



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.04.2021

PRONOUNCED ON : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.R.C. (MD) No.274 of 2021

and

CRL.M.P. (MD) No.2735 of 2021

WEB COPY

P.Raghu Ganesh

: Petitioner

Vs.

The Additional Superintendent of Police,
CBI, SC-II, New Delhi.

: Respondent

PRAYER: Criminal Revision Petition filed under Section 397(1) Cr.P.C. r/w. Section 401 of Criminal Procedure Code, to call for the records pertaining to the order, dated 10.03.2021 passed by the learned I Additional District and Sessions Judge, Madurai, in Crl.M.P.No.165 of 2021 in S.C.No.470 of 2020 filed under Section 207 of Cr.P.C.

For Petitioner : Mr.S.Ananthanarayanan
Senior Advocate
for Mr.K.Elangovan

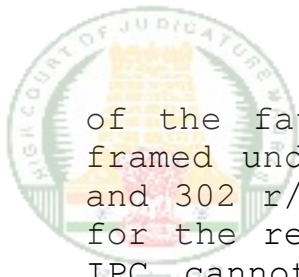
For Respondent : Mrs.L.Victoria Gowri,
Assistant Solicitor General of India

ORDER

This petition is filed as against the order dismissing the petition filed seeking to discharge the accused from the charges framed against him by the learned I Additional District and Sessions Judge, Madurai.

2.It is the contention of the petitioner that he had filed petition under Section 227 of Cr.P.C., in Crl.M.P.No.165 of 2021 in S.C.No.470 of 2020 seeking to discharge the petitioner/accused from the charges. After having heard the discharge application, the learned Judge dismissed the claim of the petitioner seeking discharge. It is the contention of the learned Counsel for the petitioner that the offences under Sections 211 and 218 of IPC cannot be investigated by the police. It has to be filed by a public servant as a private complaint.

3.The contention of the learned Counsel for the revision petitioner seeking discharge is found unacceptable and unreasonable. Considering the controversies surrounding the death



of the father and son under the provisions of IPC, the charges framed under Sections 342, 201, 183, 193, 211, 218, 302 r/w. 34 and 302 r/w. 109 of I.P.C. The contention of the learned Counsel for the revision petitioner is that the offence under Section 188 IPC cannot be registered or enquired by the police officials. While so, the petitioner herein, as accused A3, before the learned District and Sessions Judge, sought discharge from the charges. The learned District Judge, dismissed the application and framed the charges. Aggrieved by the dismissal of the discharge petition, the accused had come to this Court by filing this petition.

4.Mr.Anantha Narayanan, learned Senior Counsel submitted that as per the ruling of this Court reported in **2018 (2) L.W (Cr1.) 606** in the case of **Jeevanandham Vs. State** and **Cr1.O.P.No.7922 of 2019 Order dated 30.08.2019** in the case of **Sri Raja Vs. State** that the Public Official is not a Police Officer and any Officer can file a private complaint before the learned Judicial Magistrate regarding the offence under Section 188 of IPC. Therefore, without filing a private complaint by the Public Servant, the Police cannot initiate/register the FIR. He also relied upon the ruling of this Court in **Cr1.O.P.No.7922 of 2019** in the case of **Sri Raja Vs. State** wherein it was held that for offence under Section 188 of IPC, the Police cannot register an FIR. Based on that, he sought to quash the proceedings regarding offence under Section 188 of IPC before the learned Single Judge.

5.He had filed a petition on behalf of the accused to discharge the accused from the case in S.C.No.470 of 2020 on the file of the learned First Additional District Judge, Madurai, and the same was dismissed by the learned First Additional District and Sessions Judge. Against the order of dismissal, this Revision had been filed.

6.Considering the interpretation of the statutes by the learned Single Judge, the view expressed by the learned Single Judge that offence under Section 188 of IPC cannot be registered as an FIR by the Police Officials. It had to be done only by the officials belonging to the other Departments of the Government who are empowered to enforce Law and Order, only they can file a criminal case, private complaint against the violation of authority of the Public Servant. Therefore, the petition filed by the learned Counsel on behalf of the petitioner/accused was dismissed by the learned trial Judge, against which this Revision had been filed.

7.Considering the ratio laid down by the learned Single Judge of this Court in **2018 (2) L.W (Cr1.) 606** in the case of **Jeevanandham Vs. State** and **Cr1.O.P.No.7922 of 2019 Order dated**



30.08.2019 in the case of **Sri Raja Vs. State**, this Court is of the opinion that insofar as offence under Section 188 of IPC is concerned, the violation of authority for which FIR was registered is found against the Ruling of this Court.

8. At the same time, the line of arguments put forth by the learned Assistant Solicitor General of India that if the First Information Report is filed along with other Sections of IPC, the same cannot be quashed, is found justified. Therefore, the petition seeking to discharge from the case filed by the accused herein is found acceptable. At the same time, the trial Court had framed the charges including Section 188 of IPC and trial had commenced, by the time the case was argued. At that stage, if the discharge petition dismissed by the learned Single Judge, is allowed it will result in confusion in the mind of the learned trial Judge. Thereby, the trial will be jeopardised. To avoid such exigencies, the accused is discharged only from Provisions under Section 188 of IPC and not from the entire case. Regarding the other offences, evidence is to be recorded and on appreciation of evidence, the learned trial Judge shall pronounce Judgment.

9. This Criminal Revision is partly allowed discharging the petitioner/accused only from the charge under the Provisions of Section 188 of IPC. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

cmr/dh

To

1. The I Additional District and Sessions Judge,
Madurai.
2. The Additional Superintendent of Police,
CBI, SC-II, New Delhi.
3. The Assistant Solicitor General of India,
Madurai Bench of Madras High Court,
Madurai.

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