

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1018 of 2018

and

Crl.M.P.No.11939 of 2018

M.K.Vijayakumar
S/o.M.Kaliyamurthi

... Petitioner/Petitioner/Accused-2

Vs.

The Inspector of Police
Vridhachalam Town Police Station
Vridhachalam

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of the Criminal Procedure Code to call for record relating to the order dated 28.08.2018 in C.M.P.No.505 of 2018 in S.C.No.267 of 2015 on the file of Sessions Judge Mahila Court, Cuddalore, set aside the same and consequently discharge the petitioner from the case filed in S.C.No.267 of 2015 in Cr.No.436 of 2013.

For Petitioner : Mr.M.K.Vijayakumar (NA)

For Respondent : Mr.T.Shunmuga Rajeshwaran
Government Advocate (Crl. Side)

O R D E R

The revision has been filed seeking to call for the record relating to the order dated 28.08.2018 in C.M.P.No.505 of 2018 in S.C.No.267 of 2015 on the file of the Session Judge, Mahila Court, Cuddalore, and to set aside the same and consequently discharge the petition from the case file in S.C.No.267 of 2015 in Crime No.436 of 2013.

2. The brief facts of the case is that the petitioner is arrayed as A2 and facing trial in S.C.No.267 of 2015 for offence under Sections 120B, 364(A), 347 IPC. The case of the prosecution is that on 27.05.2013 the defacto complainant S.M.Shanmugadurai S/o.Madasamy had lodged a complaint before the respondent police stating that his daughter namely XXX went to temple and did not return home. Therefore, he had enquired and

searched for his daughter in and around his area and his relatives' house. However, he was unable to trace his daughter. Since, he had suspected one Sathish who is the son of Kamalakkannan, Chithalur, had preferred a complaint before the respondent based on which, the respondent registered the case in Crime No.436 of 2013 under the caption "Girl Missing" on 27.05.2013 at 19:00 hrs. When, the respondent police had been continuing with the investigation, on 28.05.2013, the defacto complainant had received a call from the petitioner/A2 and that the petitioner/A2 had informed him that the missing girl is in the custody of A1/Sathish and claimed himself to be the Advocate of A1/Sathish and had demanded a sum of Rs.1,00,000/- to release the missing girl. The petitioner/A2 had also informed the defacto complainant that if he refuses to part with the amount, his daughter would be murdered and asked him to come near Annamalai Hotel, Villupuram. The defacto complainant immediately informed the same to the respondent police and the then Inspector of Police along with his team, had gone to Annamalai Hotel where the petitioner/A2 had asked the defacto complainant to come. While the police personnels were hiding themselves at the Annamalai Hotel. the defacto complainant had gone to the said hotel and handed over a sum of Rs.50,000/- as ransom to the petitioner/A2 and had requested him some time to pay the balance amount of Rs.50,000/- and requested him to release the victim girl whereas, the petitioner/A2 had refused to accept the same and insisted the defacto complainant to pay Rs.1,00,000/- in lumpsum. When the conversation was going on between the petitioner/A2, A1 and the other accused and the defacto complainant, the police personnels who were hiding there, had surrounded them and arrested the accused along with the petitioner/A2, A3-Ahamed, A4-Ashraf Ali, A5-Deva @ Devanand, A6-Nethaji and A7-Kamalakannan and their confession statements were recorded in the presence of witnesses namely Gurusamy and Kamaraj and based on their confession, cash of Rs.50,000/-, two cell phones and one Yamaha bike were seized from A2. A Nokia cell phone was seized from A3, a Pulser two wheeler bearing Regn.No.PY01 BJ 0183 and a cell phone were recovered from A4, a Yamaha two wheeler bearing Regn.No.TN 32 AB 4582 and a cell phone were recovered from A5 and one more cell phone was recovered from A6 and thereafter, all the arrested accused were produced before the Judicial Magistrate, Virudhachalam. Later, the victim girl was rescued and sent to Government Hospital for medical checkup. The Inspector of Police had examined the victim girl and recorded her statement based on the statement, the offences were altered to one under Sections 363, 366(A), 364(A) read with 120(b) IPC against the accused persons on 16.09.2014 and the alteration report was submitted before the learned Judicial Magistrate-I, Virudhachalam. After conducting a detailed investigation based on the statements of the 23 witnesses and material evidences and the legal opinion obtained

from Deputy Director of Prosecution, the Inspector of Police once again altered the Sections of the case to one under Sections 120(b), 364-A, 347 IPC read with 109 IPC against the accused persons A1 to A9 and filed the charge sheet before the learned Judicial Magistrate-I, Virudhachalam, on 16.09.2014 and the same was taken up on file in P.R.C.No.12 of 2014 on 18.09.2019 and thereafter, the case was committed to the Court of Sessions and assigned S.C.No.267 of 2015 on 18.12.2015. Thereafter, it was made over to the Mahila Court, Cuddalore, for trial.

3. The allegation against the petitioner is that the petitioner/A2 who claims himself to be a practicing Advocate, conspired with the other accused to grab money illegally from the defacto complainant by detaining his minor daughter in his custody. The petitioner/A2 had filed a discharge petition under Section 227 Cr.P.C. before the trial Court and the petition was taken up in C.M.P.No.505 of 2018 for which, the respondent had filed a counter and that the trial Court after hearing both sides, had dismissed the petition by order dated 28.10.2018. Against which, the present revision has been filed.

4. When the matter was listed on 22.02.2021, there was no representation for the petitioner and thereby, this Court directed the Registry to list the matter on 25.02.2021 under the caption "for orders". Accordingly, the matter is posted today i.e. 25.02.2021 under the caption "for orders". Even today, there is no representation for the petitioner.

5. The main grounds raised by the petitioner is that the respondent has suppressed the vital facts that the victim girl had earlier eloped with the main accused namely Sathish/A1 and subsequently once again she had eloped with the same boy/A1. After coming to know about the second elopement, the parents of A1 rushed to Cuddalore and produced them before the Superintendent of Cuddalore. Whereas, the Superintendent of Police, without producing both the boy and girl before the Judicial Magistrate, allowed the girl to go her home and arrested only A1/Sathish and produced him before the Judicial Magistrate on 25.06.2013 and thereafter, he was remanded to judicial custody on 09.07.2013. The sordid affair of the second elopement would demolish the edifice of the false case. Therefore the entire Sessions case is vitiated and the police report has to be closed and the petitioner has to be discharged. The next ground raised is that the petitioner had requested for production of CCTV recordings which would clearly prove the production of the victim girl at the Superintendent Office during the period 20.06.2013 to 25.06.2013. Further, if the radiological evidence is taken into account, it would prove that the victim was a major at the time of occurrence and that would

go against the entire case and further, the petitioner had only given the house for stay of the victim girl and A1 and thereby, the petitioner cannot be charged for offence under Section 120B IPC.

6. The learned Government Advocate (Crl. Side) would vehemently oppose stating that the grounds raised by the petitioner in the discharge petition are matters for trial and at the stage of discharge, the trial Court cannot conduct a mini trial or a roving enquiry to look into the veracity of the documents or the evidences on record and that the Court only has to see whether there are enough materials to frame charges against the accused. He would further submit that there are materials to show that the petitioner had conspired with the other accused and called the father of the victim namely LW-1 from his mobile No.9159394124 to the mobile number of the defacto complainant namely No.9442981310 on 28.05.2013 and demanded a ransom of Rs.1,00,000/- to release the victim girl. Based on the demand of ransom, the defacto complainant along with the police party had gone near Annamalai Hotel and that the police party were hiding themselves near the Hotel. At that time, the defacot complainant had handed over a sum of Rs.50,000/- to the accused and requested them for some time to pay the balance amount of Rs.50,000/-, but it was refused by the petitioner and when the conversation was going on, the police party had surrounded the petitioner and the other accused and arrested them and that enough materials have been produced by the prosecution to prove that the petitioner had conspired with the other accused and kidnapped the minor girl and demanded ransom for releasing the victim girl. The trial Court finding that there are ample materials against the petitioner for framing charges, had dismissed the discharge petition filed by the petitioner in C.M.P.No.505 of 2018 by order dated 28.08.2018. He would further submit that the petitioner being an Advocate, has been filing petitions after petition to scuttle the progress of trial. Earlier, he had filed a quash petition before this Court in Crl.O.P.No.3358 of 2016 and this Court on finding that there are materials against the petitioner, had dismissed the petition by order dated 05.10.2010. Thereafter, he has filed the present petition seeking for discharging. He would further submit that it is the case of the year 2013 in Crime No.436 of 2013 and the Sessions Case is of the year 2015 and that there are materials against the petitioner.

7. Having perusing the materials on record, this Court is of the opinion that that there are material available to frame charges against the petitioner and at this stage of discharge, the trial Court cannot conduct a roving enquiry or a mini trial to look into the probative value of the documents on record.

There is no merit in the revision petition and this Court finds no infirmity or perversity in the order passed by trial Court.

8. Accordingly, this Criminal Revision case stands dismissed. Consequently, connected Miscellaneous Petition is closed. The observation made in this petition is only for deciding the revision, the trial Court shall not be influenced with the observations made in this order and shall independently deal with the case based on evidence adduced during trial.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ksa-2

To

1. The Sessions Judge Mahila Court,
Cuddalore.
2. The Inspector of Police,
Vridhachalam Town Police Station,
Vridhachalam.
3. The Public Prosecutor,
High Court of Madras.

CrI.R.C.No.1018 of 2018 and
CrI.M.P.No.11939 of 2018

AJB (CO)
CSR 15.04.2021

सत्यमेव जयते

WEB COPY