

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.641 OF 2018

P.Jayakanthan

... Petitioner

Vs.

State by
The Inspector of Police
District Crime Branch(DCB)
Vellore District.

... Respondent

Prayer:

The Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to set aside the order made in C.M.P.No.2062 of 2017 in C.C.No.400 of 2017 by an order dated 23.04.2018 on the file of learned Judicial Magistrate No.II (FAC), Vellore and allow the Criminal Revision Petition.

For Petitioner : Mr.C.Veeraraghavan

For Respondent : Mr.R.Suryaprakash
Government Advocate

ORDER

This criminal revision has been filed against the order dated 23.04.2018 made in C.M.P.No.2062 of 2017 in C.C.No.400 of 2017 by the learned Judicial Magistrate No.II (FAC), Vellore.

2. The respondent police registered the case against the revision petitioner in Cr.No.01 of 2015 for the offence under Sections 409, 477(A) read with 109 IPC. After investigation, the respondent police laid charge sheet before the Judicial Magistrate No.II, Fast Track Court, Vellore in C.C.No.400 of 2017 in which the petitioner has been arrayed as A3 and in another C.C.No.401 of 2017, this petitioner has been arrayed as A1. During the pendency of the calendar case, the revision petitioner wants to file a petition in C.M.P.2062 of 2017 for discharging him from this case. The learned Magistrate after hearing the case, dismissed the petition by an order dated 23.04.2018, against which the petitioner has filed the present revision petition.

3. The learned Counsel for the revision petitioner would submit that the offence falls under the Co-operative Society Act and therefore, they can prosecute the petition only under Co-operative Society Act not under any other Act. It is a special Act and therefore special Act prevails over the general Act and therefore, the petitioner should have been prosecuted only under Co-operative Society Act and not under Indian Penal Code. Further they have not obtained any sanction from the competent authority to proceed against the petitioner, which vitiates the case of the prosecution. Further, he would submit that the petitioner is a public servant and as per Indian Penal Code, the prosecution should get sanction under Section 197 of the Cr.P.C. Without obtaining prior permission, the prosecution cannot proceed against the petitioner and the learned Counsel also placed reliance on the judgment of this Court reported in 2010 1 L.W.525 (Bagyam & Others Vs. The Commissioner, Coimbatore City).

"22. The Tamil Nadu Co-operative Societies Act is a self - contained Act and the Registrar of Co-operative Societies, has been vested with enormous powers."

The learned Magistrate has failed to consider this aspect and dismissed the petition, which warrants interference of this Court.

4. The learned Counsel for the State would submit that the petitioner has not raised the said point before the Magistrate. Further, there is prima facie case is made out against the petitioner and now the Court has to see the documents produced by the prosecution and defence under Section 173 Cr.P.C. taken by the accused cannot be considered at this stage. Therefore, the learned Magistrate found that there is no ground to discharge him and there are valid grounds are available to proceed the case further.

5. Heard both sides and perused the materials placed on record.

6. Admittedly the respondent police registered the case against the revision petitioner for the offence under Sections 409, 477(A) read with 109 IPC and after investigation charge sheet was filed. At that time, the petitioner filed petition for discharge. On a reading of the entire records and evidence, the judgment referred to by the learned Counsel for the petitioner is not applicable to the present case.

7. On reading of the entire materials, a prima facie case is made out against the petitioner. While deciding the petition

under Section 239 Cr.P.C. the Court has to see the materials placed by the prosecution under Section 173 of Cr.P.C. and not the defence taken by the accused. Whether the sanction of prosecution is necessary or not, even otherwise, whether they can get sanction or not can be decided only at the time of trial and not at this stage. Therefore, whether the action can be taken only under the Co-operative Society Act or under the Indian Penal Code, can also be decided after the trial and at the time of disposing the case on merit. Once the Court comes to the conclusion that a prima facie case is made out, there is incriminating materials against the accused, then the Court shall proceed further in framing the charge by adducing sufficient reasons for framing charges. Under these circumstances, this court finds that there is no perversity in the order passed by the Magistrate. Therefore, the criminal revision is dismissed. However, the revision petitioner shall take defence before the Court concerned during trial.

8. With the above observation, this criminal revision case is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KSA-2

To

1. The Judicial Magistrate No.II(FAC),
Vellore.
2. The Inspector of Police,
District Crime Branch(DCB), Vellore District.
3. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
Criminal Section, High Court, Madras-104.

+1cc to Mr.C.Veeraraghavan, Advocate, S.R.No.26072

Cr1.R.C.No.641 of 2018

GP(CO)
CS/20/01/2020