

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :21.06.2018

Orders Pronounced on: 27.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.674 of 2018
and
Crl.M.P.No.8149 of 2018

S.Viswanathan

...Petitioner

Vs.

The Inspector of Police,
C.C.I.W/C.I.D Tiruvannamalai P.S
Tiruvannamalai

...Respondent

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in C.M.P.No.994 of 2017 in C.C.No.3 of 2014 dated 06.04.2018 on the file of the Judicial Magistrate I, Vellore and set aside the same and allow this revision petition.

For Petitioner : Mr.S.Ramesh Kumar

For Respondent : Mr.R.Surya Prakash,
Govt.Advocate (Crl.side)

ORDER

The third accused is the petitioner herein. This revision is filed against the dismissal of the petition filed under Section 216 of Cr.P.C to alter the charges in C.C.No.03 of 2004, 7 of 2004, 8 of 2004, 09 of 2004 and 10 of 2004 by restoring Al Sa.Si.Perumal (already discharged). Charge sheets had been originally filed by the respondent in Calendar Cases C.C.No.03/2004, C.C.No.07/2004, C.C.No.08/2004, C.C.No.09/2004 and C.C.No.10/2004 and in all the said cases, Sa.Si.Perumal was

the first accused.

2. The learned counsel for the petitioner has submitted that originally the said Mr.Sa.Si.Perumal filed a discharge petition under Section 239 of Cr.P.C in Crl.M.P.No.1466 of 2004 in C.C.No.03/2004, Crl.M.P.No.1465/2004 in C.C.No.04/2004 Crl.M.P.No.1467/2004 in C.C.No.08/2004, Crl.M.P.No.1468/2004 in C.C.No.09/2004 and Crl.M.P.No.1469/2004 in C.C.No.10/2004 and the said discharge applications were dismissed by this Court on 27.07.2006. On such dismissal, all the Calendar Cases were clubbed together for the purpose of common trial.

3. The learned counsel for the petitioner has further submitted that A1 had preferred revision in Crl.A.No.30 of 2007 against the dismissal of his discharge applications in Crl.M.P.No.1466/2004 in C.C.No.03/2004 and the said revision petition was allowed by the Fast Track Court, Vellore by order dated 22.08.2007, whereby A1 stood discharged in C.C.No.03/2004.

4. Further, the counsel for the petitioner has submitted that the petitioner had not challenged the order passed in CRP.No.30/2007. However, a member had challenged the order in Crl.R.P.No.30/2007 and by order in Crl.R.C.No.777/2011, this Court confirmed the order of the Fast Track Court, Vellore.

5. According to the learned counsel for the petitioner, A1 was discharged in only one case. However, in respect of other Calendar Cases, he ought to have been tried and he drew my attention to the office note of the Judicial Magistrate No.II, Vellore on 1.8.2016, whereby, all the cases have been separated.

6. The learned Government Advocate (crl.side) has submitted that originally the said Sa.Si.Peruaml was arrayed as A1 in all cases and all cases have been clubbed together. Thereafter, he filed a petition for discharge in Crl.M.P.No.1466 of 2004 in C.C.No.03/04 and it was dismissed by the learned Judicial Magistrate. However, on appeal, the Additional District Judge has allowed Crl.R.P.No.30 of 2007, dated 22.08.2007 and thereby, A1 stood discharged from the C.C.No.3 of 2004, when it stood as clubbed cases. It also appears that one member of the Society has preferred Crl.R.C.No.777 of 2011 before this Court and same was also dismissed, confirming the order passed by the F.T.C, Vellore. Therefore, the A1 stands discharged from all the proceedings and it appears that the office note order passed by the learned Judicial Magistrate No.II, Vellore is only on 01.08.2016. Therefore, in view of the earlier position of clubbing of all the cases as that of one, A1 stands discharged in all the cases and learned counsel for the petitioner further submitted that the trial has been completed and argument has been heard and the case was reserved for Judgment. It was posted

on 18.06.2018. Since this Criminal Revision was numbered, the pronouncement of the judgment has been delayed by the learned Judicial Magistrate.

7. Heard both sides and perused the records.

8. After going through the records, it is seen that though the discharge petition in Crl.M.P.No.1466 of 2004 in C.C.No.3/04 (after clubbing as a single case) was dismissed by an order dated 22.08.2018, the Additional Judge, FTC has allowed the Crl.R.P.308 of 2007 and the same was confirmed by this Court in Criminal Revision Case No.777 of 2011. Only thereafter, the cases are again split up. Therefore, the trial Court again found fault with the fact that A1 was discharged and ought to have been arrayed as an accused in other cases and such stand cannot be accepted.

9. Admittedly, this Court confirmed the order of discharge against A1. Now, the present petition has been filed before the Court below only under Section 216 of Crl.P.C for alteration of charges, wherein the one of the accused wanted to rope in A1. Admittedly, no application has been filed under 319 of Cr.P.C for adding him as accused. Hence, this revision cannot be entertained by this Court within the frame-work of the Cr.P.C.

10. Since the discharge of A1 has already been confirmed by this Court in Crl.R.C.No.777 of 2011 and as no petition has been filed under Section 319 of Cr.P.C., though, the evidence of certain witnesses referred to by the learned counsel for the petitioner was recorded as early as on 14.09.2016 and now that trial has been completed and argument has also been completed and the matter is posted for judgment. It appears that the petition has been filed only to circumvent the judicial proceedings.

11. In the above view of the matter, the petition is filed before the Court below under Section 216 of Cr.P.C for alteration of the charges in a such a way that a discharge accused is to be added as regular accused in an indirect way, to face the trial, the same cannot be permitted.

12. This Criminal Revision Petition is devoid of merits and liable to be dismissed. The order passed by the Judicial Magistrate does not call for any interference, as the same does not suffer from any illegality or irregularity.

13. Accordingly, the impugned order is confirmed and this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

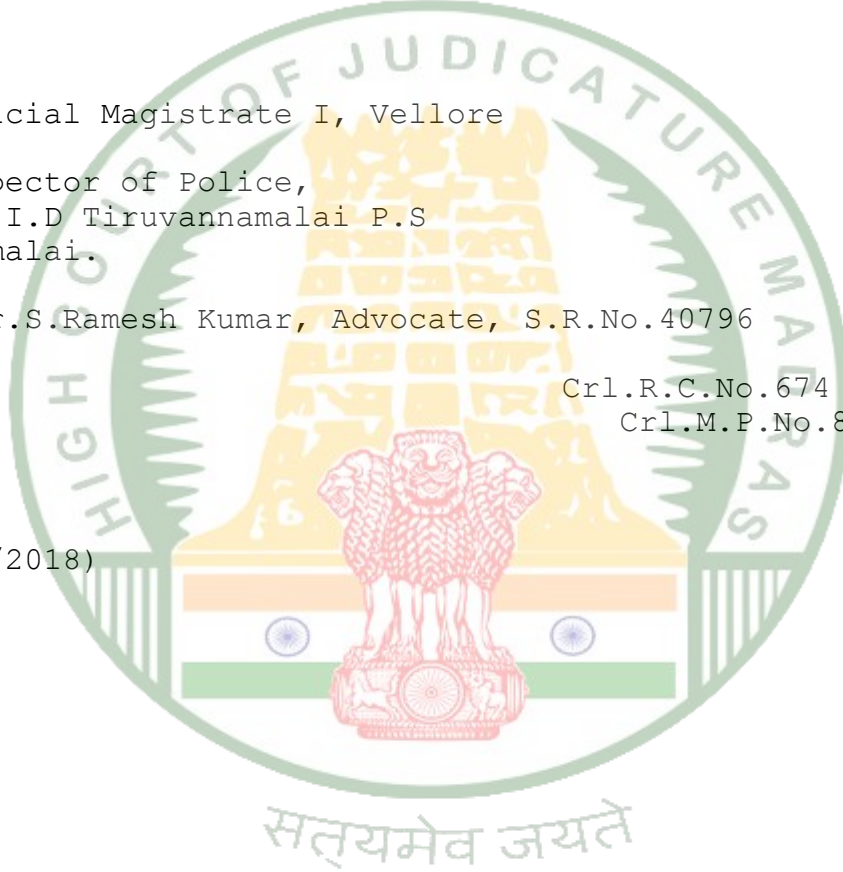
1.The Judicial Magistrate I, Vellore

2.The Inspector of Police,
C.C.I.W/C.I.D Tiruvannamalai P.S
Tiruvannamalai.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.40796

Crl.R.C.No.674 of 2018 and
Crl.M.P.No.8149 of 2018

VGII (CO)
GSP(10/07/2018)



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