



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.10.2021

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CORAM:
THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.181 of 2020

Mohan Kumar ...Petitioner/Defacto Complainant
Vs.
1. Mrs. Ruby Thomas @ Rubi Christy ..Respondent/accused
2. The State Represented by,
Inspector of Police,
G-1, Vepery Police Station, Vepery,
Chennai- 600 007. ...Respondent/complainant

Prayer: Criminal Revision is filed under section 397 and 401 of Criminal Procedure Code praying to call for records and set aside order dated 18.11.2019 in Crl.M.P.No.1843 of 2018 in C.C. No. 914 of 2017 on the file of the learned II Metropolitan Magistrate, Egmore at Chennai.

For Petitioner : M/s.A.Damodaran
For Respondent : M/s.K.Sanjay
For R1
For Respondent : Mr.S.Sugendran
For R2 Government Advocate (Crl. Side)

ORDER

(The case has been heard through video conference)

The Criminal Revision Case has been filed against the order dated 18.11.2019 in Crl.M.P.No.1843 of 2018 in C.C.No.914 of 2017 passed by the learned II Metropolitan Magistrate, Egmore, Chennai.

2. The second respondent police registered a case in Crime No.782 of 2010 against the first respondent/accused for the offence under Sections 465, 468, 471, 420 and 506(i) of IPC. The respondent police after investigation, laid charge sheet before the learned II Metropolitan Magistrate, Egmore, Chennai, and the learned Magistrate has taken cognizance of the charge sheet on file in C.C.No.914 of 2017. During pendency of the above Calender Case, the first respondent/accused invoking Section 239 Cr.P.C. filed a petition for discharge. The learned Magistrate after hearing both the parties by order dated 18.11.2019, allowed the petition and discharged the first



respondent/accused from all the charges levelled against him in the above calendar case. Aggrieved by the said order passed by the learned II Metropolitan Magistrate, the defacto-complainant has filed the present revision before this court.

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3. The learned counsel for the petitioner/de facto complainant would submit that the first respondent/accused had borrowed a sum of Rs.2 Crore from the defacto complainant for which he had given a share certificate for security. Subsequently, it was found to be a forged one and hence the petitioner/defacto complainant questioned the same for which, the first respondent/accused threatened the petitioner/defacto complainant with dire consequences. Therefore, the petitioner/de facto complainant lodged a complaint before the second respondent/police and after investigation, the second respondent/police laid the charge sheet before the II Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate has taken the charge sheet on file. Subsequently, the first respondent/accused filed a discharge petition under Section 239 Cr.P.C. and the learned Magistrate, without considering the averments made in the complaint given by the petitioner/defacto complainant and the statement given under Section 161 Cr.P.C. before the Investigating Officer and other subsequent materials, discharged the first respondent /accused which is against law. The trial Court cannot conduct roving enquiry on the final report filed by the prosecution agency under Section 173(2) of Cr.P.C. at the time of deciding the petition under Section 239 Cr.P.C. and the trial Court has to see only prima facie materials and allegations and the defence taken by the accused cannot be considered at the time of framing of charge or while dealing with the discharge petition. The learned Magistrate failed to understand the scope of the petition under Section 239 Cr.P.C. and simply gone into the merits of the case and discharged the first respondent/accused, which warrants interference.

4. The learned counsel for the first respondent/accused would submit that the first respondent/accused had not produced any share certificate and he had not produced anything at the time of alleged borrowal. The said share certificate was subsequently sent for Forensic Expert opinion and the report of the same are not favourable to the petitioner/defacto complainant. Even all the statements recorded by the Investigating Officer does not reveal any prima facie case and there is no allegation found against the first respondent/accused and the learned Magistrate rightly considered the entire materials particularly the statements of the witnesses and also the Expert Opinion and the report of the Forensic Department shows that there is no material to prove that the first respondent/accused has committed the offence as



alleged by the prosecution. Therefore, there is no perversity in order passed by the learned Metropolitan Magistrate and on merits, there is no ground to interfere with the order of the learned Magistrate and it does not warrant interference.

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5. The learned Government Advocate (Crl. Side) would submit that based on the complaint given by the petitioner/defacto complainant, the second respondent/police conducted investigation and found that the first respondent/accused has committed the alleged offence and after completing the investigation, laid charge sheet against the first respondent/accused before the learned II Metropolitan Magistrate, Egmore, Chennai. The learned Magistrate failed to consider the final report filed by the second respondent under Section 173 (2) and the materials annexed with it and allowed the petition.

6. Heard the learned Counsel for the petitioner, learned Counsel for the 1st respondent and the learned Government Advocate (Crl. Side) appearing for the 2nd respondent and also perused the records.

7. Admittedly the petitioner/defacto complainant lodged the complaint against the first respondent/accused before the second respondent/ police and after completing the investigation, the second respondent/police laid charge sheet before the learned II Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 465, 468, 471, 420 and 506(i) of IPC and the same was taken on file by the learned Metropolitan Magistrate in C.C.No.914 of 2017. When the matter was pending with the learned Metropolitan Magistrate, the first respondent/accused filed a petition invoking Section 239 Cr.P.C. for discharging him from the above said case. The learned Metropolitan Magistrate after enquiry, allowed the petition and discharged the first respondent/accused from the case, against which the petitioner/defacto complainant has filed the present revision before this Court.

8. A careful reading of the entire materials especially the final report filed by the second respondent/police under Section 173 (2) Cr.P.C. and the statement of the petitioner/defacto complainant who was examined as L.W.1 regarding the allegation levelled against the first respondent/accused and the subsequent witness who has also spoken about the allegation, it reveals that there are prima facie materials against the first respondent/accused to proceed with the case.

9. 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 with 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 the petition for discharge of the accused, the 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. The probative value of the evidence need not be gone into at that 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.

10. Though the learned counsel for the first respondent/accused contended that the Forensic Report and expert opinion are against the prosecution case and the first respondent /accused cannot be prosecuted with the available materials, the object of Section 239 Cr.P.C. is not to find out whether the material leads to convict or not and it has to see whether there is any prima facie material or not and if prima facie material is available, it is the duty of the Court to frame the charges and proceed further. Whatever the defence taken by the accused that can be testified at the time of trial and not at the time of deciding the petition under Section 239 Cr.P.C.

11. Therefore, from the reading of the entire materials, this Court finds that there is prima facie material against the first respondent/accused to proceed with the case. Therefore, under these circumstances, this court finds that the order passed by the learned Metropolitan Magistrate in C.M.P.No 1843 of 2018 is perverse and the same is liable to be set aside.

12. Accordingly, the Criminal revision case is allowed. The order dated 18.11.2019 passed in CrI.M.P.No.1843 of 2018 in C.C. No.914 of 2017 by the learned II Metropolitan Magistrate, Egmore, Chennai, is set aside.

13. The learned Metropolitan Magistrate is directed to complete the trial within a period of 3 months from the date of receipt of a copy of this order. The first respondent/accused is at liberty to take all his defence at the time of trial.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ksa-2/dsn



To

1. The II Metropolitan Magistrate, Egmore, Chennai.
2. Do through the Chief Metropolitan Magistrate, Egmore, Chennai.
3. The Inspector of Police,
G-1, Vepery Police Station, Vepery,
Chennai- 600 007.

4. The Public Prosecutor Officer, High Court, Madras.

+1 cc to M/s.K.Sanjay, Advocate Sr.NO. 54572

+1 cc to M/s.A.Neela Narayani, Advocate Sr.NO. 54546

CrI.R.C.No.181 of 2020

PMK(CO)

A.SK(10/03/2022)