



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.07.2018

DELIVERED ON : 29.08.2018

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CORAM :

**THE HONOURABLE MRS. JUSTICE R. THARANI**

Crl. R.C. (MD) No.319 of 2014

and

M.P.(MD) Nos.1 and 2 of 2014

Kalyanasundaram

... Petitioner/A8

vs.

1. The Inspector of Police,  
Oomatchikulam Police Station,  
Madurai.

... 1<sup>st</sup> Respondents/Complainant

2.V.Marnadu

3.V.Mohan

... Respondents 2&3/Defacto  
Complainants

**Prayer:-** Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to call for the records and set aside the order dated 20.06.2014 in Cr.M.P.No.6761 of 2013 in C.C.No.348 of 2011 on the file of the learned Judicial Magistrate No.II, Madurai.

For Petitioner : Mr.G.Prabhurajadurai  
For Respondent No.1 : Mr.K.Suyambulinga Bharathi  
Government Advocate (Crl. Side)  
For Respondents 2 and 3 : Mr.K.Prabhu

**ORDER**

Heard Mr.G.Prabhurajadurai, learned counsel appearing for the petitioner, Mr.Mr.K.Suyambulinga Bharathi, learned counsel appearing for the first respondent and Mr.K.Prabhu, learned counsel appearing for the respondents 2 and 3.

2.This petition is filed to set aside the order dated 20.06.2014 in Cr.M.P.No.6761 of 2013 in C.C.No.348 of 2011 on the file of the learned Judicial Magistrate No.II, Madurai.

3.The case against the petitioner is that the petitioner and others approached the Revenue Department Officials and obtained a false patta in the name of A3, even though the District Revenue



Officer has passed a negative order. When the complainant approached A4 for rectifying the patta, A4 and her husband A1 demanded illegal gratification from the complainant. As the complainant refused to give the demanded amount, A1 to A4 conspired with the other accused and created forged sale deed and a case under Section 163, 164, 166, 167, 468, 471 r/w. 120(b) and 420 of IPC is registered against the accused.

4.The petitioner filed a discharge petition under Section 239 of Cr.P.C., and the same was dismissed by the learned Judicial Magistrate No.II, Madurai. Against the order of dismissal, the petitioner has preferred this revision case.

5.On the side of the petitioner, it is stated that the land of 1.30 acres belonged to one Salika Beevi. The complainant purchased the property in the year 1973. The patta was issued in the name of Balkis Beevi for 0.82 cents. When the complainant approached the Village Administrative Officer to change the patta, A4 and her husband demanded bribe. Using the false patta given in the name of Balkis Beevi, the said Balkis Beevi sold the property with the help of other accused. FIR was registered against seven persons and the name of the petitioner is not in the FIR. A1 is the husband of A4. A3 is Balkis Beevi. She sold the land to A2. A5 to A7 witnessed the document. This petitioner is A8.

6.On the side of the petitioner, it is stated that the civil suit is pending and ownership cannot be decided at this stage and the enquiry of the District Revenue Officer is in favour of A3. The disciplinary proceedings against A4 is also dropped. There is no question of forgery. A3 is the owner of the property. The revenue records stand in her name. The only allegation against the petitioner is that he conspired with other accused. P.W.4 was punished by the department for issuing patta in the name of the complainant. But the petitioner was denied promotion. All the juniors of the petitioner are getting promoted.

7.On the side of the petitioner, it is stated that the part played by the petitioner is not stated in the evidence of P.Ws.2 and 3. The District Revenue Officer has decided that the property was in the name of Balkis Beevi in the revenue records even before the UDR. There is no promise to do any act. No act was done by the petitioner. No benefit was received by the petitioner. There is no forgery or imperfection or any criminal intention for the petitioner.

8.On the side of the prosecution, it is stated that the petitioner is A8 in the case and discharge from the disciplinary proceedings cannot be taken into account the criminal proceedings. The petitioner and others conspired together to grab the land of the complainant and FIR is not a encyclopedia, it cannot be a



ground to discharge a person merely because his name is not mentioned in the FIR. Departmental proceedings was done by officials whereas the criminal proceedings needs applying of judicial mind and prayed the revision to be dismissed.

9. On the side of the complainant, it is stated that the petitioner conspired with A5 pasted the photo of A3 and created forged patta pass book and A3 using the same, transferred the patta in the name of A2, and that there is specific overt act against the petitioner. On the side of the second respondent, it is further stated that in the evidence of L.W.1. In the 161 statement of A1 to A4, there are specific allegation against the petitioner. Discharge stage will occur only after issuance of copies under Section 207 of Cr.P.C., whereas in this case, A3, A5 and A7 were absconding and copies of documents are not yet given to the accused.

10. The learned counsel for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court of India in the case of **Raju @ Evendra Choubey v. State of Chhatisgarh** in **Criminal Appeal No.822 of 2012**, which reads as follows:

*"There is no reference to a third person in the FIR; no evidence that he came with the other accused or left with them. No weapon was seized from him, nor was any property connected with the crime, seized. Having regard to the role attributed to him and the absence of incriminating factors we find that it is not safe to convict Mahesh of the offence of murder with the Section 34 and 120(B)."*

11. The learned counsel for the petitioner relied on the Judgment passed by this Court in the case of **T.T.G. Industries v. State** in **Criminal R.C.No.337 of 2010**, which reads as follows:

*"There can be no direct evidence regarding the alleged conspiracy. It has been held supra that the petitioners are entitled to an order of discharge in respect of the offence alleged to have committed in pursuance of the alleged conspiracy."*

12. The learned counsel for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court of India in the case of **B.Krishnan and Others v. The Deputy Supreintendent of Police, Vigilance and Anti Corruption Wing** in **2015 0 Supreme (Mad) 1087**, which reads as follows:

*"On considering the above, disciplinary proceedings were initiated against the petitioners simultaneously, but charges have not been proved. Hence, they were*



exonerated from the charges levelled against them, against which, the Board preferred special leave petitions, which were dismissed. As per the decision of the Apex Court, in the departmental proceedings, the charges against the petitioners could be proved only by preponderance of probabilities not by beyond reasonable doubt as required in criminal case."

13.The learned counsel for the prosecution relied on the Judgment passed by the High Court of Karnataka in the case of **The State v. Vittalrao Baise** in **Criminal Revision Petition No.901 of 2010**, which reads as follows:

"Criminal case is decided on basis of evidence adduced therein and cannot be rejected on basis of evidence in departmental proceeding or report of enquiry officer-However, if prosecution is solely based on a finding in a disciplinary proceeding and same is set aside by superior authority, as the very foundation goes, prosecution may be quashed."

14.In support, the Judgments passed by the Supreme Court of India in the case of **Sathish Mehra v. Delhi Administration and Another** reported in **(1996) 9 Supreme Court Cases 766** and the judgment passed by this Court in the case of **Marnadu v. The Inspector of Police** in **Crl.O.P. (MD)No.4474 of 2014** are cited.

15.In support of the contention of the complainant the Judgments passed by the Hon'ble Supreme Court of India in the cases of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd** reported in **1999 STPL(LE)26285 SC** and **Deputy Inspector General of Police and another v. S.Samuthiram** reported in **2012 STP(LE) 47022 SC** are cited.

16.Records perused. A perusal of the records reveals that L.Ws.1 to 4 gave some statement under Section 161 of Cr.P.C., against the petitioner herein. The stage of the case is that three of the accused are absconding and the copies of the case records are not furnished to the accused under Section 207 of Cr.P.C. The involvement of the petitioner in the offence can be decided only at the time of trial.

17.In this circumstances, there is nothing sufficient enough to interfere the orders of the lower Court. The lower Court is hereby directed to split up the case against the absconding accused and to take up the trial in this case and to dispose of the case within a period of six months from the date of receipt of copy of this order. The Registry is directed to send a copy of this order to the lower Court immediately.



18. With the above direction, the Criminal Revision case is dismissed. Consequently, M.P.(MD) Nos.1 and 2 of 2014 are closed.

sd/-

**Assistant Registrar (AS)**

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**Sub Assistant Registrar (CS-II)**

To

1. The Judicial Magistrate No.II,  
Madurai.
2. The Inspector of Police,  
Oomatchikulam Police Station,  
Madurai.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.G.Prabhurajadurai, Advocate SR.No.81146

+1cc to Mr.K.Prabhu, Advocate SR.No.81375

Mrn

MK/RP/SAR 2/10.09.2018/5P/6C

Cr1. R.C. (MD) No.319 of 2014  
29.08.2018