



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.913 of 2015 and
M.P.No. 1 of 2015

K.Dinakaran

...Petitioner

Vs.

State Rep. by
The Inspector of Police,
B-3, Fort St. George Police Station,
Chennai - 600 009.

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for records in Crl.M.P.No.468 of 2015 in C.C.No.266 of 2015 and to set aside the order dated 12.08.2015 made by the learned VII Metropolitan Magistrate, George Town, Chennai.

For Petitioner: Mr.V.T.Balaji

For Respondent: Mr.R.Ravichandran

Government Advocate (Crl.Side)

ORDER

The criminal revision has been filed against the order dated 12.08.2015 made in Crl.M.P.No.468 of 2015 in C.C.No.266 of 2015 by the learned VII Metropolitan Magistrate, George Town, Chennai.

2 The petitioner herein was a sitting Member of Legislative Assembly at the time of occurrence. The allegation is that on 19.02.2015, in Assembly session, one of the Members of Assembly had disturbed the session and hence the Marshal was ordered to evict him. The petitioner herein, in order to support the particular Member of Legislative Assembly, had squat in the corridor of the lobby and shouted. As per order of the Speaker, the Marshal, while evicting them, the petitioner herein had confronted and assualuted the Marshal/L.W.1 the Inspector of Police and he sustained injuries. Hence, a case was registered in Cr.No.9 of 2015 under Section 341, 332 r/w 34 of IPC. The Investigating Agency, after detailed enquiry, had filed a final report before the learned VII Metropolitan Magistrate, George Town, Chennai, which was taken on file in C.C.No.266 of 2015.



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3 Pending the above case, the petitioner/1st accused had filed a miscellaneous petition in CrI.M.P.No.468 of 2015, seeking discharge. The learned Magistrate, after giving due opportunities to both the parties, had dismissed the petition, by order dated 12.08.2015.

4 Aggrieved against the above said order dated 12.08.2015, 1st accused has preferred the present criminal revision before this Court.

5 The learned counsel for the petitioner would submit that the petitioner was falsely implicated in this case. The petitioner, while discharging his official duties, false allegations were levelled against him. Further, since the petitioner is a public servant, sanction has to be obtained from the competent authority, to prosecute him. In the case on hand, no sanction was obtained by the prosecution. Therefore, the case registered against the petitioner is not maintainable. In support of his contentions, the learned counsel has relied on decisions rendered by Hon'ble Supreme Court reported in AIR 1962 Supreme Court 1573 and (2001) 5 Supreme Court Cases 7. The learned Magistrate has failed to consider the above aspects and erroneously dismissed the petition filed by the petitioner, seeking discharge, which warrants interference of this Court.

6 The learned Government Advocate (CrI.Side) would submit that there is prima facie materials to frame charge against the petitioner/1st accused. At the time of committing offence, the petitioner had not discharged his official duties. L.W.1 has clearly spoken about the incident and L.W.2 & L.W.3 were eye witness to the occurrence and L.Ws.10 to 12 are Doctors, who treated L.W.1/complainant. Hence the Magistrate, has rightly dismissed the petition, filed by the petitioner, seeking discharge.

7 Heard the learned counsel for the petitioner/1st accused and the learned Government Advocate (CrI.Side) and perused the materials available on record.

8 When the matter was taken up for hearing on an earlier occasion, it was directed to produce proof with regard to sanction. Accordingly, today, the learned Govt. Advocate has produced proceedings dated 20.02.2015 of the Secretary.

9 The learned counsel for the petitioner contended that the letter dated 20.02.2015 produced by the learned Government Advocate is bereft of particulars and the same does not shows, against whom it was ordered to take action and it would not suffice to charge the petitioner.

10 It is well settled proposition of law that, while



dealing with petitions of this nature, seeking discharge, the Court has to see the allegations made in complaint and materials produced by the prosecution under Section 173 of Cr.P.C. and defence taken by the accused need not be looked into. Further, in this case, sanction was obtained from the Secretary vide letter dated 20.02.2015 and validity of the same can be decided only after trial.

11 In the present case, the learned Magistrate found that there is prima facie materials to proceed the case against the accused and hence dismissed the petition, seeking discharge, in which this Court does not find any illegality or irregularity. However, the petitioner can raise his defence at the time of trial. The Magistrate is directed to dispose of the case in accordance with law without influencing any of the observations made by this Court.

12 In the result, the criminal revision is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The VII Metropolitan Magistrate, George Town, Chennai.
2. Do Through The Chief Metropolitan Magistrate
Egmore, Chennai.
3. The Inspector of Police
B 3 Fort. St. George Police Station
Chennai 9.
4. The Public Prosecutor, High Court of Madras.

Copy to

The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.V.T. Balaji Advocate sr 65274.

Cr1.R.C.No.913 of 2015 and
M.P.No. 1 of 2015

SV(CO)
SP(31/10/2018)