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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.779 of 2021
and
CRL.M.P.No.11716 of 2021

A.Karthikeyan

...Petitioner

Versus

State represented by
The Inspector of Police,
Central Crime Branch,
EDF-II, Team-IXA,
Vepery, Chennai-600 007.
(CCB Cr. No.526 of
2015)

...Respondent

PRAYER: Criminal Revision Case filed under Section 401 of the Code of Criminal Procedure, to call for the records in CC.No.7221 of 2019 pending on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore - 8 and to set aside the order in Crl.M.P.No.12969 of 2020 dated 19.04.2021.

For Petitioner : Mr.P.Palaninathan

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

ORDER

The Criminal Revision has been filed against the dismissal of the discharge petition filed by the petitioner.

2. The Learned counsel for the petitioner would submit that the petitioner is arrayed as A5 in C.C.No.7221 of 2019 pending on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore for offences punishable under Sections 120B, 406 and 420 IPC. He would further submit that the petitioners had filed Crl.M.P.No.12969 of 2020 under Section 239 Cr.P.C. seeking discharge from the case. He would further submit that the Trial Judge, without application of mind and without affording opportunity of hearing, had dismissed the discharge petition.



3. The learned counsel for the petitioner would also submit that though there are several other legal points available to him, he seeks to set aside the order of dismissal only on the ground of non providing of opportunity of hearing to the petitioner and non application of mind on the part of the learned Magistrate. He would submit that the co-accused in this case viz., A3 had filed CrI.M.P.No.2569 of 2020 and both the petitions were listed for arguments on 1.4.2021, however, on that date, though the petitioner and his counsel were present in the court, due to the Covid protocol prevailing at that time, they were not permitted to enter into the court and it was informed to them that the case was adjourned to 19.4.2021. He would further submit that in the meanwhile, the High Court had issued an Official Memorandum in Roc.No.1363/2020/RG/Sub Courts dated 15.4.2021 and by that ROC, access to the court buildings of Subordinate Courts were restricted unless the presence of the parties/litigants were called for by the courts. He would further submit that on 19.4.2021, the counsel for the petitioner alongwith the petitioner was present in the court in the morning itself, however, the learned Judge had informed them to look for the next hearing date in the website and it was informed that no adverse orders would be passed, whereas, to their shock, the learned Judge had dismissed the Application on the same day.

4. The learned counsel for the petitioner would also submit that only after receiving the copy of the order in the CrI.M.P.No.12969 of 2020, he was able to see that the order passed in CrI.M.P.No.2569 of 2020 in respect of A3 was cut and pasted and given to the present petitioner/A5. He would further submit that a perusal of both the orders from paragraphs 4 to 7 would show that the order passed in CrI.M.P.No.12969 of 2020 is the replica of the order passed in CrI.M.P.No.2569 of 2020 which would disclose that the learned Judge has not applied his mind and further there is no reference in the matter in respect of the grounds raised by the petitioner and thereby the order of dismissal against the petitioner suffers from non application of mind. He would further submit that the Section 239 Cr.P.C provides the accused an opportunity of hearing, whereas the learned Judge, without hearing the petitioner, had passed the order and thereby he would seek to set aside the order passed by the court below.

5. Mr.S.Sugendran, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that the learned Trial Judge after considering the police report and the documents sent under Section 173 Cr.P.C., after due application of mind, had passed the order. He would further submit on instruction that the accused were not allowed inside the Court and he would also submit that paragraphs 4 to 7 in both the



orders namely in CrI.M.P.No. 2569 of 2020 and CrI.M.P.No.12969 of 2020 are one and the same.

6. Heard the learned counsel appearing for the parties.

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7. The only point urged by the learned counsel for the petitioner is that the petitioner was not afforded an opportunity of hearing and that the order has been passed without due application of mind.

8. Section 239 Code of Criminal Procedure reads as under:-

"239. When accused shall be discharged.

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

9. In this case, neither the petitioner nor his counsel was heard and a perusal of the order passed in respect of the present petitioner and the order passed in respect of the co-accused shows that paragraphs 4 to 7 of both the orders are one and the same. Further, there is no mention with regard to the charges and materials against the petitioner/A5. Therefore, in the opinion of this Court, the learned Judge has not applied his mind.

10. In view of the above, this Criminal Revision Case is allowed the order dated 19.04.2021 passed by the learned CCB & CBCID Metropolitan Magistrate, Egmore in CrI.M.P.No.12969 of 2020 is set aside and the matter is remitted back to the learned Magistrate. The learned Magistrate shall afford an opportunity on hearing the petitioner or his counsel and pass orders after due application of mind and the said process shall be completed within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar



ssk/ham

To

1. The CCB & CBCID Metropolitan Magistrate,
Egmore - 8.

2. The Inspector of Police,
Central Crime Branch,
EDF-II, Team-IXA,
Vepery, Chennai-600 007.

3. The Public Prosecutor,
High Court, Madras - 104.

+1cc to Mr.P.Palaninathan, Advocate, S.R.No.61165

CRL.R.C.No.779 of 2021
and
CRL.M.P.No.11716 of 2021

KSM[co]
NSK 07/12/2021