

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2019

PRONOUNCED ON : 25.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.RC.No.1215 of 2019
CrI.MP.No.16228 of 2019

1.Prabu
2.Anbazhagan
3.Rajaraajeswari : Petitioners/A1 to A3

Vs

State by SHO, All Women Police Station
Vridhachalam. : Respondent

Prayer:- This Criminal Revision Petition is filed, against the order dated, 24.10.2019, made in CMP.No.1031 of 2019 in SC.No.176 of 2019, by the Sessions Judge (Mahila Court) Cuddalore, dismissing the said petition filed by the Petitioner under Section 227 of Cr.PC, seeking discharge.

For Petitioner : Mr.N.V.Prasanna
For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

1.This Criminal Revision Petition is filed against the order, dated, 24.10.2019, made in CMP.No.1031 of 2019 in SC.No.176 of 2019, by the Sessions Judge (Mahila Court) Cuddalore, dismissing the said petition filed by the Petitioner under Section 227 of Cr.PC, seeking discharge.

2.The facts leading to filing of this Criminal Revision Petition and necessary for disposal, are as follows:-

- a) In the complaint given by the victim Maheswari, it was alleged that the Petitioner/A1, falsely promising to marry her, had intercourse with her at her residence, for about five years, due to which, about three years ago, she became pregnant and again confirming the earlier promise to marry her, the Petitioner/A1 had aborted her pregnancy, by forcing her to take abortion tablets and that even after the Petitioner/A1 got a job as a Night Watchman in the Court, he avoided talking to her.

- b) It was further alleged in the complaint that on 19.06.2017 at about 9.00 a.m. the victim along with her parents went to his house and wanted his parents to arrange her marriage with him, but the Petitioners/Accused abused them in a filthy language, assaulted the victim and told her to die taking poison and thereby, she consumed oleander seeds poison, however, she was saved by giving treatment in the Government Hospital and that again on 10.11.2017 at about 2.00 p.m.. when the victim and her family Members went to the house of the accused, the Petitioner/Accused abused them in a filthy language and attempted to pour kerosene on her throttling her and demanded huge dowry to perform their marriage.
- c) Hence, the Petitioners/A1 to A3 were charge sheeted for the offences under Sections 417, 376, 312, 294(b), 352, 307 and 506(ii) of IPC in SC.No.170 of 2019, in which the Petitioners/Accused had filed CMP.No.1031 of 2019 under Section 227 of Cr.PC, seeking discharge and a counter was filed by the Respondent. After hearing both sides, the said Petition was dismissed by the impugned order. Hence, this Criminal Revision Petition has been filed.

3.This court heard the learned counsel on either side.

4.The learned counsel for the Petitioners would submit that the allegations made by the defacto complainant complainant and in the statements recorded under Section 161 of Cr.PC, which are in a stereo type manner, are improbable and that in the absence of any medical evidence, the averments that the Petitioner/A1 had raped the victim for about five years at her residence, falsely promising to marry her and the victim became pregnant three years ago and she was aborted forcefully by the Petitioner/A1, compelling her to take abortion tablets and continued to have intercourse with her, would not make out an offence of rape and that in the absence of particulars as to the date and time as to the Petitioner/A1's visit to the house of the victim, the evidence of the witnesses would not substantiate the evidence of the defacto complainant.

5.The learned counsel for the Petitioners would further submit that with regard to the incident on 19.06.2017 at 900 a.m. the Petitioner was on duty as a Watchman in the Sub Court, Neiveli and thereby, the averment that the Petitioners went to the house of the victim on 19.06.2017 at about 9.00 a.m. cannot be believed and as such, the entire case is a fabricated one without any sufficient evidence and that the Trial Court has failed to exercise its judicial mind to determine as to whether a case for framing charges has been made out or not. He would further submit that the Trial Court has failed to appreciate the settled position of law that in exercising powers under

Section 227 of Cr.PC, the Trial Court, while considering the question of framing charges, has power to sift and weigh the evidence for the limited purpose of finding out as to whether or not a prima facie case against the accused has been made out, whereas the Trial Court had erroneously held that all these are matters to be decided in the course of trial and that the evidence available on record is sufficient to frame charges against the accused and thereby he would pray for allowing this Criminal Revision Petition. In support of his contentions, he would rely upon the decision of the Honourable Supreme Court reported in 2019 7 SCC 148 (Asim Shariff Vs. National Investigation Agency).

6. On the other hand, the learned Additional Public Prosecutor would submit that the statements of the witnesses recorded under Section 161 of Cr.PC are sufficient to frame charges against the accused and the question as to whether the charges levelled against the accused can be proved or not can be decided only during the course of trial by letting evidence and at this stage, the said question cannot be decided and hence, he would pray for dismissal of this Criminal Revision Petition. He would further submit that the Petitioners had taken the ground of alibi and the burden is on the Petitioners to prove the plea of alibi and it could be decided only at the time of trial and that the Trial Court, after perusing the materials on record and the documents submitted therewith and after hearing the parties, had considered that there are sufficient grounds for proceeding against the accused and thereby, the Trial Court had rightly dismissed the petition. He would further submit that at the time of framing charges, the Court has to look only whether prima facie materials are available for framing charges and that the Trial Court cannot conduct a mini trial or a roving enquiry at the stage of framing charges. In support of his contentions, he would rely on the decisions of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), 2018 13 SCC 455 (State by the Inspector of Police, Chennai Vs. S.Selvi and another) and 2012 9 SCC 460 (Amit Kapoor Vs. Ramesh Chander and another).

7. I have given my careful and anxious consideration to the submissions of the learned counsel on either side and also perused the materials placed on record.

8. It is trite that at the stage of discharge petition, the Trial Court cannot conduct a roving enquiry or is not permitted to conduct a mini trial and the Trial Court has to look into whether there are sufficient materials for framing of charges against the accused.

9. In the case on hand, while dismissing the discharge petition, the Trial Court had found that there are sufficient materials to frame charges against the Petitioners/Accused for the alleged offences. It was finally held by the court below that the relief seeking to discharge as claimed by the Petitioners can be decided only after a full fledged trial and accordingly, dismissed the discharge petition. Based on the materials available, the Trial Court had dismissed the petition for discharge.

10. At this juncture, it is pertinent to note that time and again, it had been held by the Honourable Supreme Court in various decisions that no mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed. For this proposition, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N. Suresh Rajan and others), wherein it has been held thus:-

“29. 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 the 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.

32. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out

whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification."

- 11.If there is a strong suspicion, which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not, as has been held in 2015 2 SCC 417 (State Vs. A.Arun Kumar).
- 12.In the Honourable Supreme Court reported in 2018 13 SCC 455 (State by the Inspector of Police, Chennai Vs. S.Selvi and another), wherein the Honourable Supreme Court has relied on its various decisions, regarding the scope of powers of revision, and has held as under:-

"6.It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima

facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond

reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

8. This Court in *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] and *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] has reiterated almost the aforementioned principles. However, in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , relied upon by the counsel for Respondent 1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgement of the High Court quashing the entire criminal proceedings inclusive of the registration of first information report. The said matter was not concerned with the discharge of the accused.

10. If on the basis of the material on record, the Court would form prima facie opinion that the accused might have committed the offence, it can frame charge, though for conviction it is required to be proved beyond

reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record 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 conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

13. In 2012 9 SCC 460 (Amit Kapoor Vs. Ramesh Chander and another), wherein the order of the High Court, quashing the charges framed was under challenge, the Honourable Supreme Court has held that framing of charge is a kind of tentative view, which is subject to final culmination of the proceedings and that the Court is not expected to form even a firm opinion at this stage, but a tentative view would evoke presumption referred to under Section 228 of Cr.PC. It was finally held that the High Court erred in quashing the charges, by re-evaluating and re-appreciating the evidence, which was beyond the jurisdiction, either revisional or inherent, when the High Court itself, was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial. The Honourable Supreme Court holding so, had set aside the order of the High Court, quashing the charges and directed the Trial Court to proceed with the Trial, in accordance with law.

14. Even in the decision reported in 2019 7 SCC 148 (Asim Shariff Vs. National Investigation Agency), the Honourable Supreme Court had held that the Trial Court has the undoubted power to sift and weigh the evidence, it is only for the limited purpose of finding out as to whether or not a prima facie case against the accused has been made out and at the stage of framing charges, the Trial Court cannot conduct a roving enquiry. It was held in the said decision as under:-

"17. The exposition of law on the subject has been further considered by this Court in State v. S. Selvi [State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710] followed in Vikram Johar v. State of

U.P. [Vikram Johar v. State of U.P., (2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794].

18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record. "

15. In this case on hand, the Trial Court, after analysing the statements recorded from the witnesses listed in the charge sheet and other materials, had found that there are sufficient grounds and materials available for framing charges against the Petitioners/Accused. In respect of the incident on 19.6.2017 at 9.00 a.m., the plea of the Petitioner/A1 was that he was away at Neiveli on duty and the claim of alibi, the burden is on the accused to prove the same and the said ground can be decided only after examination of the witnesses after adducing evidence during the trial. The Trial Court, having found prima facie materials and sufficient grounds for framing charges against the Petitioners/Accused, by the impugned order had dismissed the Petition, seeking discharge.

16. On applying the above decisions to the case on hand, in the opinion of this Court, it is not the stage where the Court can appreciate or evaluate the records and documents filed with it by conducting a roving enquiry or a mini trial. I do not find any infirmity or illegality in the impugned order dismissing the petition seeking discharge.

17.In the result, this Criminal Revision Petition is dismissed. Consequently, the connected MP is closed. However, it is made clear that the Trial Court shall proceed with the trial in accordance with law, uninfluenced by any of the observations made in this order.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

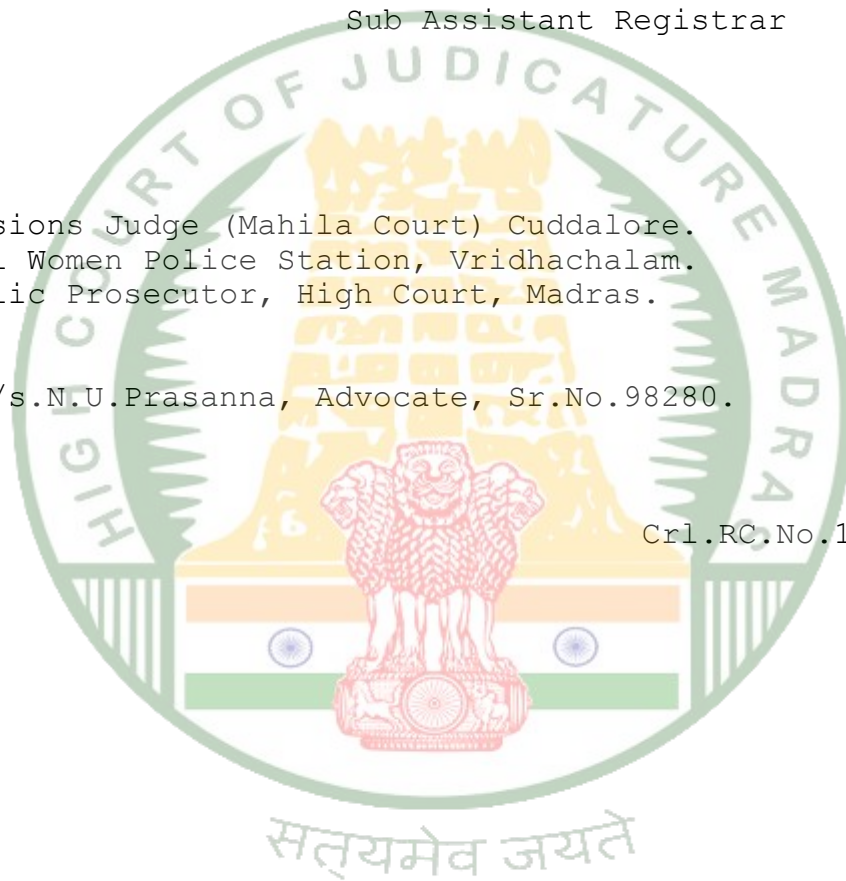
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To:

- 1.The Sessions Judge (Mahila Court) Cuddalore.
- 2.SHO, All Women Police Station, Vridhachalam.
- 3.The Public Prosecutor, High Court, Madras.

+1CC to M/s.N.U.Prasanna, Advocate, Sr.No.98280.

Order in
Crl.RC.No.1215 of 2019



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