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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.350 of 2021 and
Crl.M.P.No.6035 of 2021

V.Gurumurthi

...Petitioner/Petitioner/Accused 2

-Vs-

State rep. by
The Inspector of Police,
Central Crime Branch, Team-3,
Office of the Commissioner of Police,
Vepery, Chennai - 7.
(Crime No.292/2014)

...Respondent

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to call for records in order dated 21.04.2021 made in Crl.M.P.No.3573 of 2021 in C.C.No.5240 of 2021 in Crime No.292 of 2014 on the file of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, for examine the correctness, legality and propriety of the findings and set aside the dismissal order and to pass orders discharge the petitioner from the charges levelled against him.

For Petitioner : Mr.N.Kannan

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

O R D E R

The respondent police registered a case in Cr.No.292 of 2014 for the offence under Sections 406 and 420 r/w 34 of IPC and after completing investigation, the respondent police laid a charge sheet before the learned Metropolitan Magistrate, (CCB & CBCID), Egmore, Chennai, which was taken on file in C.C.No.5240



of 2021. Pending trial, the petitioner has filed a petition under Section 239 of Cr.P.C. seeking to discharge him from the charges levelled against him. The learned Magistrate, after due enquiry dismissed the petition on 21.04.2021.

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2 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.

3 When the matter was called for hearing, the learned counsel Mr.N.Kannan has appeared on behalf of the petitioner and sought adjournment, since this Court has not inclined to grant the same, the matter was passed over. Again, at the end of the list, when the matter was called for hearing, there is no representation on behalf of the petitioner.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the respondent examined 11 witnesses and obtained statement from them and after completing investigation filed charge sheet before the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, and the same was taken on file in C.C.No.5240 of 2021. The complainant was examined as L.W.1, he has clearly spoken about the involvement of the petitioner and other accused. Further all the accused were arrested and confession statement also obtained from them. 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.

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

6 It is seen that the first respondent police registered case against the petitioner for the offence under Sections 406 and 420 r/w 34 IPC and after completing investigation laid charge sheet before the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, and the same was taken on file in C.C.No.5240 of 2021.

7 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 and the other accused have given confession statement.

8 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.

9 In the result, the criminal revision stands dismissed. Consequently, connected miscellaneous petition is closed. The learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai, is directed to frame charge against the petitioner and proceed with the trial and complete the same as early as possible.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The CCB & CBCID Metropolitan Magistrate,
Egmore,
Chennai.



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2. The Inspector of Police,
Central Crime Branch, Team-3,
Office of the Commissioner of Police,
Vepery, Chennai - 7.

3. The Public Prosecutor,
High Court of Madras.

Crl.R.C.No.350 of 2021 and
Crl.M.P.No.6035 of 2021

PVS (CO)
SU (28/07/2021)