



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.879 of 2015 and
M.P.Nos.1 & 2 of 2015

Sivabakkiam ...Petitioner/Complainant
Vs.
N.Gejalakshmi ...Respondent/Accused No.2

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against order dated 20.07.2015 made in C.M.P.No.412 of 2015 in C.C.No.115 of 2014 by the learned Additional Mahila Court, Salem.

For Petitioner : Mr.A.Selvendran

For Respondent : Mr.P.Tamilvel

O R D E R

The criminal revision has been filed against the order dated 20.07.2015 made in C.M.P.No.412 of 2015 in C.C.No.115 of 2014 by the learned Additional Mahila Court, Salem.

2 Complainant has preferred this criminal revision. It is the case of the complainant that he preferred private complaint before the learned Judicial Magistrate, Additional Mahila Court, Salem, against accused 1 and 2, which was taken on file in C.C.No.115 of 2014 and charges were framed under Sections 294 (b), 506 (ii) IPC. Pending the above case, the respondent/2nd accused has filed a miscellaneous petition C.M.P.No.412 of 2015 under Section 245 of Cr.P.C to discharge her. The learned Magistrate, after giving due opportunities to both the parties, allowed the petition by order dated 20.07.2015, against which, the complainant has preferred the present criminal revision before this Court.

3 The learned counsel for the petitioner/complainant would submit that while allowing the petition, filed by the respondent/2nd accused, seeking discharge, the learned Magistrate has observed that the place, where the alleged occurrence took place, will not come within the jurisdiction and also stated that there is no prima facie material to proceed the case



against the respondent/ 2nd accused, which were contrary to law. Even though, the petitioner/complainant has clearly narrated the averments in his complaint itself, the learned Magistrate failed to consider the same and erroneously allowed the petition and discharged the 2nd accused, which warrants interference.

4 The learned counsel for the respondent/2nd accused would submit that there is no specific allegations against the respondent and hence the learned Magistrate has rightly allowed the petition, filed by the respondent, seeking discharge.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 On a perusal of the complaint, it is seen that there is prima facie allegation against the petitioner/2nd accused to proceed the case. Further, jurisdiction is not the ground to discharge the accused, as done by the learned Magistrate in the present case. If the Magistrate found, the Court has no jurisdiction, it should have transferred the same to the Court concerned or returned the complaint to present before the Court, which has got jurisdiction. It is settled proposition of law that while deciding petition, seeking discharge, the Court has to see the allegations levelled in the complaint and not the defence.

7 In view of the above, the criminal revision is allowed and the order dated 20.07.2015 made in C.M.P.No.412 of 2015 in C.C.No.115 of 2015 is hereby set aside. The learned Magistrate is directed to dispose of the case in C.C.No.115 of 2015, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Mahila Court,
Salem.
2. The Sub Inspector of Police,
Karumandurai Police Station
at Sugantha Nagar Pattasu Godown Near,
Kottaimariamman Koil Opp.
Muthunaickenpatti Road,
Omalur, Salem District.



3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.P.Tamilvel, Advocate, S.R.No. 65303

+1cc to Mr.A.Selvendran, Advocate, S.R.No.65596

Crl.R.C.No.879 of 2015 and
M.P.Nos.1 & 2 of 2015

RSI (CO)
GN(30/10/2018)