



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. (MD) No. 4810 of 2018

Srinivasan

: Petitioner / Accused No.5

-Vs.-

State represented by
The Inspector of Police,
SPE/CBI/ACB/CHENNAI,
RC MA1 2015 A 007

: Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to direct the learned II Additional Sessions Judge cum Special Judge for CBI Cases, Madurai, to receive the additional grounds filed by the petitioner in CrI.M.P.No.302 of 2018 in C.C.No.11 of 2017 pending before the learned II Additional Sessions Judge cum Special Judge for CBI Cases, Madurai.

For Petitioner : Mr.A.K.Manickam

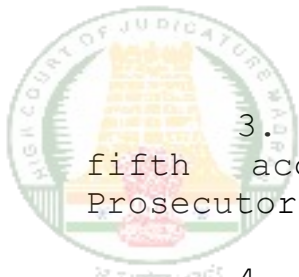
For Respondent : Mr.N.Nagendran

Special Public Prosecutor

O R D E R

The CBI registered a case in RC MA1 2015 A 007 and after completing the investigation, have filed a charge sheet against eight accused before the learned Second Additional District Judge [Special Court for CBI Cases], Madurai, and the same has been taken on file as C.C.No.11 of 2017. All the accused appeared before the trial Court and they were furnished with the copies of the charge sheet and relied upon documents under Section 207 Cr.P.C.

2. When the Magistrate proceeded to act under Chapter 19 of the Code of the Criminal Procedure, Srinivasan [A5] filed a discharge application under Section 239 Cr.P.C. The CBI filed their counter and during the course of arguments, Srinivasan [A5] filed a petition to raise additional grounds, which, according to Srinivasan [A5], was not accepted by the trial Court and therefore, Srinivasan [A5] is before this Court for a suitable direction to the trial Court to accept his additional grounds.



3. Heard Mr.A.K.Manickam, learned counsel appearing for the fifth accused and Mr.N.Nagendran, learned Special Public Prosecutor for CBI Cases.

4. It has come to the notice of this Court that in most of the cases, the accused adopt a peculiar strategy on filing discharge applications one after the other and thereby, preventing the trial Court from proceeding further. This methodology is clearly against the provisions of Sections 239 and 240 Cr.P.C. It may be apposite to extract Sections 239 and 240 Cr.P.C, which are as under:

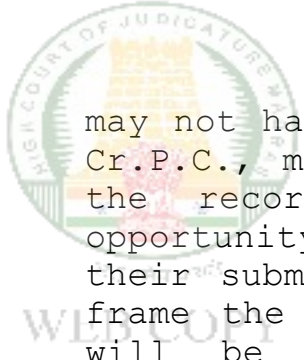
"Section 239 Cr.P.C.: When accused shall be discharged - If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 240 Cr.P.C.: Framing of charge - (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

5. A reading of Section 239 Cr.P.C., shows that the Court shall peruse the police report and documents and after giving an opportunity for the prosecution and the accused, proceed to discharge the accused, if the accusation is groundless. In other words, the prosecution should first begin the case before the trial Court and shall proceed to show that there are prima facie materials against the accused for framing charge. This process is not at all adopted in the trial Courts. The learned public prosecutor in respect of the case never opens the case under Section 239 Cr.P.C.. He waits for the accused to file a discharge application and thereafter, files a counter for the discharge application.

<https://hcservices.ecourts.gov.in/Tcservices/> In the opinion of this Court, there is absolutely no necessity for the accused to file a discharge application at all. There are instances where the accused may be a poor person, who



may not have the means to engage a lawyer. Therefore, Section 239 Cr.P.C., mandates the Court to first peruse the charge sheet and the records and the prosecution must be given the first opportunity followed by an opportunity to the accused to make their submissions on the availability of sufficient materials to frame the charges. If this practice is adopted uniformly, there will be no necessity for the accused to file discharge applications one after the other for delaying the trial.

7. If any accused does not cooperate in the enquiry under Section 239 Cr.P.C., he can be remanded to custody under Section 309 Cr.P.C., also. Therefore, this Court directs the trial Court to first find out, if all the accused have engaged lawyers. If any one has not engaged lawyer, he may be given reasonable time to engage a lawyer, failing which, he may be given the services of lawyer from the Legal Services Authority. Thereafter, after consultation with the prosecution and defence, the date should be fixed, before which, whoever wants to file a discharge application, they may file. Even, if no discharge application is filed, the trial Court shall proceed to go through the final report and the documents and give opportunity to the public prosecutor to open the case and hear the accused thereafter, and decide as to which of the accused could be discharged. Only when an accused is discharged, the reasons should be recorded under Section 239 Cr.P.C.. During this exercise, it is always open to the defence to raise all their points before the trial Court. This will also ensure that the learned Public Prosecutor in the trial Court does his home work well.

8. In such view of the matter, no direction as prayed for could be given in this case. It is open to the petitioner to raise all the points before the trial Court after the learned Public Prosecutor makes submissions. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. If any of the accused absconds, a fresh FIR can be registered under Section 229-A IPC and they can be remanded to custody.

9. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar



To

1. The Second Additional Sessions Judge cum
Special Judge for CBI Cases, Madurai.

2. The Inspector of Police,
SPE/CBI/ACB/CHENNAI.

3. The Special Public Prosecutor CBI Cases,
Madurai Bench of Madras High Court, Madurai.

+1. CC to Mr.A.K.Manickam, Advocate SR.No.58193

Order made in
Cr1.O.P. (MD) No.4810 of 2018
Dated: 27.03.2018

sm

MKV-MM-PN-SAR 1/28.3.2018/4P-5C