



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.R.C. (MD) No.180 of 2016

and

CrI.M.P. (MD) No.2525 of 2016

WEB COPY

1.Siriya Pushpam
2.Vijayalakshmi
3.Mallika
4.Anbalagan
5.Maheshkumar @ Senthilkumar
6.Saravanamuthu @ Vivek ... Petitioner / Accused 1 to 6

vs.

1.The Inspector of Police,
B3, Teppakulam Police Station,
Teppakulam,
Madurai - 625 009. ... 1st Respondent/ Complainant

2.P.Semasekara Rajan ... 2nd Respondent/Defacto
Complainant

(R2 impleaded as per order of this
Hon'ble Court made in CrI.M.P.(MD)
No.11336/2016 in CrI.R.C.(MD) No.
180 of 2016 dated 21.02.2017 by BGJ)

PRAYER: Criminal revision filed, under Section 397 r/w 401
Cr.P.C., to call for the records and set aside the order dated
27.08.2015 passed in Cr.M.P.No.2599 of 2015 in C.C.No.169/2013, on
the file of the Judicial Magistrate No.1, Madurai.

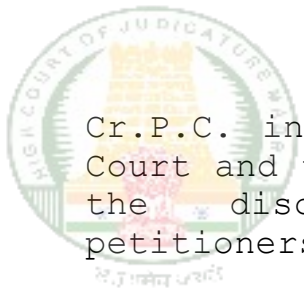
For Petitioner : Ms.P.Jessi Jeeva Priya

For 1st Respondent : Mr.S.Bharathi
Government Advocate (Criminal side)

For 2nd Respondent : Mr.S.Saravanakumar

O R D E R

On the complaint lodged by Semasekara Rajan, the respondent
police registered a case in Crime No.826 of 2012 on 04.09.2012
under Section 341, 294(b), 447 and 506(ii) I.P.C. and after
completing the investigation have filed a charge sheet in
C.C.No.169 of 2013 against the petitioners herein for the offences
under Sections 147, 447, 341, 294(b) and 506(ii) r/w 109 I.P.C.
The petitioners filed a discharge application under Section 239



Cr.P.C. in Cr.M.P.No.2599 in C.C.No.169 of 2013 before the trial Court and the trial Court by order dated 27.08.2015, has dismissed the discharge application, aggrieved by which, the petitioners/accused are before this Court.

2.The case of the prosecution is that on 19.07.2012, at about 15.30 hours, when Semasekara Rajan (defacto complainant) went to the house belonging to him at Pangajam Colony, he found that the locks put by him were removed and the accused had trespassed into the house; that when the defacto complainant tried to enter the house the accused prevented him from entering the house and abused him and intimidated him.

3.It is submitted by the petitioners/accused that there is no prima facie case in the final report in support of the allegations and therefore, the petitioners/accused have to be discharged from the prosecution. Strong reliance has been placed on the judgment of Hon'ble Supreme Court in **Hemchand v. State of Jharkand** reported in **2008 MLJ Cr1. 1241 (SC)** and **State of M.P. v. Mohanlal Soni** reported in **AIR 2000 SC 2583**.

4.Learned Government Advocate (Criminal side) submitted that there are sufficient materials in the complaint as well as in the police statements of the prosecution witnesses to show the involvement of the petitioners/accused in the offence.

5.In **State of Tamil Nadu v. Sureshraj** [2014 (11) SCC 709], the Hon'ble Supreme Court in paragraph 29 has stated as follows:

"29. 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."

6. On a reading of the complaint given by the defacto complainant and the 161 Cr.P.C. statements of the witnesses, there are prima-facie materials to show that the petitioners/accused have involved in the alleged offences. As held by the Hon'ble Supreme Court in **State of Tamil Nadu v. Sureshraj** [2014 (11) SCC 709] a mini trial is not admitted in discharge application. In such view of the matter, the Criminal Revision Petition is devoid of merits and hence dismissed. Consequently, connected CrI.M.P. (MD) No.2525 of 2016 is also dismissed.

7. However, the presence of petitioners/A1 to A3, who are ladies, before the trial Court is dispensed with on condition that they shall appear before the Trial Court 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 petitioners file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their 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 their absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If they adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence. If the petitioners / A1 to A6 adopt dilatory tactics, they can be remanded to custody under Section 309 Cr.P.C., as laid down by the Hon'ble Supreme Court in **State of U.P. vs. Shambhu Nath Singh**, reported in 2001 (4) SCC 667.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To:



2.The Inspector of Police,
B3, Teppakulam Police Station,
Teppakulam,
Madurai - 625 009.

WEB COPY

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

+1cc to Mr.S.Saravanakumar, Advocate Sr.No.49924
+1cc to Mr.N.Subramanian, Advocate SR.No.49929

SJ

VB/KKR/SAR3/01.03.2018/4P/6C

**Crl.R.C. (MD) No.180 of 2016
and Crl.M.P. (MD) No.2525 of 2016
19.02.2018**