

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.892 of 2012

The State rep. by
The Inspector of Police,
B-2 Police Station,
Coimbatore.
[Crime No.803/2010]

... Petitioner/Complainant

- Vs -

1. Selvi

2. Babu

3. Senthilnathan

4. Vanasundari @ Ammu

... Respondents/Accused 1 to 4

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 30.08.2011 made in CMP.No.258 of 2011 in S.C.No.63 of 2011 passed by the learned Principal Subordinate Judge and Assistant Sessions Judge, Coimbatore.

For Petitioner : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

For respondents: Mr.N.Manokaran
for R1, R3 and R4

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 30.08.2011 made in CMP.No.258 of 2011 in S.C.No.63 of 2011 passed by the learned Principal Subordinate Judge and Assistant Sessions Judge, Coimbatore.

2. The revision petitioner-Police registered a case in Crime No.803 of 2010 against the respondents herein initially for the offence punishable under Section 174 Cr.P.C and after completing investigation, laid a charge sheet before the learned Judicial Magistrate No.1, Coimbatore, informing the commission of offence punishable under Section 306 of IPC against the respondents herein. Since the offence is triable by the Sessions Court, the learned Magistrate, committed the case to the learned Principal

Sessions Judge, Coimbatore. After taking the case on file in SC.No.63 of 2011, the learned Sessions Judge made over the same to the learned Assistant Sessions Judge, Coimbatore for disposal. During pendency of SC.No.63 of 2011 on the file of the Assistant Sessions Court, Coimbatore, the respondents herein filed a petition under Section 227 Cr.P.C for discharging them from the case. After hearing the arguments on either side, the learned Sessions Judge came to the conclusion that there is no material to hold that the respondents/accused had any mens rea in their mind either to instigate or to drive the deceased to commit suicide and therefore, allowed the petition by discharging the accused from the charge by order dated 30.08.2011. Aggrieved by the said order, the State has preferred the present revision before this Court.

3. The learned Government Advocate (Crl.Side) appearing for the petitioner would submit that the prosecution witnesses have clearly spoken about the involvement of the accused in this case and also the deceased left a suicide note and the same was also sent to the Forensic Lab and the report was also submitted before the Court. However, the prosecution filed the charge sheet and the materials collected by them during investigation and the statement recorded under Section 161 Cr.P.C, which are enough to frame the charge against the accused. The learned Assistant Sessions Judge failed to consider the materials placed by the prosecution and discharged the accused, which warrants interference.

4. The learned counsel appearing for the respondents/accused would submit that the accused and the deceased are students of Law, while they were studying in the Law college, they fell in love and subsequently, they could not marry. The parents of the first petitioner approached the defacto complainant and requested him to get marry the first petitioner to his nephew. Therefore, either Section 106 of IPC or 107 of IPC are not made out against the accused in this case and also the ingredients of Section 106 IPC is also absent. Further, the learned counsel relied on the judgments of the Hon'ble Apex Court and this Court and stated that the materials placed by the revision petitioner/State is not sufficient to frame the charge against the accused and convict them. The respondents/accused have also stated that the ingredients of Section 306 of IPC is also very well absent in the complaint and even there is no material to frame the charge against the accused. Therefore, it is a fit case for discharging the accused. The learned Assistant Sessions Judge also deeply gone through the materials and came to the conclusion that the materials are not sufficient to frame the charge against the accused. There is no reason to interfere with the judgment of the trial Court. The learned counsel placed reliance on the judgment of the Supreme Court in the case

of Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao reported in (2012) 9 SCC, which reads as follows:-

".....

...

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be

expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

5. Heard the learned Government Advocate (Crl. Side) appearing for the petitioner and the learned counsel for the respondents and also perused the materials available on record.

6. The revision petitioner/police registered a case against the respondents/accused initially for the offence under Section 174 Cr.P.C. Subsequently, after investigation, filed a charge sheet informing the commission of offence under Section 306 of IPC against the respondents/accused. Since the offence is triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal Sessions Judge, Coimbatore and after taking the case on file in SC.No.63 of 2011, the learned Sessions Judge made over the same to the learned Assistant Sessions Judge, Coimbatore for disposal. During the pendency of SC.No.63 of 2011, the respondents herein/accused filed a petition under Section 227 Cr.P.C for discharging them from the case. After hearing the arguments on either side, the learned Sessions Judge allowed the petition by discharging the accused from the charge by order dated 30.08.2011. Considering the submissions made by the learned counsel on either side and the report filed by the revision petitioner and also the statement recorded by the investigating officer during the investigation from the prosecution witnesses, this Court finds that there is sufficient ground for proceeding against the respondents herein. It is a well settled proposition of law that at the time of framing of charge, the Court need not conduct a roving enquiry on the materials collected by the prosecution to frame the charge. If the materials collected by the prosecution under Section 173 Cr.P.C itself is sufficient to frame the charge and prima facie case is made out, the Court can very well frame the charge. The innocence of the respondents/accused can be proved only after trial and also the defence taken by the accused need not be looked into at this stage. In this case, this Court finds that prima facie case is made out from the report filed by the prosecution under Section 173 of Cr.P.C and hence, there is perversity in the finding of the trial Court and the same is liable to be set aside.

7. In the result, this Criminal Revision Case is allowed. The order dated 30.08.2011 made in CMP.No.258 of 2011 in S.C.No.63 of 2011 passed by the learned Principal Subordinate Judge and Assistant Sessions Judge, Coimbatore, is hereby set aside. The learned Principal Subordinate Judge-cum-Assistant Sessions Judge, Coimbatore is directed to frame the charge against the respondents/accused and dispose of the case in accordance with law, within a period of 6 months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KMI
To

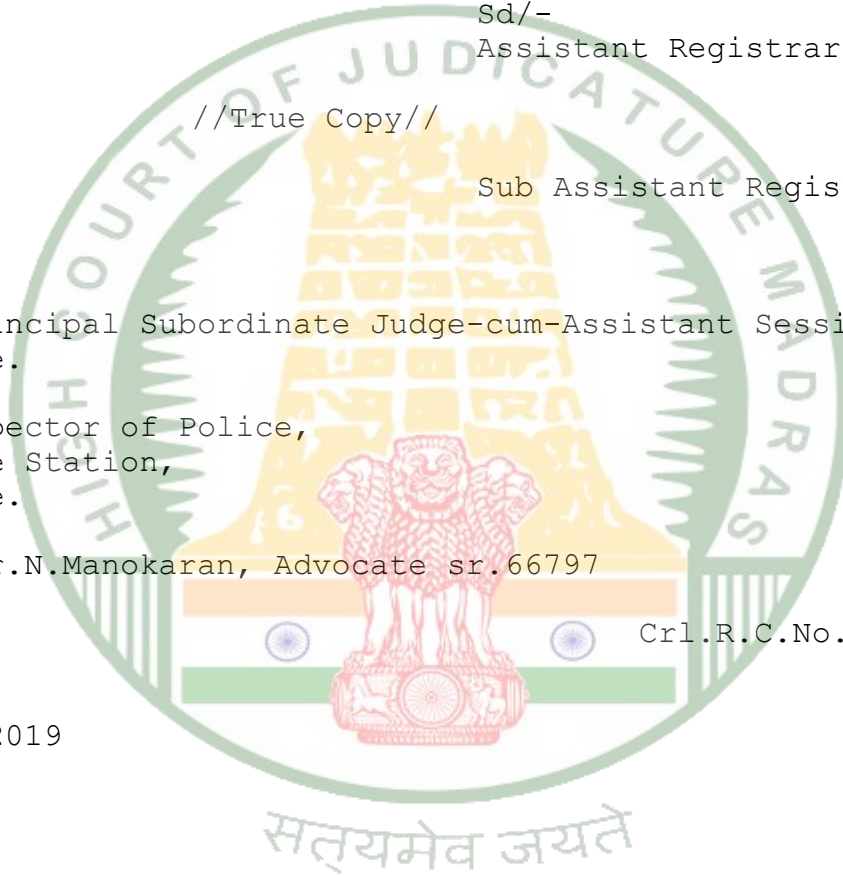
1.The Principal Subordinate Judge-cum-Assistant Sessions Judge, Coimbatore.

2.The Inspector of Police,
B-2 Police Station,
Coimbatore.

+1cc to Mr.N.Manokaran, Advocate sr.66797

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