

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.Nos.82 and 83 of 2019

and

Crl.M.P.Nos.805, 808, 811, 812 of 2019

Vijayakumar @ Prabhu ...Petitioner in Crl.RC.82 of 2019
1.K.M.Gandhi @ Muthu Krishnan
2.Mahesh Anantharaman @ Ananthu
3.T.Shakthi Kumaran ...Petitioners in Crl.RC.83 of 2019

-Vs-

State through
The Sub-Inspector of Police,
Central Crime Branch,
EDF-II, Team IV,
Veperiy, Chennai - 600 007. ...Respondent in both Crl.RC's

Prayer in Crl.R.C.No.82 of 2019: This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to call for the records in Crl.M.P.No.1554 of 2018 in C.C.No.3741 of 2017 (Old C.C.No.1920 of 2015) on the file of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai - 600 008 and set - aside the order in Crl.M.P.No.1554 of 2018 dated 07.12.2018 and thereby discharge the petitioner.

Prayer in Crl.R.C.No.82 of 2019: This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to call for the records in Crl.M.P.No.1553 of 2018 in C.C.No.3741 of 2017 (Old C.C.No.1920 of 2015) on the file of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai - 600 008 and set - aside the order in Crl.M.P.No.1553 of 2018 dated 07.12.2018 and thereby discharge the petitioners.

For Petitioners : Mr.R.Ganesh Kumar
in both cases

For Respondents : Mr.G.Harihara Arun Somasankar,
Government Advocate (Crl.Side)
in both cases

C O M M O N O R D E R

These present Criminal Revision Petitions have been filed against the Order passed by the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in C.C.No.3741 of 2017 (Old C.C.No.1920 of 2015) dated 07.12.2018, the trial Court has dismissed the petitions filed by the petitioner/accused to discharge him from the case under Section 239 of Cr.P.C.

2.The case of the prosecution was that the petitioner along with others was placed in a position to look after the administration of the establishments namely Cero-Net Institute of Education, CIHE Academy and AIMS Academy, which were imparting Education to nearly 3200 students. The institutions are having 22 branches in various places. It appears that the petitioner along with the others colluded together and embezzled huge amounts which belong to the institutions, approximately amounting to Rs.4 Crores.

3.According to the prosecution, the petitioner/accused as well as the others had issued false receipts for remittance against fees collected from the students and involved in criminal breach of trust and cheating and therefore, they were charged for the offences under Section 406 and 420 of IPC. The prosecution while charging the accused and others for the aforesaid offences had examined 10 independent witnesses. The witnesses have given elaborate statements about the embezzlement and mis-appropriation of the funds of the institutions. The investigation had also collected various cash registers from different branches of the various Educational Institutions run by the de-facto complainant.

4.While so, the petitioner/accused herein has filed the discharge petition on the ground that the statements recorded under Section 161 of Cr.P.C from the list of witnesses and the documents filed along with the charge sheet, no charges could be framed against the petitioner/accused for offences of cheating or criminal breach of trust. The statements of some witnesses, who were examined by the Investigating Officer did not disclose anything about the role of the petitioner in commission of the offences, attracting the charges of cheating or criminal breach of trust. The evidence of L.W.4 and L.W.5 the students of the de-facto complainant establishment have also not spoken anything incriminating, much less even mentioning the role of the petitioner/accused, in the case, in the statement given under Section 161 of Cr.P.C. Likewise, the other witnesses who were examined have also not spoken directly about the involvement of the petitioner/accused in the case attracting the offences under Section 406 and 420 of IPC.

5.The learned counsel also contended that the offences which are stated to have been committed for the period from 2008 to 2011. No investigation has been done with the Statutory Authorities namely the Income Tax Authorities with regard to filing of Statutory Returns. In such circumstances, the petitioner/accused need not be subjected to unnecessary ordeal of trial and therefore, he is entitled to be discharged from the offences. Unfortunately, the trial Court misdirected itself by dismissing the petition on the ground that there were prima facie materials available, when none exist. Therefore, he would implore this Court to allow the revision petition and discharge the petitioner/accused from the offences.

6.Per contra, the learned Government Advocate for the prosecution would submit that the trial Court has rightly dismissed the petition on the basis of the available materials on record. In this case, there were abundant materials available to establish more than a prima facie case against the petitioner/accused and the trial Court has rightly taken the decision and dismissed the petition. In fact, the prosecution side examined 10 independent witnesses and several documents were also examined and thereafter, the case was made out against the petitioner/accused for the offences under Section 406 and 420 of IPC. He would therefore submit that the dismissal of the discharge petition does not call for interference of this Court.

7.Upon consideration of the rival submissions of the parties, this Court is of the view that the trial Court has correctly held that the petition for discharge was without merit, in view of the fact, that there were sufficient materials available in order to proceed against these petitioners/accused for offences under Section 406 and 420 of IPC. As many as 10 independent witnesses were examined by the Investigating Officer and from their evidence it is clear that there exist a prima facie case to proceed with the trial against the petitioner. Moreover several documents were also seized and brought to the scrutiny of the investigation which also revealed the involvement of the petitioner/accused in the mis-appropriation and cheating of the Management of various institutions which were vest in the control of de-facto complainant. The de-facto complainant who had put these petitioner and others in-charge of the day to day administration of institutions and while being in-charge of the administration of the institutions, they have involved themselves against the interest of the institutions by mis-appropriating huge sums of money and committed breach of trust and cheating and therefore they have been charged for the offences under Section 406 and 420 of IPC.

8. Whether, there was any worthwhile evidence available or not, it is for the petitioner/accused to establish the same in the trial and prove his innocence and it is certainly not open to the accused to file a discharge petition in the matter like this, when there was sufficient evidence available for proceeding against him. This Court cannot interfere with the finding of fact of the trial Court unless the same is found to be legally unacceptable or perverse. In this case, this Court does not find any infirmity in the finding of trial Court to the effect that there exist enough materials to proceed against the petitioner/accused by the prosecution.

9. For the above said reasons, this Court does not find anything wrong in the trial Court order in dismissing the discharge petition and the present revision cases are devoid of merit and hence the same are dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

rna

To

1. The learned CCB & CBCID Metropolitan
Magistrate, Egmore, Chennai.

2. The Sub-Inspector of Police,
Central Crime Branch,
EDF-II, Team IV,
Vepery, Chennai - 600 007.

+2ccs to Mr. R. Ganeshkumar, Advocate SR.No. 4204, 4205

CrI.R.C.Nos. 82 of 83 of 2019
and
CrI.M.P.Nos. 805, 808,
811, 812 of 2019

SSI (CO)
GMY (14/02/2019)