



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM:

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

Criminal Revision Case No.1043 of 2021

and

Crl.M.P.No.13646 of 2021

R.Prabakaran

... Petitioner/Accused 3

..Vs..

1. State rep by

The Inspector of Police,
Kilkodungalore Police Station,
Crime No.95/2015.

... 1st Respondent/Complainant

2. A.Vanathaiyan

...2nd Respondent /Defacto complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C to call for records relating to order dated 19.04.2021 passed in Crl.M.P.No.803 of 2021 in C.C.No.296 of 2017 on the file of the Judicial Magistrate Court, Vandavasi, Tiruvannamalai District, set aside the same.

For Petitioner : Mr.P.Mani

For Respondents : Mr.S.Sugendran for R1
Government Advocate (Crl. Side)

O R D E R

This revision has been filed against the order dated 19.04.2021 made in Crl.M.P.No.803 of 2021 in C.C.No.296 of 2017 by the learned Judicial Magistrate, Vandavasi, Tiruvannamalai District, dismissing the petition filed under Section 239 of Cr.P.C. to discharge the petitioner/accused No.3.

2.The case of the prosecution is that on 02.05.2015, at about 20.30 hours with respect of a dispute regarding the Government poramboke land opposite to the house of the defacto complainant, the accused had formed into an unlawful assembly and had abused the defacto complainant with filthy language and



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that A1, A2 and A4 have assaulted the defacto complainant with wooden log on the head and on the chest and A3, A5, A6 have assaulted the defacto complainant with an iron rod on the back side and on the private part and the accused A1 to A6 have also assaulted the wife of the defacto complainant and criminally intimidated them. On the complaint given by the defacto complainant, the respondent registered a case against the petitioner/accused for the offence under Sections 147, 148, 294(b), 324 and 506(i) I.P.C. and after completion of the investigation, filed the final report against the accused on 20.06.2015 and the final report was taken on file in C.C.No.296 of 2017 for the offences under Sections 147, 148, 294(b), 324 and 506(i) I.P.C. The respondent had cited 10 witnesses and 7 documents. The petitioner, who is the third accused in this case had filed a discharge application on the ground stating that he is not involved in the above said occurrence. The petitioner has submitted that he was not present at the scene of occurrence during the relevant time and that he was in Chennai pursuing his law course in School of Excellence and that during the particular time, on 02.05.2015, he was attending marriage of his friend viz., one Praveen Babu at RJ Residency, T.Nagar and that his mother was the president of Salavedu Panchayat during the period of the alleged offence and that there was a civil dispute between the parties thereby he was falsely implicated in this case on account of enmity. The trial court finding that the defense of alibi and the documents relied on by the petitioner/accused for proof of alibi cannot be taken into consideration at the time of deciding the discharge application, had dismissed the same and against which, the present revision has been filed.

3.Learned counsel for the petitioner would submit that the petitioner was undergoing law course at the School of Excellence during the relevant time and he was staying at Chennai in a Mansion and during the period between 29.04.2015 and 14.05.2015, the final semester examination for the petitioner was going on and thereby, he was not present at the scene of occurrence. The petitioner's mother is the president of Salavedu Panchayat during the occurrence. The defacto complainant/second respondent had trespassed and encroached certain parts of Government poramboke land in Survey No.479/1 and Survey No.465 and 456 and there was a proposal by the Panchayat for passing a resolution based on the petition given by a general public for erection of Dr.Ambedkar statue in the place where there was encroachment by the second respondent and there was enmity between the defacto complainant and the petitioner and thereby he was falsely implicated in this case.



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Learned counsel would further submit that the statement recorded from the witnesses and the medical records produced by the respondent would only disclose for the offences punishable under section 323 I.P.C. whereas the final report has been filed for the offence under Section 324 I.P.C.

4. Per contra, the learned Government Advocate appearing for the respondent would submit that the petitioner in this case had taken the defence of alibi and he had also produced the documents before the Trial Court. Though the Trial Court is not at all required to look into the documents at the time of deciding the discharge petition, it had looked into the same, however it had not believed the documents and rejected the same. The trial court had found that the materials relied on by the prosecution disclosed the commission of offence and had dismissed the application. He would further submit that if the petitioner raises the defence of alibi, it can be raised only during the time of trial by letting in evidence and the admissibility of the documents relied on by the petitioner can be tested at the relevant stage during trial. He would submit that the Trial Court had rightly dismissed the discharge petition.

5. Heard the learned counsels on either side and perused the materials available on record.

6. In this case on hand, while deciding the discharging petition, though the trial court is not required to look into the documents produced by the accused, it had looked into those documents and had stated that the ground of alibi can be only taken at the time of trial and further the Trial Court has also not believed some of the documents produced by the petitioner. Further, the trial court has found that there are prima facie materials for framing charges against the petitioner. Further, the trial court had also found that the petitioner had earlier approached this Court by filing CrI.O.P.No.26817 of 2019 and the same was disposed of on 30.10.2019 with a direction to complete the trial within a period of 6 months from the date of receipt of a copy of the order. Ultimately, the trial court dismissed the discharge petition.

7. It is trite that at the stage of deciding a discharge petition, the trial court cannot conduct a roving enquiry or is not permitted to conduct a mini trial. The trial court has to look into whether there are sufficient materials for framing of charges against the accused.

8. The Honourable Supreme Court in various decisions has



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held that no mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed. For this proposition, it is relevant to refer to 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), wherein it has been held thus:

29. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

.....32. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.?

9. If there is a strong suspicion, which leads the



Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not, as has been held in 2015 2 SCC 417 (State Vs. A.Arun Kumar).

10. Further in 2018 13 SCC 455 (State by the Inspector of Police, Chennai Vs. S.Selvi and another), the Honourable Supreme Court has relied on its various decisions, regarding the scope of powers of revision, and has held as under:

"...6 It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused,



(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.



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(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.?

8. This Court in State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] and State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] has reiterated almost the aforementioned principles. However, in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , relied upon by the counsel for Respondent 1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgement of the High Court quashing the entire criminal proceedings inclusive of the registration of first information report. The said matter was not concerned with the discharge of the accused.

.....10. If on the basis of the material on record, the Court would form prima facie opinion that the accused



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might have committed the offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence. "

11. In State by Karnataka Lokayukta, Police Station, Bengaluru Vs M.R.Hiremath, (2019) 7 SCC 515 , the Hon'ble Supreme Court has held as follows:

"...25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the fact emerging from the material, taken on its face value, disclose the existence of the ingredient necessary to constitute the offence. In State of T.N. Vs . N.Suresh Rajan, advertent to the earlier decision on the subject, this Court held: (SCC pp.721-22, para 29)

"...29...At this Stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there



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is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. Further in State of Orissa vs Debendra Nath Padhi, (2005) 1 SCC 568, the Hon'ble Supreme Court has held at the stage of deciding the discharge application, the Court can consider only the material produced by the prosecution. No provision in Cr.P.C grants right to the accused to file any material or document at the stage of discharge. Further, it has also held that the necessity or desirability of the documents can be considered only at the stage of trial.

13. Applying the law enunciated by various Judgment referred above in consonance with the fact of the case on hand, in this case, the petitioner had claimed that during the relevant time of occurrence, he was not present in the village and that he was undergoing law course in Chennai and attending marriage at that time. He had also filed certain documents to substantiate his claim of alibi. Though the Trial Court is not required to look into the documents produced and relied on by the accused, the Trial Court had considered the same and rejected it. In the opinion of this Court, at the stage of discharge, the Trial Court cannot appreciate the records and it is not required to conduct a roving enquiry or mini trial. The Court can only look into see whether the material placed by the prosecution before the Court made out prima facie case against the accused. In this case, the Trial Court found that there are materials available for framing charges against the accused and dismissed the petition. This Court does not find any infirmity or illegality in the impugned order. In the result, this Criminal Revision Case stands dismissed.

14. Further, it is made clear that what has been observed by this Court is only for the purpose of disposal of the discharge petition and any observations made, shall not be prejudiced the rights of the parties during the course of trial and the Trial Court may also not be influenced/ inhibited by the observations made by this Court and shall proceed with the trial independently in accordance with law. Further, this Court while dismissing the quash petition of the petitioner in



Crl.O.P.No.26817 of 2019 by order dated 30.10.2019, had directed the Trial Court to complete the Trial within a period of six months from the date of receipt of the copy of the order. The Trial Court shall complete the trial in compliance with the order passed by this Court.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Vandavasi,
Tiruvannamalai District
2. The Inspector of Police,
Kilkodungalore Police Station,
Crime No.95/2015.
- 3.The Public Prosecutor (Crl side),
High Court, Madras.
- 4.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Mani, Advocate SR.No.69270

Crl. R.C. No.1043 of 2021

CA(CO)
GN(20/01/2022)