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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 30.07.2018

DELIVERED ON : 29.08.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C. (MD) No.400 of 2015

Eswaran

... Petitioner

vs.

1.State Rep. By

The Deputy Superintendent of Police,CBCID
Tirunelveli,
(Cr.No.391 of 2006 Kadaiyanallur P.S.)

2.Hasanammal

... Respondents

(Respondent No.2 impleaded as per order of this Court
made in M.P.(MD)No.2 of 2015 in Crl.R.C.(MD)No.400 of 2015
dated 21.07.2016 by PDSJ)

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 passed in Cr.M.P.No.246 of 2013 in
S.C.No.195 of 2011 dated 10.08.2015 on the file of the first
Additional District and Sessions Judge, Tirunelveli.

For petitioner : Mr.A.R.L.Sundarasan
Senior Counsel
For Mr.K.Praveen Kumar
For Respondent No.1: Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)
For Respondent No.2: Mr.Ajmal Khan
Senior Counsel
For Mr.A.S.Alaudeen

ORDER

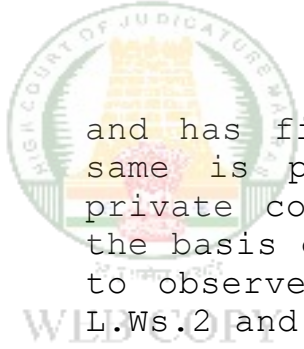
Heard Mr.A.R.L.Sundarasan, learned Senior Counsel for
Mr.Mr.K.Praveen Kumar appearing for the petitioner,
Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.
Side) appearing for the first respondent and Mr.Ajmal Khan,
learned Senior Counsel for Mr.M.S.A.S.Alaudeen, learned counsel
appearing for the second respondent.



2.This petition is filed to set aside the order passed in Cr.M.P.No.246 of 2013 in S.C.No.195 of 2011 dated 10.08.2015 on the file of the first Additional District and Sessions Judge, Tirunelveli.

3.It is seen that one Asanammal filed a complaint and the case is registered as a man missing in Crime No.391 of 2006 and subsequently the investigation was entrusted to CBCID, Tirunelveli and the section was altered into Sections 120(b) r/w. 343, 344, 348, 323, 355, 302, 218 r/w. 109 of IPC. After charge sheet was filed before the learned Judicial Magistrate, Tenkasi against the petitioner and 11 others and after committal proceedings, the case was posted before the learned I Additional District Judge. The prosecution case is that one Mohamed Masood of Kadaianallur was taken for investigation by the Kadaianallur Police Station along with Aralvaimozhi Police in Crime No.482 of 2006 on 27.11.2005. Then he was confined for interrogation at Keeripari Police. It is alleged that due to physical torture on 30.11.2005 at 11 p.m., the said Mohamed Masood died and in order to screen the offence, his body was disposed and that the R.D.O. Padmanabapuram conducted detailed enquiry and has submitted a complaint before the learned Chief Judicial Magistrate, Nagercoil. It is alleged that the petitioner and others while investigating a decoity case in Aralvaimozhi Police station in Crime No.482 of 2006 tortured and beat the said Mohamed Masood with hands and lathis and that they used third degree methods and caused the death of the said Mohamed Masood on 30.11.2005 and disposed of the body. The petitioner filed a petition under Section 227 of Cr.P.C., to discharge him from the case in S.C.No.195 of 2011. Against the dismissal order, the petitioner has preferred the present revision case before this Court.

4.On the side of the petitioner, it is stated that at the time of alleged occurrence, the petitioner was working as the Deputy Superintendent of Police, Nagercoil and he was neither the Investigating Officer nor the Superior Officer relating to Crime No.482 of 2006 of the Aralvaimozhi Police Station. The R.D.O. report was not against the petitioner herein. There is no sufficient ground or enough material to frame any charge against the petitioner herein, and there are a number of procedural violations and resulted in miscarriage of justice. It is further stated that sanction is necessary under Section 197 of Cr.P.C., for taking cognizance of offence. There is a bar as per Section 53 of Tamil Nadu District Police Act which is available to the petitioner since the alleged offence is committed in the discharge of his official duty. There is no material to show that the petitioner was engaged in the crime of murdering the deceased. Therefore, a charge under Section 120(b) of IPC is illegal. There is no material to show that the petitioner indulged in the crime. With regard to the same transaction, the R.D.O. conducted enquiry



and has filed a private complaint in C.C.No.77 of 2012 and the same is pending. The petitioner's name was not found in the private complaint. The prosecution did not initiate the case on the basis of the report given by the R.D.O. The Court below failed to observe that there is contradiction between the statement of L.Ws.2 and 3 and L.W.33.

5.On the side of the second respondent, it is stated that the second respondent is the wife of the deceased who was brutally murdered by the petitioner herein and others. It is stated that on 28.11.2005, the deceased was illegally taken by the Inspector of Kadainallur Police Station and was handed over to the Inspector of Police for interrogation regarding the robbery case on the file of the Aralvaimozhi Police Station. The second respondent was taking several efforts from 28.11.2005 to 25.07.2006 to find out her husband. Then finally the case was registered on 25.07.2006 in Crime No.391 of 2006 in the Kadaianallur Police Station as 'man missing'. Later the second respondent came to know that her husband was taken to Aralvaimozhi Police Station for interrogation by the petitioner and 11 others relating to a decoity case in Crime No.482 of 2006 under Sections 395, 397 and 427 of IPC. After several efforts taken by the second respondent, the case was transferred to CBCID and a final report was filed on 09.11.2009 against the petitioner and others.

6.The second respondent filed a Writ Petition for appointment of a Special Public Prosecutor and the same was allowed by this Court. In between on 10.12.2013, Crl.O.P.No.432 of 2014 was filed by the petitioner for clubbing the private complaint filed by the R.D.O., Padmanabapuram in C.C.No.77 of 2012 before the learned Judicial Magistrate, Boothapandi with S.C.No.195 of 2011 for Joint trial and the petition was dismissed by this Court. On 14.06.2013, the petitioner filed a discharge petition in Crl.M.P.No.246 of 2013 and the same was also dismissed on 10.08.2015 by the trial Judge. Even in the R.D.O. report, in the statement of one Krishna Murthy who is L.W.3 in this case, it is stated that during the enquiry, the petitioner and other Police Officials were present. Since the offence is criminal in nature, the petitioner cannot claim that the offence was committed by him in discharge of his official duty. The petitioner is not entitled to do any illegal act that too murdering a citizen of this country, under the guise of discharging any official.

7.On the side of the petitioner, it is stated that evidence of L.W.2 and 3 are contradictory and the offence under Sections 109 and 120(b) of IPC requires malicious intention to commit an offence or to instigate an commission of any offence. No intention is established against the petitioner and the participation of the petitioner is only suspicion not strong suspicion and mere suspicion is not sufficient to frame charges.



8. On the side of the first respondent, it is stated that the petitioner is A2 in the case and he was the Deputy Superintendent of Police, Nagercoil at that time and the deceased was taken for interrogation to the Aralvaimozhi Police Station and due to the harassment of the petitioner and others, the deceased died and they disposed the body. The charge sheet was filed by the CBCID Police and the charge sheet reveals the involvement of the petitioner in crime. The petition filed by the petitioner to quash CrI.O.P.(MD)No.3676 of 2015 was dismissed and also directed to dispose of the case within a period of nine months. The statement of L.Ws.2,3 and 33 was recorded under Section 162 of Cr.P.C., and statements reveals the involvement of the petitioner. L.W.2 is co-accused in decoity who he was taken to Aralvaimozhi Police Station along with the deceased and he has deposed the involvement of deceased in this case. The statement of Head Constable was recorded under Section 162 of Cr.P.C., and the statement also reveals that there are prima facie materials available against the petitioner and there are sufficient grounds to frame charges.

9. On the side of the first respondent, it is stated that there are several incriminating materials against the petitioner in the statements of L.Ws.2, 3 and 33. Procedure for framing charges under Section 228 of Cr.P.C., is well settled. In support, the Judgment passed in the case of Niren Sharma v. State of Assam reported in 1998 (4) Crimes 242 (@45) (Gau.), in the case of State of Bihar v. Ramesh Singh reported in (1977) 4 SCC 39 and in the case of Dinesh Tiwari v. State of Uttar Pradesh reported in (2014) 13 SCC 137 are cited.

10. On the side of the second respondent, it is further stated that the petitioner has not been conferred with any power either to murder the deceased or to do any illegal act. Apart from that the accused is not conferred with any power to frame incorrect record or writing as contemplated under Section 218 of IPC. So the plea raised by the petitioner is unsustainable and also unknown to law and it is to be rejected by this Court.

11. The learned counsel appearing for the second respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of State of A.P. v. Golconda Linga Swamy reported in (2004) 6 SCC 522, which reads as follows:

"The requirement of Sections 227 and 228 is that there should be a finding that prima facie case was made out and sufficiency of evidence resulting into conviction is not to be seen, which will be seen by the trial court."

12. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Dinesh Tiwari v.



State of Uttar Pradesh reported in (2014) 13 SCC 137, which reads as follows:

"Section 228 does not contemplate a separate hearing for framing of charge."

13. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Stree Atyachar Virodhi Parishad v. Dilip Nathumal Choradia reported in (1989) 1 SCC 715, which reads as follows:

"If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the High Court would not interfere in revision unless there is a glaring injustice which stares the Court in the face."

14. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Amirk Singh v. State of Punjab reported in 1996 CrI J 1610(P&H), which reads as follows:

"Only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen at this stage"

15. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of State of Maharashtra v. Som Nath Thapa reported in AIR 1996 SC 1744 (1996) 4 SCC 659, which reads as follows:

"If the Court comes to the conclusion that the commission of offence is a probable consequence, a case for framing charge exists, at the stage of framing charge, probative value of materials on record cannot be gone into"

16. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Fatiur Ali v. Central Bureau of Investigation reported in 2000 CrI J 2182(Gau), which reads as follows:

"At the time of framing of the charge it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation which they are bringing against the accused person is bound to be brought home against him. The purpose of Sections 227 and 228 of the Code is to ensure that the Court should be satisfied that the accusation made against the accused is not frivolous and that there is some material for proceeding against him."

17. The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Hemant Kumar Taneja v. State of Uttar Pradesh reported in (2004) CrI J 3558, which reads as follows:



"Only prima facie is to be seen, the strict standard of proof while evaluating the material to ascertain whether there is prima facie case against the accused is not to be applied"

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18.The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Inderjit Kaur v. State of Delhi reported in 2002 CrI J 505(506), which reads as follows:

" It is settled law that at the time of framing the charges, evidence cannot be appreciated. Even grave suspicion is enough."

19.The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Chandrika v. Rajaram reported in 1995 CrI J 2587, which reads as follows:

"The plea of alibi cannot be considered and accepted into at the stage of Sections 227/228 Cr.P.C., unless it is tested by the Court on evidence at the trial."

20.The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Nar Bahadur Bhandari v. State of Sikkim reported in 1996 CrI J 3413, which reads as follows:

"The documents filed by the defence cannot be considered in framing charge"

21.The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Jagdish Singh v. State of Rajasthan reported in 1998 CrI J 718, which reads as follows:

"where opinion as to prima facie case was formulated by the Sessions Judge on the basis of the circumstantial evidence, order framing charge was not interfered in revision."

22.The learned counsel appearing for the second respondent relied on the Judgment passed in the case of Mahesh Chandra v. State of U.P. reported in 1993 CrI J 1151, which reads as follows:

"Where the materials show prima facie case, the order framing charge cannot be interfered in revision."

23.On the side of the petitioner, it is stated that this Court has to see whether there is prima facie case made out to frame charges against the accused. This Court has to consider whether there is sufficient ground to proceed against the petitioner or not, in order to decide the question of discharge under Section



24. The learned counsel for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of Dilwar Balu Kurane v. State of Maharashtra reported in (2002) 2 Supreme Court Cases 135, which reads as follows:

"By and large, if two views are equally possible and the judge is satisfied that the evidence produced before him gave rise to some suspicion but not grave suspicion against the accused."

25. On the side of the second respondent, It is stated that whether the petitioner is having involvement in the case can be decided only at the time of trial. In support, the Judgments passed by the Hon'ble Supreme Court in the case of Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia and another reported in (1989) 1 Supreme Court Cases 715, in the case of State of Bihar v. Ramesh Singh reported in (1977) 4 Supreme Court Cases 39, in the case of State of TamilNadu v. N.Suresh Rajan and others reported in 2014 CrL. L. J. 1444 and in the case of Palwinder Singh v. Balwinder Singh and others reported in (2008) 14 Supreme Court Cases 504 are cited.

26. On the side of the second respondent, it is further stated that mere suspicion is sufficient to frame the charges. This custodial death has occurred 13 years ago. The petitioner is dragging on the proceedings by filing various petitions and prayed the petition to be dismissed.

27. From the records, it is seen that one Mohamed Masood was said to have committed an offence of decoity in a case related to Aralvaimozhi Police Station. It is further stated that Mohamed Masood was taken by Kadaianallur and Aralvaimozhi Police for interrogation and subsequently, he was missing. The case was taken by the CBCID Police and it is stated that the investigation reveals that the petitioner and others, during the course of investigation, harassed the deceased and due to their harassment, the deceased died and the petitioner and other disposed the body of the deceased.

28. On the side of the petitioner, it is stated that in the R.D.O. report and in the private complaint, the name of the petitioner is not included. On the side of the first respondent, it is stated that R.D.O. report is not conclusive report. The evidence of L.Ws. 2, 3 and 33 clearly shows the involvement of the petitioner in the offence.

29. In framing of charge, mere suspicion or probability for an accused to have some involvement in the offence is sufficient. The offence is grave in nature and the petitioner cannot claim that the offence is committed during the course of discharge of his duty. 164 statement recorded in the case and the statement of



L.Ws.2, 3 and 33 are sufficient to show that there is prima facie case made out against the petitioner. The contradiction in the statement of L.Ws.2, 3 and 33 may be taken into account only after the completion of the trial and not at this stage.

30. It is seen from the records that quash petition filed by the petitioner was already dismissed by this Court and the Court has passed a direction to complete the case within a time frame. The petitioner is at liberty to put forth his case before the trial Court. In the above circumstances, there is no sufficient merit to interfere the order passed by the trial Court. Hence, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

- 1.The first Additional District and Sessions Judge, Tirunelveli.
- 2.The Deputy Superintendent of Police,CBCID
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2CCs TO MR.S.A.S.ALAUDEEN, ADVOCATE IN SR.NO.80672.

MRN

DS RP SAR-1:28.09.2018: 8P/6C

CrI. R.C. (MD) No.400 of 2015
29.08.2018