



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.10.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.17960 of 2018

C. Sam Justin Thampi

... Petitioner/Petitioner

Vs.

The Inspector of Police,
Commercial Crimes Investigation Wing,
Nagercoil, Kanyakumari District.

... Respondent/Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the order dated 26.04.2018 passed in Crl.R.C. No.14 of 2007 on the file of the Sessions Court, Kanyakumari District at Nagercoil filed confirming the order dated 08.03.2007 passed in Crl.M.P.No.1808 of 2006 on the file of the Judicial Magistrate No.II (Special Court) Tirunelveli.

For Petitioner

: Mr.M.Gnanagurunathan

For Respondent

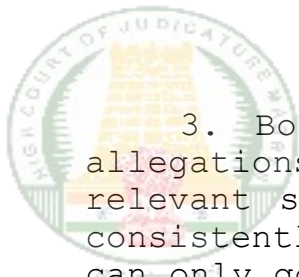
: Mr.K.Suyambulinga Bharathi

Government Advocate (Crl.Side)

ORDER

This petition has been filed challenging the order passed in Crl.R.C. No.14 of 2007 by the Sessions Court, Kanyakumari confirming the order passed by the Judicial Magistrate No.II (Special Court) Tirunelveli in Crl.M.P.No.1808 of 2006 , dismissing the discharge petition filed by the petitioner.

2. The learned counsel for the petitioner would submit that the petitioner was working as a supervisor in Land Development Bank, Thuckalay. The loan was sanctioned in the name of one John Rose. The case of the prosecution is that one Robinson was identified as John Rose and the loan was sanctioned in his favour. Thereafter there was misappropriation and the same resulted in the registration of the First Information Report in Crime No.03 of 2003. The First Information has been registered against 9 accused persons. The respondent police have investigated the case and filed final report and the same has been taken on file in C.C.No.25 of 2006. In the said final report, this petitioner has been ranked as A4. The learned counsel would further submit that at the relevant point of time, John Rose was infact the member of the society and the loan was only sanctioned in his favour and there was no misappropriation as projected by the prosecution.



3. Both the courts below have taken into consideration the allegations that has been made in the final report and also the relevant statements given by the witnesses. The Courts below has consistently held that at the stage of framing charges, the court can only go into the allegations made in the final report along with the statements. The court cannot go into the process of appreciation of evidence at the time of framing of charges. Therefore both the courts came to conclusion that *prima facie* case has been made out by the prosecution and therefore charge will have to be framed and the accused persons will have to face the trial.

4. This Court exercising its jurisdiction under 482 of Cr.P.C cannot sit on an appeal against the order passed by both the Courts below. This jurisdiction cannot be converted in to one of the second revision which is barred under section 379(2) of Cr.P.C. The defence that has been raised by the petitioner falls within a realm of appreciation of evidence and the same cannot be gone into at the stage of considering the petition for discharge.

5. It is open to the petitioner to raise all the grounds before the court below in the course of proceedings and the court below shall consider the same on its own merits and in accordance with law. The Criminal Original petition is dismissed. It is seen that the case is pending from the year 2006 onwards. Hence there shall be a direction to the learned Judicial Magistrate No.II (Special Court) Tirunelveli to complete the proceedings in C.C.No.25 of 2006 with in period of three months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Sessions Judge, Kanyakumari at Nagercoil.
2. The Judicial Magistrate No.II (Special Court) Tirunelveli.
3. The Inspector of Police,
Commercial Crimes Investigation Wing,
Nagercoil, Kanyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.M.GNANAGURUNATHAN, ADVOCATE IN SR No. 89544

AAV

TE/SV/SAR-2 : 09/11/2018 : 2P/6C