IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1357 of 2012

1.Arunkumar
2.Ramesh
3.Venkatesan .... Petitioners/Accused 1 to 3

vs

State by
Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.
(Crime No.228 of 2011 .... Respondent/Complainant

Prayer Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate Court No-1, Kancheepuram, dated 07.08.2012 in C.M.P.No.1681 of 2012 in C.C.No.149 of 2011.

For Petitioners: Mrs.M.Srividhya

For Respondent : Mr.T.Shanmugarajendran
Government Advocate (Crl.Side)

ORDER

The respondent police registered a case against the revision petitioners for offences under Sections 294(b) and 506 (i) IPC. Defacto complainants have also been charge sheeted for offences under Sections 147, 341, 294(b), 323, 506(i) IPC. The respondent police investigated both the matters and laid a charge sheet before the learned Judicial Magistrate No-1, Kancheepuram and the learned Judicial Magistrate, taken both the cases on file in C.C.Nos.149 & 150 of 2011.

2 During pendency of the C.C.Nos.149 & 150 of 2011 the revision petitioners have filed a petition under Section 239 r/w 251 and 173(8) Cr.P.C., in C.M.P.No.1681 of 2010 to discharge them or seeking an order for fresh investigation and direct the respondent police to file a referred charge sheet. The learned Judicial Magistrate No-1, Kancheepuram, after hearing the matter and considered that there is a primafcie case made out against the revision petitioners hence, dismissed the petition.

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3 Challenging the said order dated 07.08.2012 in C.M.P.No.1681 of 2012 in C.C.No.149 of 2011 passed by the learned Judicial Magistrate No-1, Kancheepuram, the revision petitioners have filed the present revision before this Court.

4 The learned counsel for the petitioner would submit that the petitioners submitted a counter complaint but the learned Judicial Magistrate No-1, Kancheepuram, failed to consider the defacto complainant as an aggressor. The investigation has not been properly conducted. There is no primafacie case made out against the revision petitioners and the learned Judicial Magistrate No-1, Kancheepuram, failed to consider the same, which warrants interference of this Court.

5 The learned Government Advocate (Criminal Side) for the respondent would submit that the case in counter was filed by the revision petitioners. In this case, the respondent police investigated the matter and laid a charge sheet. In the mean time, the revision petitioners filed discharge petition and the same was dismissed, against which the present revision. In the mean while, in the case in counter after the trial the accused were convicted. Thus, the case in counter has already been disposed on merits. Therefore, the contention raised by the learned counsel for the revision petitioners may not be accepted. There is no merit in this revision case, which does not warrant any interference of this Court.

6 Heard the learned counsel for the revision petitioners and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

7 The respondent police registered the case against the revision petitioners for the offence under Sections 294 (b) and 506(i) IPC., the defacto complainants have been charge sheeted for the offences under Sections 147, 341, 294(b), 323, 506(i) IPC. After investigation of both the cases, the respondent police laid a charge sheet before the learned Judicial Magistrate No-1, Kancheepuram. The learned Judicial Magistrate No-1, Kancheepuram, taken both the charge sheets on file in C.C.Nos.149 & 150 of 2011. During pendency of the C.C.Nos.149 & 150 of 2011, the revision petitioners have filed a petition under Section 239 r/w 251 and 173(8) Cr.P.C., in C.M.P.No.1681 of 2010 to discharge the revision petitioners from the case or order for fresh investigation and direct the respondent police to file a referred charge sheet and the same was dismissed by the learned Judicial Magistrate No-1, Kancheepuram.

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8 On reading of the materials available on records, the primafacie case made out against the revision petitioners. It is well settled proposition of law, while deciding the petition under Section 239 Cr.P.C., the Court has to see the records filed by the prosecution under Section 173 Cr.P.C., but not the defence taken by the accused or the documents produced by the accused.

9 In this case also the material shows that there is a primafacie case made out against the revision petitioners. Further it is pertinent to note that after the trial, in one case the accused were convicted, the trial proceedings are stopped in another case. Moreover, the revision petitioner has not taken any effective steps to try both the cases jointly at the initial stage. This Court feels that primafacie case is made out against the revision petitioners and at this stage, the Court cannot direct the respondent police to proceed further investigation.

10 Further, as already discussed the case in counter has already been disposed of on merit, after full-fledged trial and the case in C.C.No.149 of 2011 is pending from 2011. Hence, the learned Magistrate is directed to frame the charges against the revision petitioners and dispose of the matter in accordance with law, within a period of three months from the date of receipt of a copy of this order.

11 In the result the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No-1,
   Kancheepuram.

2.The Inspector of Police,
  Vishnu Kanchi Police Station,
  Kancheepuram.

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