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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.262 OF 2021

AND

CRL.M.P.NOS.5617 & 6734 OF 2021

N.Purushothaman

... Petitioner/Accused No.3

-Vs-

State Rep. by
The Inspector of Police,
Devala Police Station,
The Nilgiris District.
(Crime No.228/2008)

... Respondent/Complainant

PRAYER:-

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records pertaining to the order dated 18.03.2021 made in C.M.P.No.3371 of 2016 in C.C.No.248 of 2014 on the file of the learned Judicial Magistrate, Pandalur (Full Additional Charge), and set aside the same by allowing this criminal revision.

For Petitioner : Mr.N.Manoharan

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

O R D E R

The respondent police registered a case in Cr.No.228 of 2008 against the petitioner and two others for the offence under Sections 467, 468, 471 and 409 of IPC and after investigation filed a charge sheet before the learned Judicial Magistrate, Pandalur (Full Additional Charge), which was taken on file in C.C.No.248 of 2014.

2. During pendency of the above calendar case, the petitioner filed a petition under Section 239 of Cr.P.C seeking



discharge and the trial Court after due enquiry, by order dated 18.03.2021 dismissed the same.

3. Aggrieved against the dismissal of discharge petition filed under Section 239 Cr.P.C, the petitioner is before this Court with the present criminal revision.

4. Mr.N.Manoharan, the learned counsel appearing for the petitioner would submit that prima facie there is no allegation against the petitioner, who was arrayed as A3. L.W.13 is the only person, who has deposed that this petitioner collected money and without verifying the veracity of same, the Court cannot relied on the statement of L.W.13. There is no incriminating materials to rope the petitioner in this case and in the absence of the same, the petitioner cannot be equated with the other accused. The learned counsel relied on the decision rendered by the Hon'ble Supreme Court reported in 2011 CrI.L.J.4264, 2008 (10) SCC 394 and 1990 (4) SCC 76. The learned Judicial Magistrate has failed to consider the fact that there is no materials against this petitioner and erroneously dismissed the petition filed by the petitioner seeking discharge, which is liable to be set aside.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the L.W.1 to 16 have spoken about the commission of offence and involvement of this petitioner in the offence. Since the trial Court found prima facie there are materials to proceed the case against the petitioner and hence the learned Magistrate dismissed the petition filed by the petitioner under Section 239 of Cr.P.C. 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 petitioner.

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

7. It is contended by the learned counsel that there is no incriminating materials against the petitioner and hence the petitioner cannot be equated with the other accused. On reading of the materials, it is seen that L.W.13 and L.W.14 have spoken about the involvement of the petitioner in the offence and whether based on the same, the petitioner cannot be equated with the other accused or not is a matter for trial. It is for the Magistrate to look into the same at the time of trial and framing of charges.



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 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 petitioner and found incriminating material against the petitioner herein. Further, in this case, the witnesses have spoken about the involvement of the petitioner.

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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Pandalur (Full Additional Charge).
2. The Chief Judicial Magistrate,
The Nilgiris.
3. The Inspector of Police,
Devala Police Station,
The Nilgiris District.



4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.32322

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GJ(CO)
PBS/11/08/2021