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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.164 of 2020 and
CrI.M.P.Nos.1260 & 1261 of 2020

1. P. Malarkodi
2. B. Padmanaban
3. B. Loganathan
4. A. Sampathkumar

...Petitioners

Vs.

State Represented by
The Inspector of Police,
T.10, Thirumullaivoial Police Station,
Chennai - 600 062.

...Respondent

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for records made in impugned order in CrI.M.P.No.84 of 2020 in C.C.No.16 of 2014 dated 20.01.2010, on the file of the learned Judicial Magistrate, Ambattur, and quash the same as illegal.

For Petitioners : Mr.R.Sankarasubbu

Respondent : Mr.S.Sugendran,
Government Advocate (CrI.Side)

O R D E R

The petitioners herein are accused in C.C.No.16 of 2014 and facing trial for the offence under Sections 465, 467, 468 and 471 r/w 109 IPC.

2. During pendency of the above calendar case, the petitioners filed a petition under Section 239 of Cr.P.C seeking discharge and the trial Court after due enquiry, by order dated 20.01.2020 dismissed the same.



3. Aggrieved against the dismissal of discharge petition, the petitioners are before this Court with the present criminal revision.

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4. The learned counsel appearing for the petitioners would submit that the petitioners were arrayed as A1 to A4. There is no offence as alleged by the prosecution, since the first petitioner is daughter of the complainant and the complainant voluntarily executed the Deed of Power of Attorney in favour of the first petitioner. The learned Magistrate, without considering the above fact and also without any incriminating materials against these petitioners, dismissed the petition filed by the petitioners, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that since the trial Court found prima facie there are materials to proceed the case against the petitioners and hence the learned Magistrate dismissed the petition filed by the petitioners seeking discharge. It is settled proposition of law once the Court finds prima facie, it has every power to proceed the case. Therefore, there is no reason to interfere with the order of the learned Magistrate dismissing the discharge petition filed by the petitioners.

6. Heard the learned counsel appearing for the petitioners and the Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record.

7. It is seen that the Magistrate, after due enquiry, came to the conclusion that prima facie case made out against these petitioners and hence dismissed the petition.

8. It is settled proposition of law that at the time of deciding petition under Section 239 of Cr.P.C, seeking discharge, the Court has to see whether there exists 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 and the documents filed by the prosecution in the final report 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, if the Court would be justified in framing charges and the prosecution has shown the seed in the form of some incriminating materials which has got the potential to develop itself into a full fledged one during trial. In this case, on a perusal of the final report filed by the prosecution under Section 173 Cr.P.C. and documents annexed to that, prima



facie case made out against the petitioners and found incriminating material against the petitioners herein. Since there is prima facie case against these petitioners and also incriminating materials are available against the petitioners, they are not entitled for discharge.

9. Hence the learned Magistrate has rightly dismissed the petition seeking discharge and this Court does not find perversity, illegality or infirmity in the order of the Court below, warranting interference and there is no reason to interfere with the order passed by the learned Magistrate.

10. In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petitions are closed. However, the petitioners are at liberty to raise all their defence before the trial Court.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Ambattur.
2. The Chief Judicial Magistrate, Thiruvallur (For Information)
3. The Inspector of Police,
T.10, Thirumullaivoial Police Station,
Chennai - 600 062.
4. The Public Prosecutor, High Court of Madras.

Cr1.R.C.No.164 of 2020 and
Cr1.M.P.Nos.1260 & 1261 of 2020

RGN(CO)
RLP(02/09/2021)