

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1454 of 2018
and
Crl.M.P.No.16991 of 2018

S.Siva @ Sivagnanam

... Petitioner/Accused/Party in person

Vs

The Inspector of Police,
W 32 All women Police Station,
Madipakkam, Chennai.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, to call for the records of relating to the discharge petition CMP No.1743 of 2018 in CC No.568 of 2017, Pending on the file of the learned Judicial Magistrate Court at Alandur, Chennai - 16.

For Petitioner : Mr.S.Siva @ Sivagnanam
(Party-in-person)

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

O R D E R

This petition has been filed by the petitioner to call for the records of relating to the discharge petition CMP No.1743 of 2018 in CC No.568 of 2017, on the file of the learned Judicial Magistrate Court at Alandur, Chennai .

2. Based on the complaint given by one N.Ambika, the respondent police registered a case in Crime No.3 of 2012 against the revision petitioner for offences under Section 498 (A), 419, 420, 494 and 506(i) of IPC. The respondent police, after completing the investigation, filed charge sheet against the revision petitioner and the same was taken on file in C.C.No.568 of 2017. before the learned Judicial Magistrate, Alandur. During the pendency of the case, the petitioner has filed a petition before the learned Magistrate under Section 239 Cr.P.C., to discharge him from the above offences. The learned

Magistrate after giving an opportunity to both sides, dismissed the petition in respect of offences under Section 419, 420, 494 and 506(i) and the petitioner was discharged under Section 498 (A) of IPC alone. Challenging the order passed by the learned Judicial Magistrate in C.M.P.No.1743 of 2018 in C.C. No.568 of 2017, the petitioner has filed the revision before this Court.

3. Today, when the matter is taken up for hearing, the petitioner/accused has appeared as party-in-person before this Court. He would submit that since he was discharged from the offence under Section 498(A) IPC, otherwise in respect of the other sections will not be made out. Therefore, the learned Judicial Magistrate ought to have discharged him in toto. Further, another accused in this case pleaded before this Court to quash the FIR file against them. This Court has directed the respondent police to complete the investigation and either file a final report or closure report, as the case may be within a period of six months from the date of receipt of a copy of the order. Based on the order dated 19.08.2016, the respondent police investigated the case and filed closure report in respect of the other accused except this accused. In the petition filed to quash the FIR, this Court has given the reason that there is a doubt regarding the second marriage of the petitioner, since two dates have been given for his second marriage. Therefore, it is not possible to close the case against this petitioner. The case has been closed against the other accused on the ground of mistake of fact. The very same benefit of doubt could have been extended to the petitioner also. He has produced the marriage certificate and has also given different date of his marriage, one is 2005 and another one is 2006, which also creates a doubt. Therefore, the learned Magistrate has failed to consider all these aspects and dismissed the petition, which warrants interference of this Court.

4. The learned Government Advocate would submit that the revision petitioner committed the offence under Section 498(A) IPC. There is a prima facie case made out against the petitioner. There is no need to interfere with the order of the Magistrate.

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

6. It is well settled proposition of law that while deciding the petition filed under Section 239 of Cr.P.C., the Court has to see the materials produced by the prosecution under Section 173 Cr.P.C. and not the defence taken by the accused. In this case, the allegation against the petitioner is that while first marriage is subsisting without getting divorce and he conducted

the second marriage, the said fact to be decided during trial and not at this stage.

7. From the available materials, this Court finds that there is a prima facie case made out against the revision petitioner. Therefore, all the defence raised by the petitioner could be raised during trial not at this stage. On a reading of the entire materials, this Court does not find any merit in the revision, and discharging other accused in the offence may not be help to discharge the petitioner. When a prima facie case made out against the petitioner, and there are materials to proceed further with the case against him, the defence taken by the revision petitioner/accused cannot be gone into at this stage and the probative value of the evidence cannot be looked into at this stage.

8. In the result, this Criminal Revision Case is dismissed accordingly. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

1. The Judicial Magistrate Court
Alandur, Chennai.

2. The Inspector of Police,
W 32 All women Police Station,
Madipakkam, Chennai.

3. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1454 of 2018
and
Crl.M.P.No.16991 of 2018

nr 24/06/2019