

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5647 of 2019

and

Crl.M.P.No.3209 of 2019

Ashok @ Anandan

...Petitioner /
Accused No.2

Vs.

State rep. by
Inspector of Police
Pallathur Police Station
Sivagangai District

...Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Special Court for Trial of Criminal Cases related to Elected MPs and MLAs of Tamil Nadu at Chennai to number and dispose the application on merits in un-numbered Crl.M.P.No. of 2019 in S.C.No.4 of 2019.

For Petitioner : Mr.A.R.L. Sundaresan, Sr. Counsel
for K.Muthuramalingam

For Respondent : Mr.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner under Section 482 Cr.P.C., to direct the learned Special Court for Trial of Criminal Cases related to Elected MPs and MLAs of Tamil Nadu at Chennai to number and dispose the application on merits in un-numbered Crl.M.P.No. of 2019 in S.C.No.4 of 2019.

2.The learned Senior Counsel appearing for the petitioner would submit that already he has challenged the framing of charges in Crl.O.P.No.2430 of 2019, in which, this Court, allowed the petition and set aside the charges framed by the

Trial Court. This Court also further directed the Special Court to undertake the exercise of framing of charges strictly in accordance with Sections 227 and 228 Cr.P.C. and strictly in accordance with the guidelines given by this Court in the case of P.Kallapiran Vs. The Inspector of Police, Alwarkuruchi Police Station, Tirunelveli District reported in (2018) 2 LW (Crl.) 779 and further directed the Court to hear the respective counsel at the time of framing of the charges in order to properly appreciate the materials available on record.

3. Therefore, the petitioner filed a petition under Section 227 Cr.P.C. to discharge him from the case in S.C.No4 of 2019, which was returned for the reasons stated below:

"1. As per the order of the Hon'ble High Court in the present case in Crl.O.P.No.2430 of 2019 it was ordered to frame the charges in accordance with the guideline given in P.Kallairan Vs. Inspector of Police Alwarkuruchi. Further it was also ordered to frame charges as against each of the accused and to complete the entire proceedings within a period of six months. Hence, how this petition filed u/s.227 Cr.P.C. to discharge the petitioner / accused A.22 is maintainable, since the petitioner alone went to Hon'ble High Court and got an order in Crl.O.P.No.2430 of 2019.

2. The petitioner is having opportunity to put forth his arguments with materials at the time of arguments for framing of charges and hence how this petition is maintainable?

3. Further in the present case in Crl.O.P.No.2430 of 2019 the Hon'ble High Court also referred the judgment delivered by the Hon'ble Supreme Court in P.Kallairan Vs. Inspector of Police, Alwarkuruchi (2018 eL.W.(Crl.) 779) the guideline framed by Hon'ble High Court to frame the charges. Hence based on the order of our Hon'ble High Court, how this petition is maintainable?

4. Further in the present case in Crl.O.P.No.2430 of 2019 the Hon'ble High Court also referred the judgment delivered by the Hon'ble Supreme Court in Vinod Kumar Vs. State of Punjab (2015 (3) SCC 220). In which it was held that after the framing of charges, summon to be issued to the witness and the witness to be cross examined on the date, when he was chief examined. Further in the present case in

Crl.O.P.No.2430 of 2019 the Hon'ble High Court also referred the judgment delivered by the Hon'ble Supreme Court in State of Uttar Pradesh Vs.shambhu Nath Singh and Others (JT 2001 (4) SC 319) in which it was held that the accused should not play dilatory tactics to prolong the proceedings. Hence, how this petition is maintainable?.

4. Therefore, the petitioner has filed a petition before this Court to direct the Trial Court to entertain this petition and dispose of the said application on merits.

5. Per contra, the learned Additional Public Prosecutor would submit that though the setting aside the charges framed by the Court below is ordered by this Court, the petitioner cannot seek for discharge u/s.227 Cr.P.C. As this Court categorically directed the Special Court to consider the submissions and written arguments of the accused at the time of framing of the charges in order to properly appreciate the materials available on record. Therefore, already the proceedings under Section 227 Cr.P.C. has been crossed by the Trial Court. The learned Additional Public Prosecutor would further submit that the Trial Court has only returned the application. The petitioner instead of re-presenting the same, has come before this Court. Therefore, vehemently opposed to allow this petition.

6. Heard the learned Senior counsel for the petitioner as well as the learned Additional Public Prosecutor.

7. It is seen from the records that the petitioner has challenged the framing of charges in Crl.O.P.No.2430 of 2019 and the same was quashed by this Court and this Court also directed the Trial Court to exercise the framing of charges strictly in accordance with Sections 227 and 228 Cr.P.C. and strictly in accordance with the guidelines given by this Court in the case of P.Kallapiran Vs. The Inspector of Police, Alwarkuruchi Police Station, Tirunelveli District reported in (2018) 2 LW (Crl.) 779. Further, this Court has observed that the Trial Court was directed to hear the respective counsel at the time of framing of charges.

8. Now the case has been transferred to Special Court for Trial of Criminal Cases related to Elected MPs and MLAs of Tamil Nadu at Chennai. It is also seen that the petitioner has filed a petition u/s.227 Cr.P.C. to discharge him from the case in S.C.No.4 of 2019 and the said petition was returned by the Trial Court for the reasons that this Court ordered to framing of charges against each of the accused and to complete the entire proceedings within a period of six months. Further stated that the petitioner should have an opportunity to put forth all the

materials at the time of arguments and of framing of charges. It is also seen that the petitioner has filed a petition u/s.227 Cr.P.C. now to discharge him from the entire proceedings.

9.Though this court had already directed the Trial Court to frame the charges as against each of the accused, it does not mean that the Trial Court has to frame charges against all the accused persons. It is also made clear in the said order that the Trial Court shall undertake the exercise of framing of charges strictly in accordance with Sections 227 and 228 Cr.P.C. and strictly in accordance with the guidelines given by this Court in the case of P.Kallapiran Vs. The Inspector of Police, Alwarkuruchi Police Station, Tirunelveli District reported in (2018) 2 LW (Cr1.) 779.

10.Therefore, the petition under Section 227 Cr.P.C. can be entertained by the Trial Court. It is also seen from the second reason for returning the application by the Trial court that the petitioner is having an opportunity to put forth his arguments and materials at the time of framing of charges.

11.Therefore, the petitioner has rightly filed a petition under Section 227 Cr.P.C. to discharge him from the entire proceedings. As the Senior Counsel for the petitioner stated that the matter is posted tomorrow i.e. on 05.03.2019 for hearing, the petitioner is directed to re-present the petition after compliance by tomorrow itself i.e. on 05.03.2019.

12.It is also made clear that the Trial Court has to number and dispose of the petition filed u/s.227 Cr.P.C. on merits in accordance with law without influencing any of the observations made by this Court.

13.Accordingly, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kas/ssr

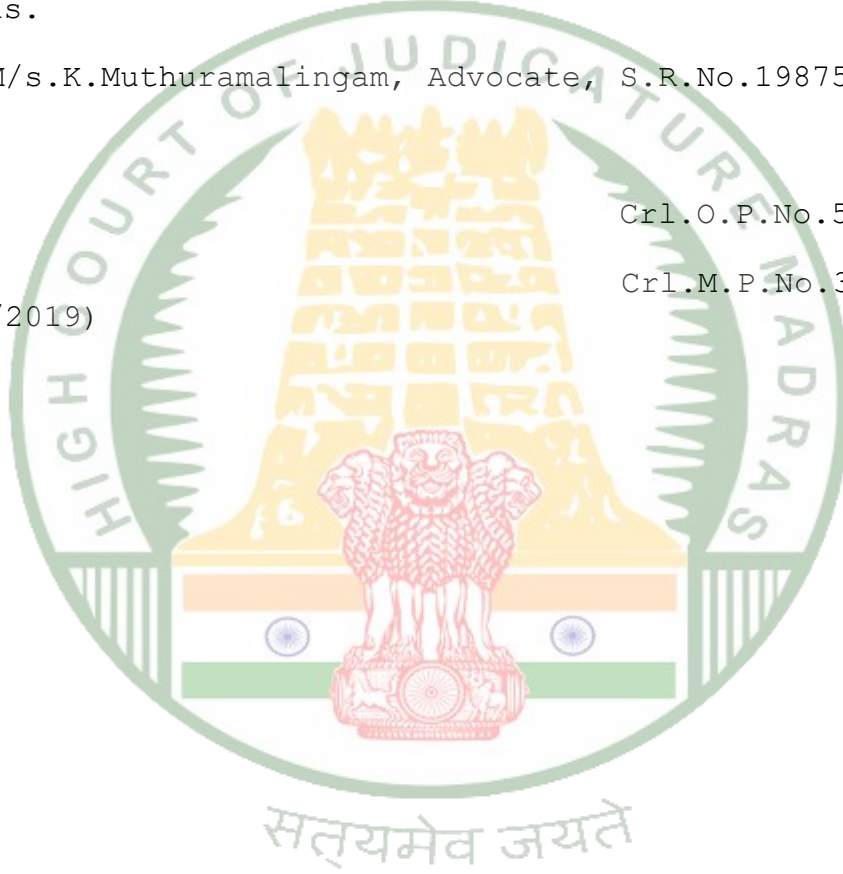
To

1. The Special Court for Trial of Criminal Cases
Related to elected MPs & MLAs of Tamil Nadu
Chennai.
2. The Inspector of Police,
Pallathur Police Station,
Sivagangai.
3. The Public Prosecutor,
High Court of Madras,
Madras.

+1 cc to M/s.K.Muthuramalingam, Advocate, S.R.No.19875

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and
Crl.M.P.No.3209 of 2019

SSM(05/03/2019)



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