



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI  
Crl.RC.No.354 of 2009

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N.Viswanathan ... Petitioner/Complainant

(As per the order of this  
Court dated 30.11.2018 made  
in Crl.M.P.No16121 of 2018  
in Crl.RC.No.354 of 2009)

Vs.

1.Ramalingam

2.Shanmugasundaram

3.Bhoopathy

... Respondents/Accused

No.1 to 3

Prayer:- Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure to call for the records pertaining to the order dated 09.01.2009 made in Crl.M.P.No.51 of 2008 in S.C.No.270 of 2008 on the file of the Additional District and Sessions Court/Fast Track Court No.II, Salem and set aside the same by allowing the Criminal Revision Case before this Court.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.D.Shivakumaran

O R D E R

This Criminal Revision Case is filed to set aside the order dated 09.01.2009 made in Crl.M.P.No.51 of 2008 in S.C.No.270 of 2008 filed under Section 227 of the Code of Criminal Procedure, on the file of the Additional District and Sessions Court/Fast Track Court No.II, Salem, by which, the learned trial Judge allowed the petition and discharged the respondents/accused from the case, against which, the present Criminal Revision Case is filed.

2.The petitioner herein is the husband of the deceased one Siddammal. On earlier occasion, he lodged a complaint against the respondents herein in Cr.No.107 of 2004 for the offences under Sections 341, 323 and 302 of the Indian Penal Code. After investigation, the said case was closed as 'mistake of fact'. Thereafter, the



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petitioner herein filed a private complaint in C.M.P.No.2723 of 2005 and the same was taken on file by the learned Judicial Magistrate No.II, Mettur Dam. However, after enquiry, the learned Judicial Magistrate No.II, Mettur Dam, dismissed the above C.M.P.No.2723 of 2005 under Section 203 of the Code of Criminal Procedure. Aggrieved by the said order of dismissal, the petitioner herein preferred a revision in Crl.R.C.No.1419 of 2007 before this Court. This Court, by its order dated 18.09.2007, set aside the order and directed the learned Judicial Magistrate No.II, Mettur Dam, to proceed with the complaint and pass appropriate orders. Thereafter, the learned Judicial Magistrate recorded the statements of the witnesses and assigned P.R.C.No.21 of 2008. Thereafter, the matter was committed to the Sessions Court, for further trial. After committal proceedings, the respondents herein filed a discharge petition under Section 227 of the Code of Criminal procedure. The above said discharge petition was allowed, after hearing the respondents/accused, against which, the present revision is filed.

3.Mr.N.Manokaran, learned counsel for the petitioner would submit that though initially, the Law Enforcing Agency closed the matter as 'Mistake of fact', the petitioner filed a private complaint under Section 200 of the Code of Criminal Procedure before the learned Judicial Magistrate No.II, Mettur Dam. After the dismissal of the said complaint, this Court, by its order dated 18.09.2007, has set aside the order passed by the learned Judicial Magistrate No.II, Mettur Dam and directed the learned Judicial Magistrate to proceed the matter for further trial. After recording the entire statements and perusal of the documents and after completing the committal proceedings, the matter was further made over to the Sessions Court, for further trial. At that stage, the respondents herein filed a discharge application and the Sessions Court instead of finding out the prima facie case arising for consideration, conducted mini trial and allowed the discharge petition.

4.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court of India in the case of Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and Another reported in (2013) 11 Supreme Court Cases 476 and the relevant paragraph No.20, is extracted as under:

''20.To the same effect is the decision of this Court in Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] where this Court was examining a similar question in the Context of Section 227 of the Code of





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does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

5. Per contra, Mr. D. Shivakumaran, learned counsel for the respondents would submit that the learned Judicial Magistrate has power to discharge the accused, when there is no prima facie case is made out by the petitioner. The Doctor certificate clearly indicates that the death of the petitioner's wife was due to rupture in her heart and it was purely a natural death. The petitioner's wife suffered heart disease, due to which, she died naturally. Based on the medical certificate and statement of the Doctor, the trial Court discharged the respondents/accused, which is perfectly right and this Court need not interfere with the same.

6. In support of his contention, the learned counsel appearing for the respondents/accused relied upon the decision of the Hon'ble Supreme Court of India in the case of Dilawar Balu Kurane Vs. State of Maharashtra reported in (2002) 2 SCC 135 and the relevant paragraph No.12 is extracted as under:

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the



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prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] )."

7. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

8. The admitted fact is that initially, the Law Enforcing Agency registered the complaint filed by the petitioner, thereafter, the case was closed as 'mistake of fact'. Not satisfied with the said order, again, the petitioner filed a private complaint under Section 200 of the Code of Criminal Procedure before the learned Judicial Magistrate No. II, Mettur Dam. Though, initially, the Judicial Magistrate dismissed the complaint and on intervention of this Court, the complaint was taken on file and the matter was committed to the Sessions Court, for further trial. At that stage, the respondents/accused filed a discharge petition contending that the trial Court perused the statement and certificate issued by the Medical Practitioner and arrived at a conclusion that it was a natural death and not as alleged by the petitioner.

9. The relevant portion of the report of the Postmortem doctor, is extracted as under:

"No anti mortem injuries present anywhere on the body. A tear present over the posterior aspect of the heart 1 x 5 c.m. With reddish yellow zone surrounding it. Abundant Fat present on the heart and in the abdominal wall coronaries Patent."

10. However, on perusal of the statement of the witnesses, entire records and the medical certificate, the trial Court arrived at a conclusion, which is unsustainable one and the trial Court has no power to conduct mini-trial in the discharge application.

11. On perusal of the above decision, it is made clear that the learned trial Judge, who has to consider discharge of accused under Section 227 of the Code of Criminal Procedure, has to satisfy as to whether any prima facie case is available or not. When there is no prima facie case is available, the learned trial Judge



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can discharge the accused without any application and the trial Court has to consider whether any prima facie material is available to proceed with the case or not and the trial Court has power to discharge the accused under Section 227 of the Code of Criminal Procedure. However, in the present case, there are several litigations between the petitioner and the respondents and the same need not be discussed before this Court.

12. Without expressing any opinion, I am inclined to set aside the order dated 09.01.2009, made in CrI.M.P.No.51 of 2008 in S.C.No.270 of 2008, on the file of the Additional District and Sessions Court/Fast Track Court No.II, Salem, and remand the matter for trial.

13. In the result, this Criminal Revision Petition stands allowed and the order dated 09.01.2009, made in CrI.M.P.No.51 of 2008 in S.C.No.270 of 2008, on the file of the Additional District and Sessions Court/Fast Track Court No.II, Salem, is hereby set aside. The learned Additional District and Sessions Judge, Fast Track Court No.II, Salem, is directed to proceed with the case in accordance with law. However, the appearance of the respondents is dispensed with, unless, the learned Additional District and Sessions Judge finds that the appearance of the respondents/accused for completing the trial is necessary. However, this order would not stand in the way of the learned Additional District and Sessions Judge to insist for the appearance of the respondents.

Sd/-  
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,  
Fast Track Court No.II, Salem.

2. The Public Prosecutor,  
High Court,  
Madras.

+1cc to Mr.D.Shivakumaran , Advocate SR.No. 89163

+1cc to Mr.N.Manokaran , Advocate SR.No. 89128

CrI.RC.No.354 of 2009

A. SK (24/06/2019)