

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1327 of 2018 and
Crl.M.P.No.15615 of 2018

1. Vishnu Parthiban
2. Yuvanesh
3. Chakravarthi
4. Loganathan
5. Kumaresan ...Petitioners

-Vs-

The state rep. by
The Sub-Inspector of Police,
Kannankuruchi Police Station,
Salem. (Cr.Noo.24/2013) ...Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order passed by the learned Principal District and Sessions Judge, Salem in C.M.P.No.3346 of 2018 in S.C.No.28/2018 dated 11.10.2018.

For Petitioner : Mr.C.Johnson for Mr.Mohamed Ismail.A

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

O R D E R

This criminal revision has been filed against the order of dismissal of discharge petition filed under Section 227 of Cr.P.C by the petitioners.

2 According to learned counsel for the petitioners, originally case was registered only against two accused and these petitioners were impleaded subsequently, without following any procedures. Since the defacto complainant happened to be a Practising Advocate, the learned Magistrate, without adhering any procedures, had impleaded these petitioners, even without causing any notice, which is against the principles of natural justice. Furthermore, the vehicle said to have been damaged by the petitioners had already damaged in some other incident and

on the date of occurrence, it was not available at the place of occurrence, which was also admitted. Hence the order dated 11.10.2018 dismissing the petition filed by the petitioners under Section 227 of Cr.P.C. is liable to be set aside.

3 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that as contended by the learned counsel for the petitioners originally case was registered only against two accused, but, subsequently, on further investigation, since there are allegations against these petitioners, they were also impleaded as accused. There are enough materials for the Court to proceed against these petitioners and whatever defence, they can very well establish during trial.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that the petitioners were charged for the offence under Sections, 147, 148, 294(b), 448, 324, 323 and 506 (i) IPC and Section 3(1) of TNPPD Act. While the case is pending, the petitioners filed a petition seeking discharge, which was dismissed by the Court. At the time of deciding petition, seeking discharge, the Court has to see whether there is any prima facie materials to proceed the case and the defence taken by the accused need not be looked into at the time of framing of charges. It is settled proposition of law that while considering petition for discharge of the accused, allegations and materials in the documents filed under Section 173 Cr.P.C. must be considered and not the defence taken by the accused. Probative value of the evidence need not be gone into at this stage. In this case, on a perusal of the records filed by the prosecution under Section 173 Cr.P.C. prima facie case made out against these petitioners. Therefore, there is no reason to interfere with the order passed by the learned Sessions Judge.

6 In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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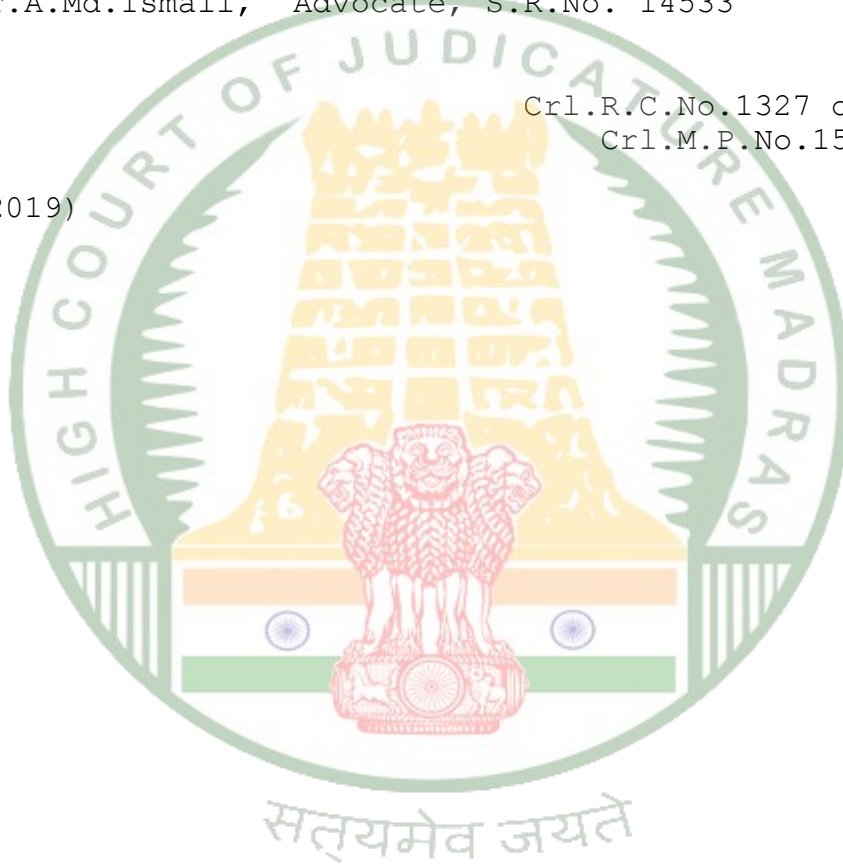
To

1. The Principal District and Sessions Judge,
Salem.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Kannankurichi Police Station,
Salem.

+1cc to Mr.A.Md.Ismail, Advocate, S.R.No. 14533

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RGN(CO)
GN(05/04/2019)



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