

IN THE HIGH COURT OF JUDICATURE AT MADRAS

: 21.08.2018

RESERVED ON

PRONOUNCED ON : 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.663 of 2015 and
M.P.No.1 of 2015

1. A.Rahmunisha @ Nasreen

2. A.Kalith

...Petitioners

Vs.

1. The State of Tamilnadu rep. By
The Sub-Inspector of Police,
Virugambakkam Police Station (L&Q),
Chennai - 600 092.
(Crime No.136/2014)

2. R.Bernard Jothi

... Respondents

This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C. praying to set aside the order passed in Crl.M.P.No.3852 of 2014 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai-15, dated 18.03.2015 in C.C.No.3403 of 2014.

For Petitioners :Mr.R.Muniapparaj

For Respondents :Mr.R.Ravichandran,
Govt. Advocate (Crl.Side) for R1
Service awaited for R2

ORDER

This criminal revision case has been filed against the order of dismissal of discharge petition filed by the petitioners under Section 239 of Cr.P.C., passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai-15, in Crl.M.P.No.3852 of 2014 dated 18.03.2015 in C.C.No.3403 of 2014.

2 The first respondent police registered a case against the petitioners for the offence punishable under Sections 447, 294(b) and 506(1) of IPC and after investigation as per the direction of this Court has filed a final report before the

Court below and the same was taken on file in C.C.No.3403 of 2014. During pendency of the above calendar case, the petitioners/accused had filed a petition under Section 239 of Cr.P.C seeking discharge from all the charges levelled against them. The learned Magistrate, after hearing both the counsel, by order dated 18.03.2015 dismissed the petition. Aggrieved against the same, the petitioners/accused are before this Court with the present criminal revision case.

3 According to learned counsel for the petitioners, ingredients of Section 447, 294(b) and 506(1) of IPC are not made out against the petitioners. It was alleged that the defacto complainant was in possession of the properties and the petitioners trespassed into the same, but, the fact remains that once possession of the defacto complainant itself is in question and not proved, the question of trespass would not at all arise. The learned Magistrate has failed to consider the above fact and dismissed the petition filed by the petitioners. Further there is no prima facie materials to prove the offences alleged to have been committed by the petitioners and the learned Magistrate has failed to appreciate the fact that the materials produced by the prosecution itself are not sufficient to frame charges against the petitioners. Therefore the petitioners need not undergo the ordeal of trial and they are entitled for discharges.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that there was tenancy dispute between the parties and on 10.09.2009 complaint was received from the defacto complainant/2nd respondent stating that he is doing metal furniture fabrication business and after demise of the owner of the property, in which the parties are tenant, the first petitioner was incharge for collection of rent and whenever he came to collect, some problem would arise. On the day of occurrence, 14th day ceremony of the first petitioner's husband was conducted and on that day also the petitioners/accused had not allowed the defacto complainant to enter into the premises through main gate and when he tried to enter into the premises through other way, the petitioners and their family members intercepted and prevented him and abused in a filthy language and threatened with dire consequences. The respondent police after investigation laid a charge sheet before the Court below and since there is prima facie materials to proceed against these petitioners and whatever defence, they can very well establish during trial, the learned Magistrate dismissed the petition filed by the petitioners seeking discharge. There is no reason to interfere with the same and this revision is liable to be dismissed.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that the petitioners were charged for the offence under Sections, 447, 294(b) and 506(1) of IPC. While the case is pending, the petitioners filed a petition seeking discharge, which was dismissed by the Court below. It is settled proposition of law that at the time of deciding petition under Section 239 of Cr.P.C, seeking discharge, the Court has to see whether there exists any prima facie materials to proceed the case and the defence taken by the accused need not be looked into at the time of framing of charges. It is settled proposition of law that while considering petition for discharge of the accused, allegations and materials in the documents filed by the prosecution under Section 173 Cr.P.C. must be considered and not the defence taken by the accused. Probative value of the evidence need not be gone into at this stage. In this case, on a perusal of the report filed by the prosecution under Section 173 Cr.P.C. prima facie case made out against these petitioners. This Court does not find perversity in the order of the Court below, warranting interference and there is no reason to interfere with the order passed by the learned Magistrate.

7 In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed.
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Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai-15.
2. -Do- Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court of Madras.
4. The Sub-Inspector of Police,
Virugambakkam
Police Station (L&Q),
Chennai - 600 092.

+lcc to M/s.RMR INDIAN LAW FIRM, Advocates vide SR.No. 71469

Cr1.R.C.No.663 of 2015

Kak(24/09/2019)



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