

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 29.06.2018

ORDERS PRONOUNCED ON: 12.07.2018

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.RC.NO.563 OF 2018

AND

CRL.MP.NO.6624 OF 2018

Selvakumar

..Petitioner/Accused No.6

Versus

The State Rep.by
ADSP of Police Station,
CBCID of Police,
Namakkal District.

.. Respondents/Complainant

Prayer:

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C, against the order made in Criminal Miscellaneous Petition No.1218 of 2017 in S.C.No.78 of 2016 dated 13.04.2018 on the file of the Principal Sessions Judge, Namakkal.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel
for Mr.Karan & Uday.

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

ORDER

This Criminal revision petition has been filed against the order dated 13.04.2018 made in Crl.MP.No.1218 of 2017 in S.C.No.78 of 2016 on the file of the learned Principal Sessions Judge, Namakkal, whereby the petition for discharge filed by the petitioner under Section 227 of Code of Criminal Procedure was dismissed. Challenging the same, the petitioner herein has come forward with this Criminal Revision Case.

2. The petitioner herein, who is arrayed as 6th accused in S.C.No.78 of 2016 on the file of the learned Principal Sessions Judge, Namakkal, has filed the petition in Crl.M.P. No. 1218 of 2017 in S.C.No.78 of 2016 under Section 227 to discharge him from the case and the same was dismissed.

3. Earlier, the petitioner has filed a discharge petition in Crl.M.P. No. 1218 of 2017 and during the pendency of the same, the petitioner filed another petition for dropping the criminal proceedings against him but it was returned without assigning any number. Challenging the order of return, the petitioner filed Crl.OP No. 26970 of 2017 before this Court in which an order dated 07.12.2017 was passed setting aside the order of return with a direction to the court below to take up the unnumbered petition in SC No. 78 of 2016 filed on 29.11.2017 and to dispose of the same on merits. Thereafter, the petitioner has filed another petition in Crl.OP No. 825 of 2018 before this Court to transfer the investigation in the case from the file of Principal Sessions Judge, Namakkal to the file of Special Court constituted under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to any other District of the State. The said Criminal Original Petition No. 825 of 2018 was dismissed on 27.02.2018. Thus, petitioner has filed two petitions, one in Crl.M.P. No. 414 of 2018 to drop the criminal proceedings in S.C. No. 78 of 2018 and CMP No. 1218 of 2017 for discharge and on it's dismissal by the Court below, the present Criminal Revision Case is filed.

4. The learned Senior counsel Mr.V.Ayyadurai, appearing for the petitioner would contend that the petitioner has been falsely implicated to victimise him with an ulterior motive by the informant. The petitioner was roped in the criminal case due to personal animosity due to the death of the son of the informant namely Gokulraj, which had alleged to have happened on 24.06.2015.

5. The learned Senior counsel Mr.V.Ayyadurai, appearing for the petitioner would further contend that as per the final report A-1 to A-3 have kidnapped the victim girl on 23.06.2015 in the car belonged to A-1 and thereafter contacted A-5 and A-6 (petitioner herein) over phone and asked them to be present at Kongunapuram. At about 2.15 pm, A-5 and A-6 (petitioner herein) were taken in the car belonged to A-1. However, when the car reached Oрукkamalai the petitioner/A-6 alighted from the vehicle at about 4.45 pm. According to the learned Senior counsel for the petitioner, the petitioner was neither present when the victim was abducted nor present at the site where the victim was murdered and hence, in the absence of any material to connect the accused into the alleged crime. he has to be discharged instead of directing him to face the ordeal of trial.

6. The learned Senior counsel further contended that as per the final report this petitioner is only a co-passenger and he got down at the intermediate stage between Konganapuram and Orukkamalai. Though there was a confession statement connecting the petitioner with the alleged occurrence, the confession statement does not lead to any recovery and hence it is of no legal value and further according to the final report the prime accused has kidnapped the victim in the case and picked up her in a vehicle in Orukkamalai and on receipt of the information, A-5 and A-6 have joined them in the car and went to the Orukkamalai. Therefore, the suicidal statement alleged to have been given by the co-accused and recorded by way of mobile phone by A1 and A4 when they were returning from the said mountain cannot be put against the petitioner when A6 alighted from the car in the middle.

7. The learned Senior Advocate, Ayyadurai, relied upon the decisions of the Hon'ble Supreme Court case Bullu das vs. State of Bihar reported in (1998) 8 SCC, 130 and in case Raju alias Devendra Choubey vs. State of Chattishgarh reported in (2014) 9 SCC 299. He would vehemently argue that as against this petitioner, the provisions of the SC/ST (Prevention of Atrocities) Act, is not applicable and in the absence of any valid material to show that the petitioner allegedly committed the offence under Section (3) (2) V of the SC/ST (Prevention of Atrocities) Act he is entitled for discharge. He also relied upon the decision rendered by the Hon'ble Supreme Court case Asharfi vs. State of Uttar Pradesh Judgment in Criminal Appeal No.1182 of 2015, wherein, it is held is as follows:

'In the present case, unamended Section 3(2)(v) of the SC/ST Prevention of Atrocities Act is applicable as the occurrence was on the night of 8/9.12.1995. From the unamended provisions of Section 3(2)(v) of the SC/ST Prevention of Atrocities Act, it is clear that the statute laid stress on the intention of the accused in committing such offence in order to belittle the person as he/she belongs to Scheduled Caste or Scheduled Tribe community and Section 3(2)(v) of the SC/ST Prevention of Atrocities Act can be pressed into service only if it is proved that the rape has been committed on the ground that PW-3 Phoola Devi belonged to Scheduled Caste community'

8. The respondent filed a counter statement through the learned public prosecutor alleging that the case has been investigated as per the direction of this Court and investigation was taken up by CBCID in Crime No.2 of 2015 for alleged reference under Sections 120-B, 364, 34 r/w 109 of IPC, 384, 465, 468 of IPC, 471 r/w 468 of IPC, 302, 201, 212, 216 of IPC and 3(2)(v) of SC & ST (Prevention of Atrocities) Act, 1989 against the petitioner/accused 6 and 16 others.

9. As per the investigation, the accused have entered into a conspiracy went to Konganapuram and joined the Prime accused A1 Yuvaraj. The prime accused A1 Yuvaraj along with petitioner/accused A6 Selvakumar and other accused went to Orukkamalai. Petitioner/accused Selvakumar where they have beaten Gokulraj and abused him in filthy language and asked him as to how a Schedule Caste boy can dare to be in love with a Kongu Vellalar Gounder girl and then with an intention to murder Gokulraj and to make it as a suicide, accused Yuvaraj threatened Gokulraj and asked him to speak as if he would commit suicide due to love failure. Under threat of life, Gokulraj did as directed by the accused Yuvaraj. Such conversation made by deceased Gokulraj videographed and the suicide statements of Gokulraj was recorded by using the mobile phone of the accused A2- Arun.

10. According to the learned Additional Public Prosecutor, the evidences of Lws 89 and 90 recorded in this case will clearly establish the involvement of the petitioner/accused A6, Selvakumar in the offence along with the other accused persons. The learned Additional Public Prosecutor's statement is brought to my notice and the statements were recorded under Section 161 of Criminal Procedure Code and the statement of LW89, LW90, LW18, LW45, LW51 and LW52 were relied on to contend that there are enough material evidence against the petitioner accused and therefore at this stage, he need not be discharged.

11. Heard both sides. Admittedly, the alleged occurrence in this case took place on 24.06.2015 and the amended provisions of the SC/ST (Prevention of Atrocities) Act, came into force on 26.01.2016, by virtue of the amended Act, 2016. It is brought to my notice that the trial Court is likely to frame the charge as against the accused under SC/ST (Prevention of Atrocities) Act also. Therefore, this Court is inclined to direct the trial Court to consider the applicability or otherwise of the applicability of provisions of this act prior to it's amendment or after amendment to Section 3 (2) (V) of the SC/ST (Prevention of Atrocities) Act in the light of the above reference decisions of the Hon'ble Supreme Court case in Criminal Appeal No. 1182 of 2015 dated 08.12.2017 and thereafter, proceed with case in accordance with law.

12. After going through the evidence of LW89, LW90, LW18, LW45, LW51 and 52 and the connected papers filed by way of typed set of papers. I am of the considered view that there are sufficient materials made available by the prosecution to proceed against the petitioner/A6 for the offences alleged. Therefore, in such circumstances, I am of the view that the petitioner has to face the trial in the case and at this stage, he is not entitled to be discharged. Accordingly, the order

dated 13.04.2017 passed in Criminal Miscellaneous Petition No.1218 of 2017 in S.C.No.78 of 2016 dated 13.04.2017 on the file of the Principal Sessions Judge, Namakkal is confirmed. The Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Principal Sessions Judge, Namakkal,
(Special Court Constituted under the
Scheduled castes and the scheduled
Tries Prevention of Atrocities Act, 1989)
2. The Additional Deputy Superintendent of Police,
CBCID of Police, Namakkal, Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

CrI.RC.No.563 of 2018
and
CrI.MP.No.6624 of 2018

MR (CO)
CS/24/07/18

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