

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.785 of 2016

The State Rep. by  
The Inspector of Police,  
Jolarpettai Railway Police Station,  
Vellore District.  
(Crime No.56/2015)

... Revision Petitioner/  
Complainant

Vs.

1. Mithun @ Mithunkumar
2. Kunthan @ Jacky
3. Sunny Kumar @ Kannaiha
4. Krishnakumar
5. Bittu Ram
6. Deepak Kumar
7. Mukesh Kumar
8. Ajay

... Respondents/Accused A1 to A8

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order of discharge of the respondents/ accused ( A1 to A8 )passed by the Sessions Judge, Magalir Neethimandram(Fast Track Court), Vellore District in Crl.M.P.No.101/2016 in S.C.No,186/2015 dated 23.03.2016.

For Petitioner : Mr.R.Ravichandran,  
Government Advocate  
(Crl. Side)

For Respondent : Mr.A.Swaminathan,  
Legal Aid Counsel

ORDER

Challenging the order, discharging the respondents from the criminal case, the present revision has been filed by the State.

2. All the respondents have been arrayed accused in S.C.No.186/2015 on the file of the Sessions Judge, Magalir Neethimandram(Fast Track Court), Vellore District . They have been charged for an offence under Section 392 @ 395 IPC. Earlier a crime has been registered against the respondents stating that in the mid night of 20.04.2015 and 21.04.2015 around 1.00 a.m, defacto complainant in this case was travelling in Bangalore- Chennai Express in coach No.S.5, in berth no.47. While the train was crossing Somanayakkanpatti Railway station, all the accused with an intention of committing dacoity had managed to pull down train safety chain and snatched away a gold chain weighing 24 grams through window from the neck of the defacto complainant.

3. Based on the complaint a crime has been registered in Cr.No.56 of 15 and during investigation all the accused were arrested and after investigation, final report was also filed before the jurisdictional court . Thereafter on committal the learned Sessions Judge, Magalir Neethimandram (Fast Track Court), Vellore District took cognizance of the offence in CC No. 186 of 2015, pending trial the accused filed a petition U/s.227 Cr.P.C to discharge them from the criminal case on the ground that there are no prima facie materials available against them to proceed further. The court below allowed the application holding that the accused were not previously known to the victim and that there was no test identification parade conducted at the time of investigation, to establish the identity of the accused. Now, challenging the same the present revision has been filed.

4. Since there was no representation on behalf of the respondents Mr. A.Swaminathan, learned counsel, has been appointed as Legal Aid Counsel for the respondent.

5. Heard Mr.R.Ravichandran, learned counsel appearing for the petitioner and Mr.A.Swaminathan, legal aid counsel appearing for the respondents and perused the materials available on records carefully.

6. The learned Government Advocate (Criminal Side) appearing for the petitioner/ state, submitted that there are enough materials available on record to show that a Prima facie case has been made out against the respondents and after arrest, the respondents have voluntarily given confession and based on their disclosure statements, the stolen properties were also recovered from respondents in Uttar Pradesh. Apart from that there are other prima facie materials are also available on record to prove the guilt of the accused. But the court below, without considering the same, mechanically discharged the accused from the charges.

7. Per contra the learned counsel appearing for the respondents submitted that the court below was right in holding that there are no materials available on record even to show prima facie case against the respondents.

8. I have considered the rival submissions and perused the materials available on record carefully.

9. On perusal of the record, it is seen that the accused belong to state of Uttar Pradesh and there are number of cases pending against them. In the instant case, after their arrest, it is alleged that the accused confessed to their guilt individually and pursuant to their confessions, the accused led the police to their state namely Uttar Pradesh and produced the stolen articles which were hidden somewhere in the place identified by them in the presence of witnesses. The materials available on record would be sufficient at this stage to point out the involvement of the respondents in the crime. But, the Court below without having considered the same discharged the accused merely on the ground that there was no identification parade conducted at the time of investigation.

10. Mere failure to hold a test identification parade is not at all a ground to discharge the accused especially when the other materials available on record prima facie showing the involvement of the respondents. It is to be borne in mind that test identification parade report is not a substantive evidence. It has only corroborative value. The Court below without considering all the materials available on record has erroneously discharged the respondents, which is illegal. In the above circumstances, the impugned order passed by the Court below is liable to be set aside and the revision is allowed.

11. In the result, the Criminal Revision Case is allowed and the order discharging the accused from the charges of the court below is set aside.

12. While parting with the case, we appreciate the services rendered by Mr.A.Swaminathan, the learned counsel, who appeared on behalf of the respondents/accused, as legal aid counsel. The legal services authority is directed to pay his remuneration.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

aav/ mrp

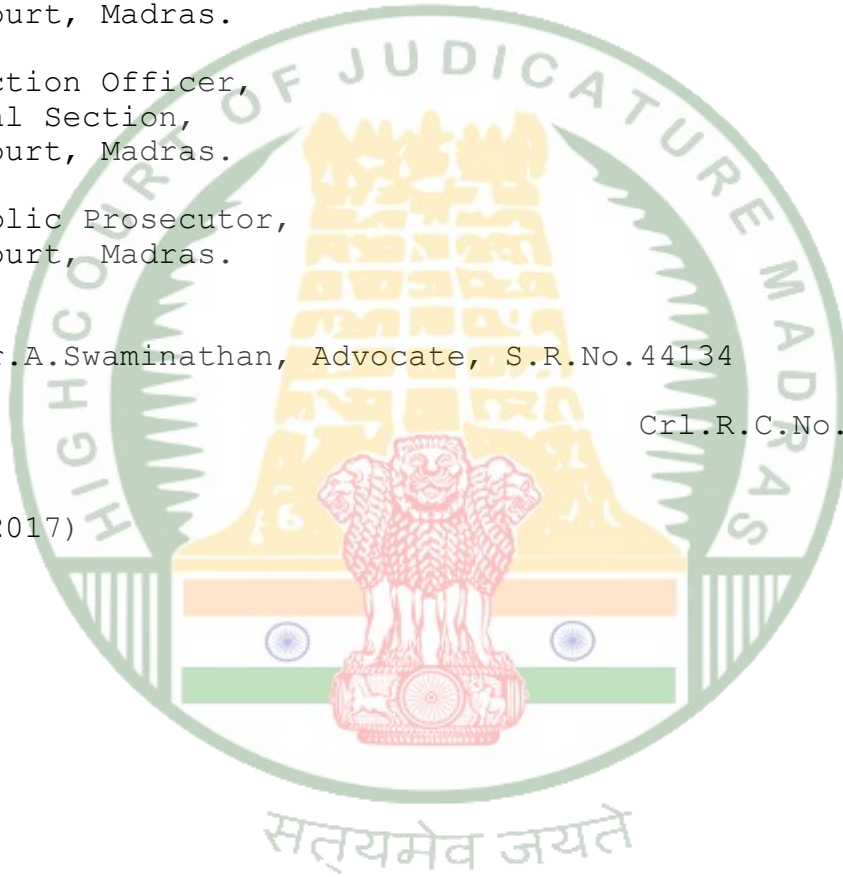
To

1. The Sessions Court,  
Magalir Neethimandram(Fast Track Court),  
Vellore District
2. The Inspector of Police,  
Jolarpettai Railway Police Station,  
Vellore District.
3. The Secretary,  
Legal Services Authority,  
High Court, Madras.
4. The Section Officer,  
Criminal Section,  
High Court, Madras.
5. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.A.Swaminathan, Advocate, S.R.No.44134

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SR(CO)  
CA(17/11/2017)



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