



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.(MD) No.679 to 683 of 2019 and

CRL MP(MD)No.8024 to 8027 of 2019, 8029,8031,8033,8034,8037 & 8038
of 2019

N.Sathiyamoorthi

... Petitioner/Accused No.1
in Crl RC(MD)Nos.679 & 682 /2019

N.Sathiyamoorthi

... Petitioner/Accused No.2
in Crl RC(MD)Nos.680,681 & 683 /2019

Vs.

State by Inspector of Police CCIW,
Virudhunagar in Crime No.1 of 2014

...Respondent in all Crl Revision Cases

Prayer in CRL RC(MD). 679/ 2019 :

Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code,to set aside the order of dismissal of the Discharge Petition dated 12.03.2019 in Cr.M.P.No.5700 of 2016 in C.C.No.104 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar in Virudhunagar District .

Prayer in CRL RC(MD). 680/ 2019 :

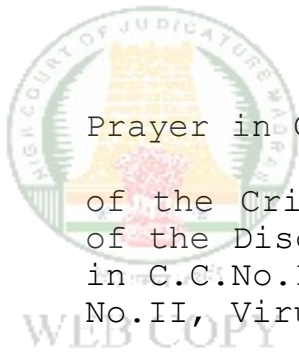
Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code,to set aside the order of dismissal of the Discharge Petition dated 12.03.2019 in Cr.M.P.No.5715 of 2016 in C.C.No.106 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar in Virudhunagar District .

Prayer in CRL RC(MD). 681/ 2019 :

Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code,to set aside the order of dismissal of the Discharge Petition dated 12.03.2019 in Cr.M.P.No.5711 of 2016 in C.C.No.107 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar in Virudhunagar District.

Prayer in CRL RC(MD). 682/ 2019 :

Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code,to set aside the order of dismissal of the Discharge Petition dated 12.03.2019 in Cr.M.P.No.5723 of 2016 in C.C.No.110 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar in Virudhunagar District.



Prayer in CRL RC(MD). 683/ 2019 :

Criminal Revision Case is filed under Sections 397 & 401 of the Criminal Procedure Code, to set aside the order of dismissal of the Discharge Petition dated 12.03.2019 in Cr.M.P.No.5726 of 2016 in C.C.No.111 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar in Virudhunagar District.

In all Revisions:

For petitioner : Mr.Sasikumar
For Respondent : Ms.M.Anantha Devi
Government Advocate

C O M M O N O R D E R

The present revision cases have been filed against the order passed by the learned Judicial Magistrate No.II, Virudhunagar, dismissing the petitions filed by the petitioner herein, seeking to discharge him under Section 239 of Cr.P.C.

2. The respondent police filed a final report against the petitioner and others for offences under Sections 403, 408, 409, 420, 465, 467, 468, 471, 477-A, 201, 120-B r/w Section 34 of IPC. The petitioner was working as Branch Manager in Virudhunagar District Central Co-operative Bank, Srivilliputhur Main Branch for the period from 28.01.2011 to 31.03.2011.

3. According to the petitioner, there is no supporting or corresponding records or entries in connection with the offence said to have been committed by the petitioner and others. There is no evidence to substantiate the charges. According to the petitioner, the allegations stated in the First Information Report, statements of witnesses have not attracted the above charges against the petitioner.

4. To counter the submissions made on behalf of the petitioner, it was stated on behalf of the respondent police that charge sheet against the petitioner and others was filed on the basis of investigation and documentary evidence and statement of witnesses and there was *prima facie* case against the petitioner and it can be proved only at the time of trial.

5. According to the charge sheet, the petitioner joined with other accused has passed the withdrawal without verifying the fake signature with the original signature of the account holder and he was responsible for allowing withdrawal fraudulently with the dishonest intention.

6. After adverting to the submissions and perusing the materials placed on record, the learned Magistrate has dismissed the discharge petition by passing a detailed order as under:



"Both side heard. Records perused. The Respondent side has stated in the charge sheet that the petitioner, has passed the withdrawal with the knowledge that the transaction is a fake one and the petitioner has not verified the fake signature with the original signature of the account holders. Without verifying the balance of the account has passed the withdrawal by conspiring with other accused. The witnesses Lakshman Kumar and Sathasivam has stated that there the offence was committed from the period 2006 to 2011. That is the working period of the petitioner also included. As the prosecution side has stated that petitioner and other accused has conspired and committed the offence, this Court considers that whether the petitioner has common intention with the other accused persons and he have conspired with them can be find out only after the trial. One perusal of records and the statement of the witnesses it came to know that it is alleged that the petitioner has initiated the Vouchers of the fac transaction during his service period. The petitioner also admitted the same in the petition. So, whether the petitioner has put his signature with dishonest intention can be ascertained only after the evidence of the prosecution side. As the 161(3) Cr.P.C statement of R.Lakshman Kumar, says that the petitioner has involved in the fake transaction this Court considers that the prima facie is made out against the petitioner and moreover only on the basis of Section 81 enquiry report the charge sheet has been filed against the petitioner. Therefore, this Court consider that as the petitioner has passed the withdrawal by signing the same the dishonest intention of the petitioner can be find out only after the trial. Therefore, after this court concluded that a *prima facie* case is made out against the petitioner and this petition is dismissed.

7. Learned counsel appearing for the petitioner would submit that there is absolutely no materials whatsoever to connect the petitioner to the charges as alleged against him. But unfortunately the learned Magistrate has simply dismissed the discharge petitions without proper application of mind. He would submit that the petitioner is therefore constrained to file the present revisions and he prays that the order passed by the learned Magistrate may be set aside.

8. This Court is unable to accept the arguments advanced by the learned counsel for the petitioner for the simple reason that the order of the learned Magistrate is self explanatory and does not require any elaboration. The learned Magistrate has clearly held that only at the stage of trial it could be established whether the



petitioner during his brief spell as Branch Manager at impacted bank was responsible for the fraudulent acts or otherwise. The dishonest intention of the petitioner or otherwise could be established only on the basis of the evidence on the side of the prosecution. In fact, the learned Magistrate has stated that 161 Cr.P.C statement shows that the petitioner was involved in the transaction and on considering the materials in entirety, the learned Magistrate has come to the conclusion that there exists *prima facie* case to proceed against the petitioner. Therefore, the learned Magistrate found that the discharge petition has no merit and dismissed the petition.

9. This Court is entirely in agreement with the conclusion arrived at by the learned Judicial Magistrate and does not find any infirmity in the order.

10. When the petitioner was charged for several offences under various provisions of the Indian Penal Code, the petitioner cannot seek to absolve himself by filing discharge petition at the threshold without facing the trial. In case the petitioner is innocent, as he claims to be it is always open to him to come out unscathed in the trial by proving his innocence, but, it is not open to him to escape from the clutches of law at the very beginning of trial by seeking to discharge him from charges. In any event this Court does not find anything wrong in the order passed by the learned Judicial Magistrate No.II, Virudhunagar.

11. For the above said reasons, this Court find that all the revision cases filed against the order passed by the Judicial Magistrate No.II, Virudhunagar, are without merit and the same are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

To

1. Judicial Magistrate No.II, Virudhunagar District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

3. The Inspector of Police CCIW, Virudhunagar.

+5 CC to Mr.V.SASI KUMAR, Advocate (SR-87994[F] dated 20/09/2019)

Crl.R.C. (MD) No.679 to 683 of 2019

18.09.2019

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VB(04.11.2019) 4P 9C

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