

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1196 of 2019
and
Crl.M.P.No.15927 & 15928 of 2019

M.Antonyous Flamstid Abraham ... Petitioner/
24th Accused

Vs.

State represented by:
The Deputy Superintendent of Police,
CBCID, Metro-I Unit,
Egmore, Chennai, (X.Cr.No.08/2015) ...Respondent/
complainant

PRAYER: The Criminal Revision Petition has been filed, under Section 397 read with 401 Cr.P.C against the order dated 18.10.2019 passed in Crl.M.P.No.2557 of 2019 in C.C.No.6756 of 2018, on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai- 8.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

J U D G M E N T

This Criminal Revision Case has been filed seeking to set aside the order dated 18.10.2019, passed by the Court of the CCB & CBCID, Metropolitan Magistrate, Egmore, Chennai - 8 in Crl.M.P.No. 2557 of 2019 in C.C.N.6756 of 2018, dismissing the petition filed seeking for discharge.

2 The brief facts of the case are as follows:

(i) The petitioner along with 74 other persons has been charged for the alleged offences under Sections 147, 506(i) , 153, 152, 353, 451 read with Sections 109 and 149 of IPC.

(ii) The case of the prosecution as per the complainant given by the Special Sub Inspector is that on 04.04.2015, while he was on duty at the residence of the Hon'ble Chief Justice at 18-21 hours, 100 persons wearing white shirt and black pant have assembled in front of the entrance of the

house. When he had questioned them, one of the persons had stated that they are practicing advocates in High Court and had asked them to open the door. When the complainant along with the other officials had informed them that the Hon'ble Chief Justice was not at home, they have threatened them saying that if they do not open the door, they will come inside by breaking open the door. Immediately, the complainant had intimated to the Pattinampakkam Police Station through telephone and at that time five persons had gate crashed and entered inside and about 85 persons were standing outside and the respondent police had prevented them from entering the house. Based on the complainant given by the complainant, a case in Crime No. 1077 of 2015 was registered by the E5 Pattinampakkam Police Station, under Section 143, 188, 353, 448 and 506(i) of IPC. The respondent after completion of the investigation, filed the final report against the 75 accused persons. The petitioner was arrayed as A24. The specific charge against the petitioner is for the offences under Sections 147, 506(i), 153, 152, 353, 451 of IPC read with Section 109, 149 of IPC.

(iii) The petitioner had filed CrI.M.P.No. 2557 of 2019 under Section 239 of Cr.P.C for discharge on the ground stating that no material had been filed by the respondent to charge the petitioner for the offence alleged against him, in the form of statement of witness, which would point out the overt act against him. Out of the witnesses, only five witnesses have mentioned the name of the petitioner and none of the witnesses have spoken about the petitioner individually and none of them have spoken about the petitioner indulging in any overt act. Further, one of the witnesses viz., T.Kannan in his 164 Cr.P.C. statement had not mentioned about the overt act of the petitioner and he had only identified the petitioner among others from a video footage covered by a news channel, viz., Polimer News. Further, even as per the witness the original video recording had been deleted and when the original video recording is not available, reliance cannot be based on the copy which is only in the form of a secondary evidence. It had been further contended that there were discrepancies in the statements recorded from the witnesses. Thereby, he had prayed for discharge of the accused.

(iv) The respondent had filed a counter stating that the petitioner along with the others with a common intention formed into an unlawful assembly in front of the main gate of the residential premises of the Hon'ble Chief Justice at 20-30 hours on 04.04.2015 and there were materials in the form of the statements recorded from LW 27 to LW31. There were materials in the form of statements recorded under 161 and also under Section 164 of Cr.P.C., from LW27 to LW31 discloses about the involvement of the petitioner.

(v) The Trial Court after perusal of the entire records, found that the prosecution witnesses LW27 to LW31 have

identified the petitioner/A24 as a member of unlawful assembly and also found that LW41-B.Prabakaram Napoleon, who is the cameraman of Polimer TV, had recorded the incident and the same has been handed over to the investigation officer in the form of DVD, based on which, accused persons have been identified by the witnesses. The Trial Court holding that the petitioner has not proved his absence and that the veracity of the witnesses can be seen and judged only after completion of the trial, had dismissed the petition. As against the same, the criminal revision case has been filed.

3 The learned counsel for the petitioner would submit that there is absolutely no material available to hold the petitioner guilty and render a judgment of conviction. There are discrepancies in the statements of the witnesses regarding the overtact of the petitioner. Further, there are also contradictions in the statements recorded from LW27 to LW31 and thereby, there is no sufficient material for framing of charges against the petitioner. He would further submit that even as per 164 statement recorded from witness P.Kannan, he had merely identified the petitioner among others from a video footage covered by a news channel. Further, the original footage of the news recorded had been deleted and only a copy of the footage had been produced before the Court. When the original footage had been deleted, what remains is only the secondary evidence and conviction cannot be passed placing reliance on a secondary evidence. The petitioner can only be termed as a spectator when no overtact has been assigned to him by any of the witnesses. Thereby, the Trial Court had erred in dismissing the petition for discharge.

4 Per contra, the learned Additional Public Prosecutor would submit that at the time of framing charges, the Court has to see whether any *prima facie* material is made out for framing of charges. At the stage of framing of charges, the Court cannot conduct a mini trial or a roving enquiry with regard to the veracity of the statements. He would submit that apart from the other offences, petitioner has been charged for the offences under Section 149 Cr.P.C. being a member of unlawful assembly and he would submit that every member of unlawful assembly is guilty of offences committed for the prosecution of common object. The petitioner along with other accused had gone to the residence of the Hon'ble Chief Justice, with the common object of trespassing, creating a problem and rioting. He would further submit that emphasis is on the common object and not on common intention and whether the petitioner had a common intention and object or not, can be decided only at the time of trial and not at the stage of the discharge. He would submit that there are statement of witnesses regarding the presence of the petitioner and there are also video recording to corroborate the same. The probative value of the available materials cannot be gone into at the stage of framing charges. Hence, he would seek for dismissal of the petition.

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

6 The petitioner has been charged for the offences under Sections 147, 506(i), 153, 152, 353, 451 of IPC read with Section 109, 149 of IPC. It is a case where, the petitioner along with 74 other persons is alleged to have gone to the house of the Hon'ble Chief Justice and threatened the security personnel of the residence of the Hon'ble Chief Justice to open the door and some of them have crashed the gate and entered into the house. The prosecution case is that the petitioner along with other accused formed into an unlawful assembly and the members of the unlawful assembly used force or violence in prosecution of such assembly. The presence of the petitioner as a member of the unlawful assembly, at the scene of occurrence, has been spoken to by the witnesses LW27 to LW31. Further the petitioner is also stated to have been identified by witnesses T.Kannan. This Court is of the opinion that there are prima facie materials for framing of charges and at the stage of framing of charges the Trial Court cannot conduct a roving enquiry or mini trial.

7 In 2014 (11) SCC 709 - [State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption Vs. N.Suresh Rajan and Others], the Hon'ble Supreme Court has held as follows:

".... True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether that facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the

conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

8 In the judgment reported in 2019 (4) SCC 149 - [State represented by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Tamil Nadu Vs. J.Doraiswamy and others], the Hon'ble Apex Court had held that:

"while considering the petition for discharge, the Courts cannot become an Appellate Court and start appreciating evidence by finding out inconsistencies in statement of witnesses".

9 In the judgment reported in 2019(7) SCC 82 - [Srilekha Senthilkumar Vs. Deputy Superintendent of Police, Central Bureau of Investigation, ACB, Chennai], the Hon'ble Apex Court has held that it is impermissible to look into the merits of the disputed facts of the case at the stage of discharge.

10 In the judgment reported in 2019 (7) SCC 515, [State by Karnataka Lokayukta, Police Station, Bengaluru Vs. M.R.Hiremath], the Hon'ble Apex Court has held that "entering into questions of evidentiary value of material adduced by the prosecution at the state of discharge is impermissible".

11 In the judgment reported in 2018 (13) SCC 455 - [State by the Inspector of Police, Chennai Vs. S.Selvi and Another], the Hon'ble Apex Court has held that "at the time of discharge, the learned Judge should not make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial".

12 From the above, it is clear that at the time of framing charges, the Trial Court has to see only whether the materials which are available are sufficient for framing of charges or not and the Trial Court cannot conduct a roving enquiry or a mini trial.

13 Taking into consideration the facts and circumstances of the case with the above legal principles enunciated by the above judgments, this Court is of the opinion that there are sufficient materials for framing of charges and as such, this Court does not find any infirmity in the order passed by the Trial Court in dismissing the petition for discharge.

14 In the result, the Criminal Revision Case stands dismissed. It is made clear that observations made in this petition are only for the purpose of disposing of this present revision and any observation made shall not either way prejudice the rights of the parties during the course of the trial and the Trial Court shall not be influenced by the observation made by this Court and shall proceed with the

trial independently in accordance with law. Consequently,
connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Deputy Superintendent of Police,
CBCID, Metro-I Unit,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

3. The Metropolitan Magistrate,
CCB and CBCID, Egmore - 600 008

+2cc to Mr.Prakash Goklaney, Advocate SR.No.92052

Cr1.R.C.No.1196 of 2019
and Cr1.M.P.No.15927 & 15928 of 2019

JP (CO)
GMY (28/01/2020)

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