

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.92 of 2017 and

Crl.M.P.Nos.1088 and 1089 of 2017

1.Kutti Ammal @ Poongodi

2.Kumaravel @ Rajendiran

3.Kamalakaran

... Petitioners

Vs.

1.Natarajan

2.State rep by
Public Prosecutor,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 21.10.2016 made in Crl.M.P.No.4142 of 2015 in S.C.No.111 of 2006 on the file of the District Sessions Court, Thiruvannamalai.

For Petitioners : Mr.J.C.Durai Raj

For Respondents : Dr.S.R.Kalyani for R1

: Mr.G.Harihara Arun Somasankar,
Government Advocate(Crl.side) for R2

O R D E R

The present criminal revision case has been filed against the order dated 21.10.2016 made in Crl.M.P.No.4142 of 2015 in S.C.No.111 of 2006 on the file of the District Sessions Court, Thiruvannamalai, dismissing the petition filed by the petitioners /accused under Section 227 of Cr.P.C for discharge.

2. The learned Sessions Judge while dismissing the discharge petition filed by these petitioners, had given a detailed reasons. The evidence as given by P.W.1 to P.W.3 had been examined in detail and it was finally found that there was a prima facie case against these petitioners for their involvement in the offence alleged against them. Infact, the learned Sessions Judge has also relied on a decision reported in 1978 Cri.LJ (NOC) 148.

3. The learned counsel for the revision petitioners would submit that the Trial Court has not taken into consideration the claim of the petitioners herein that they were never involved in the alleged offence and they were falsely implicated. According to the revision petitioners, originally the case was closed by the police concerned that it was not a murder but, the deceased had committed suicide. Thereafter, an application in CrI.O.P.No.2716 of 2004 was filed for transferring the case to CBCID for fresh enquiry and the same was also ordered. The CBCID police also filed a final report before the learned Judicial Magistrate, Cheyyar, holding that the deceased was not murdered by anybody and he himself committed suicide and closed the case as "Mistake of Fact". Thereafter, the defacto complainant filed a private complaint under Section 200 of Cr.P.C. in CrI.M.P.No.112 of 2005 against these petitioners.

4. The learned counsel for the revision petitioners would also submit that unfortunately, the learned Sessions Judge had found that there was a prima facie material to proceed with the trial and dismissed the discharge petition. According to the learned counsel that there was absolutely no material for such conclusion and the petitioners herein are entitled to discharge.

5. The learned Government Advocate (CrI.Side) appearing for the State/second respondent would submit that the Lower Court has appreciated the evidence given by P.W.1 to P.W.3 in proper perspective and found that there was a prima facie material available and hence, held that these petitioners were not entitled to be discharged from the offence. He would submit that in discharge application what has to be seen is whether there was sufficient material available for proceeding with the trial and such finding can be arrived at on the basis of the facts presented before the Trial Court. Unless the finding appears to be unjustified and perverse, the same need not be interfered with. Therefore, the learned Government Advocate appearing for the prosecution would submit that the revision case is without any merits and the same is liable to be dismissed.

6. This Court has considered the submissions and the materials and the pleadings placed on record. From the evidence and the order passed by the learned Sessions Judge, it could be seen that the findings of the learned Sessions Judge appears to be well founded and does not suffer from any infirmity. As rightly contended by the learned Government Advocate for the prosecution that the Trial Court has to consider only whether there was sufficient material available for proceeding with the trial and framing the charge and in that stage, the prosecution need not prove the case beyond the reasonable doubt. The finding of the Trial Court is that there was enough material available to proceed against these revision petitioners.

7. The learned Sessions Judge has perused the entire evidence given by P.W.1 to P.W.3 and on the basis of the evidence that was made available, the learned Sessions Judge had come to the conclusion against the petitioners and dismissed the discharge petition. The operative portion of the conclusion of the learned Sessions Judge is also extracted hereunder:-

"A conjoint reading of the statement of P.W.1, P.W.3 and P.W.8 and other witnesses examined on behalf of the complainant would reveal the fact that it was the categorical case of the complainant that one Jeevanantham was attacked by the accused and the said Jeevanantham was expired.

8. It has been held in a case :-

1978 Cri.LJ (NOC) Page 148

Vide the Criminal Procedure Code by V.R.Manohar and W.W.Chitale, Volume 2, 8th Edition, page 792 and 793 as follows:-

" If the materials on record show that there is a probability or chance of the accused being convicted a charge may be framed for decision on the trial. For framing of charge the court will not consider the reliability or worth of the material on record. At this stage, the prosecution is not to prove the case against the accused beyond all reasonable doubt."

A careful perusal of the above said ruling, wherein it has been clearly held that if the materials on record show that there is a probability or chance of the accused being convicted a charge may be framed for the decision on the trial Court. At this stage, the prosecution is not to prove the case against the accused beyond all reasonable doubt. In the light of the above said ruling, a perusal of the records on hands, the court decided on a considered view that there is prima facie case against the accused herein as stated by the witnesses as stated above and the petition is not maintainable in law and the same is to be dismissed. Accordingly, the same is dismissed.

In the result, the petition is dismissed."

8. From the above, it could be seen that the learned Sessions Judge has given cogent finding on the basis of the evidence placed on record and also on the basis of the legal principle laid down by the Court as extracted in the order itself. In any event, when some material is available for proceeding against these revision petitioners, the trial cannot be derailed by discharging these petitioners whose involvement

was found to be having some basis. In such event, the only option open to the trial Court is to proceed with the trial and not to entertain the discharge petition. The Trial Court has done exactly the same. Hence, this Court does not find anything wrong with the order and the same does not suffer from any infirmity.

9. For the above said reasons, the present revision case is devoid of merits and substance and the same is closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The District Sessions Court,
Thiruvannamalai.
- 2.The Public Prosecutor,
Thiruvannamalai District,
Thiruvannamalai.
- 3.The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.V.R.Appaswamee, Advocate, S.R.No.83298
+1cc to Dr.S.R.Kalyani, Advocate, S.R.No.83506

सत्यमेव जयते Cr1.R.C.No.92 of 2017

SS(CO)

rrs 28/01/2019

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