

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.266 of 2019 and
Crl.M.P.No.2886 of 2019

J.Anbazhagan

...Petitioner/5th Accused

Vs.

The State Represented By
Inspector of Police,
Crime Branch CID,
Tirupur
(in DCB Crime No.22 of 2011)

...Respondent/complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 21.01.2019 made in Crl.M.P.No.164 of 2018 made in Special C.C.No.31 of 2018 by the Special Court for MP's and M.L.A's at Chennai wherein the petition presented by the petitioner for discharge sought for is dismissed.

For Petitioner : Mr.S.Prabhakaran
Senior Counsel

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

ORDER

The criminal revision has been filed against the order dated 21.01.2019 made in Crl.M.P.No.164 of 2018 made in Special C.C.No.31 of 2018 by the learned Special Sessions Judge, Chennai.

2 The facts leading to prefer this revision are as follows:

The petitioner is the 5th accused in Spl.C.C.No.31 of 2018. The respondent police registered a case against the revision petitioner and others for the offence under Sections

342, 387, 406, 418, 420, 468, 471, 506(i) r/w. 120 B IPC and the Inspector of Police, after investigation, filed a charge sheet for the offence under Sections 120 B, 420, 468, 471, 344 r/w. 109/120 B IPC, 392 r/w 109/120 B IPC and 451 r/w 109 IPC and 380 r/w 109 of IPC before the learned Chief Judicial Magistrate, Tiruppur. The learned Magistrate has taken the charge sheet on file in C.C.No.81 of 2015, which was transferred to the learned Special Sessions Judge, Chennai in Spl.C.C.No.31 of 2018. Pending the above case, the petitioner/5th Accused had filed miscellaneous petition in CrI.M.P.No.164 of 2018 under Section 239 of Cr.P.C, before the learned Special Sessions Judge, Chennai seeking to discharge him from the above case. The learned Special Sessions Judge, Chennai, after hearing both sides, dismissed the petition by order dated 21.01.2019 observing that prima facie, there are allegations made out against this petitioner.

3 Aggrieved against the above said order dated 21.01.2019, the petitioner/5th accused has preferred the present revision before this Court.

4 The learned senior counsel appearing for the petitioner submitted that there is no specific allegation against the present revision petitioner in FIR. The alleged offence is said to have taken place on 01.05.2008. Whereas, the complaint lodged by the defacto complainant is on 28.07.2011. Even the statement of the defacto complainant was recorded under Section 161 (3) of Cr.P.C on 26.12.2013. During the course of investigation, one of the accused has voluntarily given statement under Section 164 Cr.P.C., before the learned Judicial Magistrate - II, Tiruppur on 06.03.2014. Based on the statements, the charge sheet was filed on 12.06.2015. The case was registered and the statement was recorded on the same day by the respondent police without applying its mind as to whether the revision petitioner has involved in this case and find out any offence is made out against him. The learned Special Sessions Judge has also failed to consider these aspects. Hence, there is no base for FIR and subsequently, respondent has developed the case at each and every stage. After 3 years of the offence, filed the charge sheet and the delay has not been properly explained. The law laid down by the Hon'ble Supreme Court in State of Haryana and others Vs. Bhajanlal, has not been followed. The learned Special Sessions Judge admitted the delay in filing the complaint. However, he failed to discharge the revision petitioner from the case. Under these circumstances, there are no materials against this revision petitioner to connect him with this case. He is the District Secretary of DMK party due to political motive to take vengeance false case has been foisted against him. Therefore, he seeks to set aside the order passed by the learned Special Sessions Judge.

5 The learned Government Advocate (Crl.Side) appearing for the respondent/police would submit that the guidelines of the Bajanlal case has been duly followed before registering the case and also during the investigation and filing charge sheet. The scope of Section 239 Cr.P.C., is very limited at the time of deciding the petition under Section 239 Cr.P.C., for discharge the Court has to see the materials placed by the prosecution. Further he submitted that statement recorded under Section 161 Cr.P.C., from the defacto complainant during the investigation also reveals the involvement of the revision petitioner/accused in this case. Statement given by the co-accused was also recorded under Section 164 of Cr.P.C which also indicate the involvement of this petitioner. At the time of deciding the petition, the Court has to see the records produced by the prosecution under Section 173 Cr.P.C. Hence this revision is liable to be dismissed.

6 Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed before the Court.

7. A perusal of the records reveal that the respondent police has registered a case against the present petitioner and other accused this revision petitioner has been arrayed as A5. After completion of the investigation, charge sheet was filed before the learned Chief Judicial Magistrate, Tiruppur. The same was transferred to Special Court, in which the petitioner filed a petition in Crl.M.P.No.164 of 2018 for discharge. The Special Court found that prima facie case made out against the revision petitioner and dismissed the petition filed by the petitioner seeking discharge from Spl.C.C.No.31 of 2018. It is well settled proposition of law that while considering petition under Section 239 of Cr.P.C. seeking discharge, the Court has to see the documents filed by the prosecution under Section 173 of Cr.P.C. before the Court and prima facie case, if made out, the Court can frame the charge and proceed further and need not look into the defence taken by the accused that can be considered only after trial not at this stage. Further probative value of the materials need not be gone into at this stage.

8. This Court is of the view that the authority cited by the learned Senior Counsel appearing for the revision petitioner/accused is not applicable to the present case in hands. The defence taken by the accused can be considered only during the trial not at this stage. In this case a perusal of the records produced by the prosecution under Section 173 of Cr.P.C this Court finds prima facie case made out against the revision petitioner herein/A5 from the available materials placed before this Court.

9 In the result, the criminal revision is dismissed as there is no perversity or infirmity in the order passed by the Court below. The revision petitioner/accused is at liberty to take the defence before the trial Court at the time of trial. Consequently, connected miscellaneous petition is closed.

dh

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Crime Branch CID,
Tirupur.
2. The Special Sessions Judge,
Spl.Court for MP's and MLA's
Chennai.
3. The Chief Judicial Magistrate,
Tiruppur.
4. The Public Prosecutor,
High Court of Madras.

+2cc to M/s.J.Thuyamani, Advocate, vide SR.NO.17160

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kak(12/03/2019)

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