



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
03.09.2021

ORDERS PRONOUNCED ON
14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.834 OF 2018

M/s. Shree Coimbatore Gujarati Samaj,
662, Mettupalayam Road,
R.S.Puram, Coimbatore - 641 002.
Rep. by its Secretary
Chandrakant Patel.

.. Petitioner/Complainant

.. Vs ..

1. Ashwin C.Thakker
2. Prakash M.Majithia
3. The State by Inspector of Police,
District Crime Branch,
Coimbatore District.

.. Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w. 401 of the Criminal Procedure Code, against the judgment dated 19.04.2018 passed in CrI.M.P.No.6494 of 2017 in C.C.No.298 of 2016, on the file of the learned Judicial Magistrate No.VI, Coimbatore, whereby the respondents 1 and 2 herein were discharged from the case under Section 239 of Cr.P.C.

For Petitioner : Mr.M.Santhana Raman
for Mr.M.R.Sivakumar

For RR-1 & 2 : Mr.L.Mouli

For R-3 : Mr.R.Vinoth Raja,
Government Advocate



ORDER

The matter is heard through "Video Conference".

WEB COPY This Criminal Revision Case is preferred by the petitioner/complainant against the order dated 19.04.2018 passed by the learned Judicial Magistrate No.VI, Coimbatore, in CrI.M.P.No.6494 of 2017 in C.C.No.298 of 2016, whereby the respondents 1 and 2 herein were discharged from the case under Section 239 of Cr.P.C.

2. The respondents 1 and 2 herein were filed a petition in CrI.M.P.No.6494 of 2017 under Section 239 of Cr.P.C. seeking to discharge them from the case and the learned Judicial Magistrate No.VI, Coimbatore, has allowed the said petition and thereby discharged both the accused 1 and 2/respondents herein. The same is under challenge by the de facto complainant.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 and 3 as well as the learned Government Advocate (CrI.Side) appearing for the third respondent.

4. Learned counsel for the petitioner has relied on a decision of the Hon'ble Apex Court reported in (2013) 11 Supreme Court Cases 476 [Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and another], wherein, the Hon'ble Apex Court has held as follows:-

"While framing charges, court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for



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conviction of accused that materials must indicate that accused had committed offence but for framing of charges if materials indicate that accused might have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true and their probative value cannot be decided at this stage. The accused entitled to urge his contentions only on materials submitted by prosecution. He is not entitled to produce any material at this stage and the court is not required to consider any such material, if submitted. Whether the prima facie case made out depends upon facts and circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he may be discharged. The court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The court should not act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the state of framing of charge."

5. Learned counsel for the petitioner has also relied on a decision of the Hon'ble Apex Court reported in (2005) 1 Supreme Court Cases 568 [State of Orissa Vs. Debendra Nath Padhi], wherein, the Hon'ble Apex Court has held as follows:-

"Trial court whether can consider any material filed by the accused. At the said stage it can consider only the material produced by the prosecution. No provision in Cr.P.C. grants to the accused any right to file any material or document at the said stage. That right is granted only at the stage of trial. Accused cannot at the stage of framing of charge invoke Section 91 to seek production of any document to prove his innocence."

6. Learned counsel appearing for the respondents 1 and 2 relied on a decision of the Hon'ble Apex Court reported in (2013) 3 Supreme Court Cases 330 [Rajiv Thapar and others Vs. Madan Lal Kapoor], wherein, the Hon'ble Apex Court has held as follows:-



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"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment, raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C.:-

30.1. Step one : whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two : whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."



7. The de facto complainant, in his complaint, has stated that the accused Nos.1 and 2, while acting as a Chairman and Secretary of the Shree Coimbatore Gujarati Samaj, the Society Registered under the Tamil Nadu Societies Registration Act, have manipulated the purchase in favour of the society by the Trust and misappropriated the funds and hence, he has filed the complaint. After investigation, the third respondent/Investigating Officer has filed charge sheet. In the discharge petition, the learned Judicial Magistrate No.VI, Coimbatore, appears to have taken note of the various documents filed by the accused in support of the discharge petition and also called the Investigating Officer as to whether the Investigating Officer has considered the petitions or the documents only and whether the Investigating Officer has any objection to receive the documents. Such procedure adopted by the learned Magistrate under Section 239 of Cr.P.C. is unsustainable in law. The learned Magistrate, while trying the petition for discharge filed under Section 239 of Cr.P.C. in a calender case, has limit scope in holding the enquiry and also receiving the documents or cross examining of Investigating Officer by way of enquiry and hence, the order passed by the learned Magistrate is not sustainable in law.

8. The main allegation in the final report is that without proper sanction and resolution empowering the accused to purchase the land, they have purchased the property and misappropriated a huge sum of amount and relied upon the statement of L.Ws.12 and 13 viz., the vendors in the land in question.

9. The learned Magistrate, after taking note of the two documents filed along with discharge petition (viz., resolution for purchase of the disputed land and also the subsequent sale deed executed by the de facto complainant), rendered a finding that there is no loss to the society.

10. On a perusal of records, it reveal that the book for resolution viz., for the year 2006-2014 was produced before the learned Judicial Magistrate No.VI, to show and demonstrate that there was a written sanction for the purchase of 89 cents and 1 acre, (the subject matter of the case). Besides regarding misappropriation, the evidence of L.Ws.12 and 13 is there. However, it does not disclose the alleged offence by satisfying the necessary ingredients.



11. Hence, (a) I find that the Investigating Officer has not collected the book of resolution for the year 2006-2014 without ascertaining whether there was a resolution or not, it appears that a final report is filed before the learned Judicial Magistrate No.VI, as if, there was no prior sanction by way of resolution to purchase the above said two pieces of lands.

(b) Secondly, 161 Cr.P.C. statements of L.Ws.12 and 13 and hence, I find that since the order has been passed by receiving the documents which are said to be in the custody of the Coimbatore Gujurati Samaj that will throw more light that the accused have committed the offence or not as projected by the present Secretary the de facto complainant.

12. This Court has taken note of the fact that the de facto complainant after assumption of the charge, these accused have filed the suit before the Sub Court, Coimbatore, challenging the election and immediately thereafter, these present complaint appears to have been filed by the newly elected Secretary.

13. Be that as it may, since the written sanction for the purchase of two pieces of lands by way of resolution is available in the book of resolution for the year 2006-2014. The Investigating Officer is hereby required to do the further investigation by taking note of those facts and after collecting the information, he is required to file additional final report as contemplated under Section 173 (8) of Cr.P.C.

14. In view of the discussion in the preceding paragraph as to the scope and enquiry and powers of the Judicial Magistrate under Section 239 Cr.P.C., for discharge, I find that the order passed by the learned Judicial Magistrate is liable to be set aside.

15. In the result,

[i] This Criminal Revision Case is allowed to the limited extent that the order of discharge passed by the learned Judicial Magistrate No.VI, Coimbatore is set aside.

[ii] The matter is remitted back to the learned Judicial Magistrate No.VI, Coimbatore.



[iii] The learned Judicial Magistrate No.VI, Coimbatore, is hereby required to restore the discharge petition in CrI.M.P.No.6494 of 2917 on his file.

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[iv] There shall be a further direction to the third respondent police to take note of the resolution book for the year 2006-2014 and to file a supplementary charge sheet depending upon the outcome of the investigation either positive report or by the negative report, on consideration of entirety of the circumstances.

[v] Thereafter, the discharge petition shall be considered by the learned Judicial Magistrate No.VI, Coimbatore, after filing of the report in the further investigation as directed as above.

[vi] The third respondent police is hereby required to complete further investigation within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

Jr1

To

1. The Judicial Magistrate No.VI,
Coimbatore.
2. The State by Inspector of Police,
District Crime Branch,
Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.R.Sivakumar, Advocate, S.R.No.46359

+1cc to Mr.L.Mouli, Advocate, S.R.No.46665

CrI.R.C.No.834 of 2018

RSV(C0)

RLP(01/10/2021)