

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1014 of 2019
and Crl.M.P.No.14136 of 2019

1.Senkottuvel
2.S.Sashi Kumar Petitioners/Accused

Versus

State represented by
The Inspector of Police,
CBCID, Metro Wing,
Egmore, Chennai-600 08.
Crime No.03 of 2015 Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 & 401 Cr.P.C seeking to set aside the order passed by the learned CCB-CBCID Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.4543 of 2018 in C.C.No.2036 of 2017 dated 07.09.2019 and discharge the petitioners.

For Petitioners : M/s.K.Ramani

For Respondent : Mr.R.Suryaprakash
Government Advocate

O R D E R

This Criminal Revision has been filed seeking to set aside the order passed by the learned CCB-CBCID Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.4543 of 2019 in C.C.No.2036 of 2017 dated 07.09.2019 and discharge the petitioners.

2. The respondent police registered the case against the petitioners and yet another. The petitioners are arrayed as A2 and A3. During the pendency, case was registered and investigated the matter and laid the charge sheet before the learned CCB, CID, Metropolitan Magistrate, Egmore, Chennai in C.C.No.2036 of 2017. During the pendency of the case, petitioners A2 and A3 filed petition before the Court below under section 239 Cr.P.C., to discharge the petitioner. The

learned Magistrate after hearing arguments, dismissed the petition. Challenging the same the accused A2 and A3 filed present revision before this Court.

3. While advancing the arguments, the learned counsel for the petitioners submitted that he is not pressing the revision filed by the first petitioner/A2. The said submission is recorded. He has also submitted that as far as 2nd petitioner/A3 is concerned, there is no material to implicate him in this case and the prosecution relied on the confession given by the co-accused A1 and A2. Though a laptop is alleged to have been recovered from the petitioner, expert opinion does not support the case of the prosecution and no incriminating materials found against the 2nd petitioner/A3. There is no material shown against the 2nd petitioner based on the confession given by the co-accused. Therefore, the case cannot be proceeded. In this connection, learned counsel placed reliance on the Judgement of the Hon'ble Supreme Court in Dipakbhai Jagdishchandra Patel Vs.State of Gujarat and others in Crl.A.No.714 of 2019 (Arising out of SLP (Criminal) No.5415 of 2017).

4. The learned Government Advocate (Crl.Side) would submit that admittedly land was allotted to the first petitioner/A2 herein and A1 is the retired Officer and he only purportedly prepared the G.O as if G.O enforced as on date and hence, the said concocted document was prepared with the help of A2 and A3/the petitioners. Even co-accused A1 and A2 have given statement against present petitioners and seized laptop from the petitioners and therefore veracity of the confession statement can only be testified during the trial and not at this stage. Therefore, the learned Magistrate rightly dismissed finding no merit to allow the said application.

5. Heard and perused the records.

6. Admittedly the case was registered against the petitioners and yet another. The present petitioners have been arrayed as A2 and A3 in the case in C.C.No.2036 of 2017 on the file of the CCB CID Metropolitan Magistrate, Egmore, Chennai. During the pendency of the case, the petitioners have filed petition under Section 239 Cr.P.C., to discharge them and the same was dismissed.

7. Though the learned counsel for the petitioners contended that there is no material available against the second petitioner/A3 to proceed the case further, on a perusal of the records and the confession statement given by A1 and A2 clearly shows that, with the help of A3/second petitioner herein, the petitioners and the other accused have taken the copy of concocted documents and the laptop was seized from A-3. The

learned counsel for the petitioner submits that confession statement is not admissible in evidence and hence it cannot be relied on. In this connection, learned counsel placed reliance on the decision of the Supreme Court reported in MANU/SC/0595/2019 [Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Ors.].

8. The crux of the case in the decision relied upon by the petitioner is entirely different. In this case, the petitioners given statement under Section 161 Cr.P.C., before the learned Magistrate and subsequently recorded the statement from the co-accused. Whereas in the cited decision, the Hon'ble Supreme Court held that a confession made to a Police Officer and recorded during investigation under Section 161 Cr.P.C., cannot be relied on. Therefore, the citation relied on by the petitioner is not applicable to the facts of the present case. Further, in the cited decision, with regard to admissibility of document, the Honourable Supreme Court allowed the appeal filed by the appellant/accused as against the dismissal of the the petition filed under Section 482 of the Cr.P.C., by the High Court of Gujarat at Ahmedabad, whereas this case is criminal revision filed u/s.397 and 401 Cr.P.C. Therefore, in the cited decision, the confession statement by the co-accused and proceeding on that basis and having found there was no recovery, Supreme Court held that law requires that the case cannot be proceeded against. Whereas in this case, admittedly there is enough material against A1 to show that A1 and A2 created concocted document, for which the 2nd petitioner/A-3 helped them. Therefore, at the time of deciding petition under Section 239 Cr.P.C., the Court need not see as to whether on the material available on record, the case can be proceeded against the second petitioner or not.

9. A reading of the confession and also the report filed by the prosecution and the Investigation Officer under Section 173 Cr.P.C., would go to show that no such defense taken by the accused before the learned Magistrate.

10. The appellate Court cannot conduct roving enquiry on the materials available on record, while exercising revisional jurisdiction. At the time of deciding petition under Section 239 Cr.P.C the trial court need not conduct roving enquiry upon the materials placed before it. In such view of the matter, there is no illegality in the order passed by the Court below. On a perusal of entire materials available on record, this Court does not find any perversity in the order passed by the learned Metropolitan Magistrate. Further, there is enough material to frame charges against the 2nd petitioner/A-3. The grounds raised

in this revision can be taken as defense during the trial of the case and not at this stage. Accordingly, the criminal revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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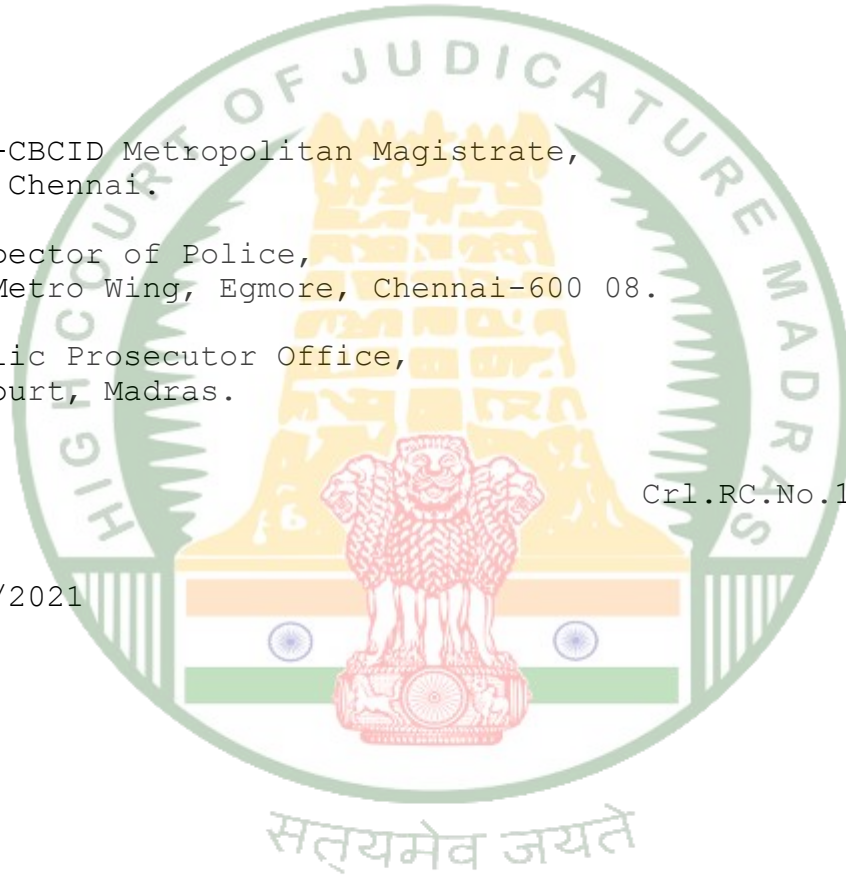
Sub Assistant Registrar

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To

- 1.The CCB-CBCID Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Inspector of Police,
CBCID, Metro Wing, Egmore, Chennai-600 08.
- 3.The Public Prosecutor Office,
High Court, Madras.

Cr1.RC.No.1014 of 2019

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