



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
CRL.R.C. (MD) No.65 of 2018

and

CrI.M.P. (MD) Nos.701 and 702 of 2018

R.B.Usha

: Petitioner

-Vs-

1.The State Rep. by
The Inspector of Police,
E-3 Anna Nagar Police Station,
Madurai,
(Crime No.973 of 2012).

2.Mrs.P.Shanthi

: Respondents

PRAYER: Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to pass an order to revise the order of the learned Judicial Magistrate No.VI, Madurai, dated 19.12.2017, made in CrI.M.P.No.1160 of 2014 in C.C.No.198 of 2013 in connection with Crime No.973 of 2012 on the file of the Inspector of Police, E-3 Anna Nagar Police Station, Madurai, forthwith.

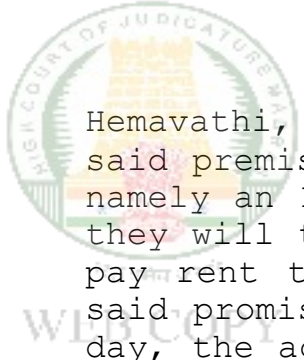
For Petitioner : Mr.S.Palani Velayutham
For Respondent No.1 : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor

ORDER

On the complaint lodged by the second respondent, the police registered a case in Crime No.973 of 2012 on 09.10.2012 against Hemavathi (A-1), Bhuvanesh (A-2) and Usha (A-3) and after completing the investigation, have filed a charge sheet in C.C.No.198 of 2013 before the learned Judicial Magistrate No.VI, Madurai, for the offence under Section 420 of the Indian Penal Code against the three accused. After appearance of the accused, Usha (A-3) filed Cr.M.P.No.1160 of 2014 under Section 239 of the Code of Criminal Procedure for discharging her from the prosecution, which has been dismissed by the Trial Court by the impugned order dated 19.12.2017, challenging which, this revision has been filed.

2. Heard Mr.S.Palani Velayutham, learned counsel for the petitioner/A-3 and Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the first respondent.

3. It is the case of the *defacto* complainant that she is the owner of a building at Door No.33/22, 4th Street, Krishnapuram Colony, Madurai-14; that Hemavathi (A-1) approached her to take on rent the house for her travel business on 17.03.2011; that



Hemavathi, Bhuvanesh and Usha were running travel business in the said premises; that the *defacto* complainant's husband had two cars, namely an Innova and Tata Indica; that the accused represented that they will take those two cars for their business purposes and would pay rent to the husband of the *defacto* complainant; that on the said promise, two cars were given to the accused and that one fine day, the accused closed the shop premises and disappeared into thin air with two cars and hence, the First Information Report. Ultimately, the Indica car was recovered from one Gurusamy and Innova car was recovered from one Chinnasamy.

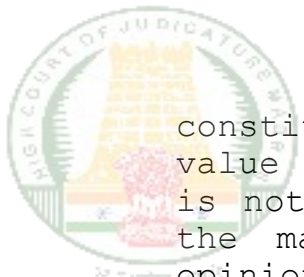
4. Mr.S.Palani Velayutham, learned counsel for the petitioner submitted that Usha was a house wife and she had nothing to do with the travel business of her husband Bhuvanesh. Therefore, he submitted that she has been falsely implicated in the offence. He also submitted that the property was taken on rent by Hemavathi (A-1) and not by Usha(A-3). In support of this contention, he brought to the attention of this Court the lease agreement between Hemavathi (A-1) and the *defacto* complainant dated 17.03.2011.

5. Per contra, the learned Additional Public Prosecutor appearing for the State submitted that there are sufficient materials to show the involvement of Usha (A-3) in the offence, inasmuch as even in the complaint given by the *defacto* complainant, she has spoken about the involvement of Usha(A-3) along with her husband Bhuvanesh (A-2) and Hemavathi (A-1). That apart, the learned Additional Public Prosecutor took this Court through the police statement of Gurusamy, who has clearly stated that Hemavathi, Bhuvanesh and Usha sold the Tata Indica car to him.

6. This Court gave its anxious consideration to the rival submissions.

7. In State of T.N. v. N.Suresh Rajan [2014(11) SCC 709], the Supreme Court has laid down the law relating to discharge under Sections 227 and 239 of the Code of Criminal Procedure. In Paragraph No.29, the Supreme Court has held as follows:

"We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients



constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

8. In this case, the police statement of the *defacto* complainant and the statement of the person from whom the car was recovered disclose *prima facie* the involvement of this petitioner and, therefore, it cannot be stated that there are no materials as against the petitioner for framing a charge. In such view of the matter, this Court does not find any infirmity in the order passed by the Court below warranting interference.

9. In the result, this Criminal Revision Case is devoid of merits and the same is, accordingly, dismissed. Consequently, the connected Miscellaneous Petitions are closed.

10. However, Mr.S.Palani Velayutham, learned counsel appearing for the petitioner submits that the presence of the petitioner before the Trial Court may be dispensed with.

11. Accepting the submission, this Court directs the petitioner to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioner files an application under Section 317 Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-examine the prosecution witnesses on the day they are examined in chief, as held by the Hon'ble Supreme Court in *Vinod Kumar vs. State of Punjab* reported in 2015 (1) Scale 542, in her absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If she absconds, a fresh First Information Report can be registered against her under Section 229-A of the Indian Penal Code. If she adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence.

Sd/-

Assistant Registrar(CS-III)

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To

1.The Judicial Magistrate No.VI,
Madurai.

2.The Inspector of Police,
E-3 Anna Nagar Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.PALANI VELAYUTHAM, Advocate, SR.45913

CRL.R.C. (MD) No.65 of 2018

Dated: 01.02.2018

SML

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