

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.18716 of 2020
and
Crl.M.P. No.7330 of 2020

R. Dinesh Kumar

...Petitioner

Vs.

The State rep. by
The Inspector of Police
Samalpatti Police Station
Krishnagiri District

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the Hon'ble Additional District Judge, at Krishnagiri to take the discharge Petition filed in Crl. M.P. Sr. No.8217 of 2020 filed on in S.C. No. 181 of 2019 on the file and to number the same and to conduct enquiry in the same in fair manner.

For Petitioner : Ms. S. Deepika
For Respondent : Ms. M. Prabhavathi
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been laid by the petitioner/A9 seeking for a direction to the Additional District Judge, Krishnagiri, to take the Discharge Petition filed in Crl. M.P. Sr. No.8217 of 2020 in S.C. No. 181 of 2019 on file and dispose of the same in accordance with law.

2. The petitioner/A9 has filed the Discharge Petition in S.C. No.181 of 2019 on the file of the Additional District and Sessions Judge, Krishnagiri. It is found that, by way of the impugned order, the Discharge Petition has been returned by the Court and the impugned order reads as follows:

"As per direction of this Court, enquiry in Crl. M.P. 456/2020 (Discharge Petition for A20) Intimation given to the counsel for accused whether they are going to file any discharge petition for other accused, they said no and after that order pronounced in the above Crl. MP. Hence this petition is not maintainable".

3. On a perusal of the records, it is found that the Crl. M.P. No.456 of 2020 has been preferred by A20. The counsel for the petitioner/A9 has filed the certified copy of the docket order passed by the court below in Crl. M.P. No.456/2020 and on a perusal of the same it is seen that on 06.07.2020, the court below had enquired the other defence counsel appearing for the other accused in S.C. No.181 of 2019, whether they intend to prefer any Discharge Petition for the other accused and it is seen that excepting the counsel who had appeared for A9 to A16, A19 and A21, others had represented that they are not going to file any Discharge Petition. It is thus evident that the counsel for A9 to A16, A19 and A21 had not reported to the court below that they are not going to file the Discharge Petition on behalf of their clients. Further, as per the additional typed set filed by the petitioner counsel regarding the status of S.C. No.181 of 2019, it is found that on 18.09.2020, the court had directed all the accused to appear on 30.09.2020 for questioning on the point of framing of charges. However, it is noted that the accused failed to appear on 30.09.2020 and thereafter, the matter stood adjourned now and then and on 19.11.2020, the court below had recorded that Discharge petition had been preferred by A11 to A15, A18 and A19 and also the petition under Section 91 Cr.PC and directed the office to check and call on and accordingly the matter stood adjourned to 30.11.2020 for further proceedings. It is thus noted that the counsel for the petitioner/accused had not represented that he is not going to file the Discharge Petition before the court when Crl. M.P. 456/2020 is pending. In the light of the abovesaid factors, when the accused have the legal entitlement to seek for the discharge from the case registered against them in accordance with law, the court is bound to take the petition on file and dispose of them as per law, particularly, when the counsel for A9 had not reported that he is not going to file any discharge petition for A9.

4. In such view of the matter, as rightly contended by the petitioner counsel appearing for A9, the petitioner/A9 is entitled to have his Discharge Petition disposed of in accordance with law. In such view of the matter, the impugned order of the court below in returning the Discharge Petition preferred by A9 without taking the same on file is not in accordance with law and accordingly, in my considered view and in the fitness of things and in the interest of justice, a suitable direction should be given to the court below to take the discharge petition preferred by the petitioner/A9 on file and dispose of the same in accordance with law.

5. In the light of the abovesaid factors, the petitioner/A9 is directed to re-present the Discharge Petition preferred by

him before the Additional District and Sessions Judge, Krishnagiri, within 3 days from the date of receipt of a copy of this order and on the said re-presentation, the Additional District and Sessions Judge, Krishnagiri, is directed to take the Discharge Petition on file, if otherwise in order, and dispose of the same in accordance with law expeditiously.

6. With the abovesaid observations, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

Copy to

1. The Additional District and Sessions Judge, Krishnagiri
 2. The Inspector of Police
Samalpatti Police Station
Krishnagiri District
 3. The Public Prosecutor, High Court, Madras.
- +1 CC to Ms. S. Deepika, Advocate sr 1031(08/01/2021)

Cr1 OP.No.18716 of 2020

SPD(CO)
NS(28/12/1994)

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