



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No. 628 of 2016

B.R.K.Adityan : Revision Petitioner /Petitioner
Accused

Vs.

1. State Rep by
The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.
(In Crime No.345 of 2013)

2.Arun @ Arunachalam : Respondent/Respondent /
Complainant

*(R2 impleaded vide order
dated 06.09.2017)

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order dated 19.08.2016 made in Cr.M.P.No.12552 of 2015 in C.C.No.316 of 2015 on the file of the Judicial Magistrate Court, Tiruchendur, Thoothukudi District and set aside the same and consequently discharge the Revision Petitioner/Accused from C.C.No.316 of 2015 on the file of the learned Judicial Magistrate, Tiruchendur.

For Petitioner : Mr.S.Karthick Subramanian

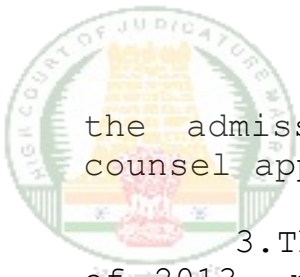
For Respondent-1 : Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor

O R D E R

This Criminal Revision has been filed praying to set aside the order, dated 19.08.2016 made in Cr.M.P.No.12552 of 2015 in C.C.No.316 of 2015, on the file of the Judicial Magistrate Court, Tiruchendur, Thoothukudi District and consequently, discharge the Revision Petitioner/Accused from C.C.No.316 of 2015, on the file of the learned Judicial Magistrate, Tiruchendur.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Criminal Revision is taken up for final hearing, in



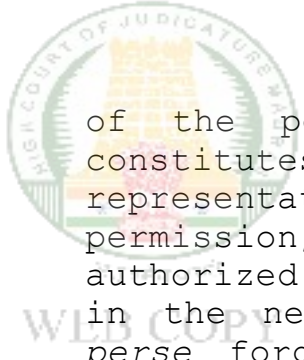
the admission stage itself, with the consent of the learned counsel appearing on either side.

3. The petitioner herein is the sole accused in Crime No. 345 of 2013, registered on 01.08.2013, by the first respondent under Section 468 of IPC., on the basis of the written complaint given by the 2nd respondent, a practicing advocate of this Court, stating that the accused is running an Institution in the name of "Mahas Institute of Professional Studies", as franchise agent, which invited and induced the students to join in Law Courses, without obtaining any proper permission from the Competent Authorities viz., the University of Grant Commission, Indian Bar Council, Tamil Nadu & Pondicherry Bar Council etc., for conducting the Law Courses, by publishing advertisements in Newspapers luring the students on receiving money to admit them in Law Colleges in the neighbor State. After completing the investigation, the first respondent has filed the charge sheet for the offence punishable under Section 468 of IPC., on 30.10.2014, before the learned Judicial Magistrate, Tiruchendur, which took cognizance and is pending as C.C.No.316 of 2015. The petitioner / accused appeared before the said Court and filed an application in CrI.M.P.No.12552 of 2015, seeking discharge under Section 239 of Cr.P.C., from the case contending that the charge sheet filed by the first respondent does not disclose the commission of offence of forgery or existence of any documents said to be forged for cheating. After hearing both sides, the trial Court dismissed the discharge application filed by the accused in its order, dated 19.08.2016. Aggrieved by the order of dismissal, the accused / petitioner has filed the present Criminal Revision before this Court.

4. The learned counsel appearing for the petitioner would submit that the petitioner is not running any educational institution and he only used his institution for the purpose of collecting fees and issue receipts to that effect, as authorized by "The Kempegowda Law College", Chickballapur in Karnataka State and he is not running the institution with an intention to cheat anybody; that the allegation raised against the petitioner / accused in the FIR as well as in the charge sheet does not constitute any offence under IPC or any other criminal legislation; that there is no prima facie materials for framing of charges and that the petitioner has not forged any documents or part of documents to attract the provisions of the offence of forgery. There is nothing on record to show that the accused knew or had reason to believe that the documents are forged ones and none of the ingredients under Section 468 IPC., is attracted and that the learned Judicial Magistrate dismissed the discharge application by improper impugned order which is vitiated and is also liable to be set aside.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned Additional Public Prosecutor appearing for the first respondent, on instructions, would submit that the act



of the petitioner, who is running such institution *ex facie* constitutes the forgery of documents viz., the visible representation of an authorized law Institution, without any valid permission, that too, an educational institution, which he is not authorized. Moreover, the petitioner has published advertisement in the newspapers, which contains misrepresentation which also *per se* forgery and cheating and that evaluation of documentary evidence can be done during the trial alone and not at this stage conducting roving and fishing enquiry, as demanded by the petitioner. Further, on perusal of the complaint and Section 161 (3) Cr.P.C., Statements of the witnesses and available records a *prima facie* case is made out for the offence of cheating and forgery and hence, this Criminal Revision is liable to be dismissed.

6. The learned Additional Public Prosecutor, in support of his contentions, has relied on the Judgment of the Hon'ble Apex Court in ***State Anti Corruption Bureau, Hyderabad and Another Vs. P.Suryaprakasam*** reported in ***(1999 SCC (Cri.) 373)*** "Held - Cr.P.C., 1973 Sections 239 & 240 and 228 - At the stage of framing of charge court is required to consider only the police report and documents sent with it under Section 173 - Accused has right of being heard and the Court may examine him, if it thinks necessary - However, the High Court not justified in looking into the documents filed by the accused and relying upon them to conclude that no offence was committed by them."

7. I have perused the materials available on record. Heard and considered the rival submissions made on either side.

8. This Court is not inclined to go deep into the probative value of the materials on record. What need to be considered at the stage of framing of charge is whether there is a ground for presuming that the offence has been committed or not a ground for committing the accused has been made out. The legal position is that, if the trial Court is satisfied with the *prima facie* case is made out, charge has to be framed. Further, the defect in investigation itself cannot be a ground for discharge, as per the decision in ***State of Tamil Nadu by the Inspector of Police Vigilance and Anticorruption Vs. N.Suresh Rajan and Others***, referred to by the trial Court in its impugned order. No provision in the Code of Criminal Procedure, 1973 mandates to the accused any right to file any material documents at the stage of framing of charge. The right is granted only at the time of trial. The copy of the charge sheet and the statements of the witnesses recorded under Section 161(3) of Cr.P.C., during investigation are filed in this case.

9. On perusal of the charge sheet filed in this case would show that there is only allegation that the accused had committed



the offence punishable under Section 468 of IPC., running "Mahas Institute of Professional Studies", in Door No.567, within the jurisdiction of Veerapandian Pattinam Panchayat, situated at Thiruchendur to Thoothukudi Main Road on 24.07.2013, without any permission or licence from the Government, by way of publication, for Joining Law course at Karnataka State. Apart from the above, nothing is stated about the existence of said to be forged, as required under Section 468 of IPC., and under Section 463 IPC. The statements recorded under Section 161(3) of Cr.P.C., do not mentioned the existence of any such documents or record said to be forged. Charges of violation of any Act or Regulation are not mentioned in the charge sheet by the prosecution. The entire charge sheet neither reveals the commission of forgery upon any documents nor records in cheating any person.

10. The statements of the Principal, "The Kempegowda Law College", Chickballapur in Karnataka State, was recorded under Section 161(3) of Cr.P.C., during investigation in which, it is stated that the accused was permitted and authorized by the said College in Ref.No.GLC/M.I.P.S/Auth/125/2011-2012 to till 31.03.2015, to collect the educational certificates, tuition fees by way of cheque from the eligible and competent persons at Tamil Nadu, who are willing to join LLB Law Course in that College at Karnataka. The statements of all witnesses recorded under Section 161 (3) Cr.P.C., reveals that they do not know as to whether the accused had obtained any permission for conducting such institution from the Government or concerned Panchayat. The prosecution has not filed any records or statements of witnesses to show that the accused is running the said institution without any permission from the Government or any Competent Authority. The prosecution documents available and produced in this case do not reveal the existence of any documents or record said to be forged or any witnesses for cheating. No materials placed or filed along with the charge sheet to frame the charge for offence under Section 468 IPC., as contended by the prosecution in this case and any other criminal offences.

11. It is pertinent to note that the learned trial Judge has not pointed out the statements of any particular witness implicating the petitioner with specific allegation. The above said finding is not only vague, but also not based on materials available on record. Except rendering the above vague findings, there is absolutely no discussion whatsoever in respect of the grounds raised by the petitioner in the impugned order. The learned trial Judge has not pointed out even a single piece of material either through the statement of witnesses or through the documents produced by the prosecution to arrive at the conclusion that the prosecution has made out a *prima facie* case against the petitioner. The charge sheet and other records produced in this case relied by the prosecution does not constitute the commission of offence



punishable under Section 468 IPC., by the accused in this case. Considering the above facts and circumstances, this Court is inclined to allow the Criminal Revision.

12. In the result, this Criminal Revision is allowed and the impugned order, dated 19.08.2016 passed in Cr.M.P.No.12552 of 2015 in C.C.No.316 of 2015, by the learned Judicial Magistrate Court, Tiruchendur, Thoothukudi District, is set aside and consequently, the Revision Petitioner / accused is discharged from C.C.No.316 of 2015, on the file of the learned Judicial Magistrate, Tiruchendur.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Tiruchendur,
Thoothukudi District.
2. The Chief Judicial Magistrate,
Tiruchendur, Thoothukudi District.
3. The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Record Clerk
Crimianl Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

MPK

AE/SKN RSK/SAR2/15.02.2018/5P/7C

Orders made in
Cr1.RC(MD)No. 628 of 2016
Dated:- 22.12.2017