



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.RC.No.489 of 2022

1.Nandhakumar
2.A.M.Velusamy

...Petitioners/A2&3

vs.

State by,
The Inspector of Police,
District Crime Branch,
Namakkal,
Namakkal District
(Cr.No.4 of 2019)

...Respondent

PRAYER:Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. challenging the impugned order dated 08.10.2021 made in Crl.MP.No.758 of 2020 in CC.No.123 of 2019 on the file of the learned Judicial Magistrate, Paramathy and to discharge the petitioners from the above said case by allowing this revision petition.

For petitioners: Mr.S.Lakshmanasamy

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

ORDER

The present criminal revision has been filed challenging the impugned order dated 08.10.2021 made in Crl.MP.No.758 of 2020 in CC.No.123 of 2019 on the file of the learned Judicial Magistrate, Paramathy and to discharge the petitioners from the above said case by allowing this revision petition.

2. The case of the petitioner is that the petitioners 1 & 2 are arrayed as accused Nos.2 & 3 in CC.No.123 of 2019 on the file of the learned Judicial Magistrate, Paramathy, Namakkal District. In the above referred case, the respondent police filed final report as against the petitioners and two others alleging that they committed offence punishable under Sections 120B, 467, 468, 471 and 420 of IPC. Later, the petitioners herein filed a petition before the said Court under Section 239 of Code of Criminal Procedure, wherein they prayed to discharge



them from the above said offence. The learned Judicial Magistrate, Paramathy, after providing an opportunity to the respondent police, by order dated 08.10.2021, dismissed the petition filed by the petitioners saying that there was a prima facie case as against the petitioners for framing charges. Aggrieved over the same, the petitioners are before this Court with the present criminal revision petition.

3.Heard, Mr.S.Lakshmanasamy, the learned counsel appearing for the petitioners and Mr.Leonard Arul Joseph Selvam(crl.side) appearing for the respondent police.

4.The learned counsel appearing for the petitioners would contend that the petitioners are signed as a witness to the document alleged to be executed by the first accused. In otherwise, the petitioners did not know anything about the transaction having by the first accused with one, Lakshmi i.e. the defacto complainant. Further, after preparation of alleged sale agreement dated 30.06.1999, civil suit has also been filed, wherein both the learned District Munsif at Paramathi and the Subordinate Judge, Namakkal concurrently held that the petition mentioned property belongs to the said Lakshmi and therefore, there was no nexus between the crime and the petitioners. But the trial court, without considering those aspects, dismissed the application filed by the petitioners under Section 239 of Cr.P.C., which is erroneous in law.

5.Per contra, the learned Government Advocate(crl.side) takes notice on behalf of the respondent police and made a submission as the issue involved in this case is whether the petitioners and others have fabricated a false sale agreement by putting one, Lakshmi's thumb impression as if she has agreed to sell her agricultural land to A1 for Rs.90,000/-. Further, in this regard, it was stated that the said Lakshmi received advance amount of Rs.50,000/-. Accordingly, filing a suit as above is no way relevant to the offence committed by the petitioners and therefore, the criminal revision filed by the petitioners requires to be dismissed.

6.Now on considering the said submissions with the relevant records, in the final report filed by the respondent police, it was stated that during the relevant point of time, A1 has prepared a forged sale agreement with the help of the petitioners by putting one, Lakshmi's thumb impression by forgery. Later, by using the same, civil suit has been filed. Accordingly, as per the investigation, the petitioners also made conspiracy with the other accused and prepared a forged sale agreement and in this occasion, on go through the 161 Cr.P.C. statement, the witnesses who are all examined by the prosecution agency have categorically stated that the signature found in the



sale agreement is not belongs to one, Lakshmi. But at the same time, in the sale agreement, it was stated that the said Lakshmi was signed in the sale agreement in presence of the petitioners herein. Therefore, it cannot be said that the alleged offence had happened without the knowledge of the petitioners. Attesting the documents amounts to only for the purpose of proving the execution of the document. In otherwise, it should be presumed that only in the presence of the petitioners, the said Lakshmi has signed in the sale agreement. Now the son of the said Lakshmi lodged complaint before the police stating that due to the act committed by the petitioners and two other accused, her mother got prejudiced. Therefore, automatically the aggrieved party can initiate a prosecution for the wrong doing by the party.

7.Obligation to discharge the accused under Section 239 of Cr.P.C. arises when the Magistrate consider the charge against the accused to be groundless. No detailed evaluation of the materials or meticulous consideration of the possible defences undertaken at this stage. Exercise of the weighing materials in golden scales is certainly not to be undertaken at this stage and has to be postponed to the later stage.

8.According to Section 239 of Cr.P.C, if upon considering the police report and documents sent with under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving 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. Under the said Section, Magistrate is required to see whether the ground for presuming commission of offence exist or whether the charge is groundless. That means, whether prima facie case pertains to the commission of offence made out or not. Accordingly, it would necessary for the Magistrate to see whether the prima facie case is available or not. The test to determine a prima facie case depends upon the facts of each case and in this regard, it is neither feasible nor desirable to lay down a rule of universal application. By and large, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only, as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see whether the trial will end in conviction or not. The word 'ground' in this context is not a ground for conviction, but the ground for putting the accused on trial.

9.Here it is a case, in the impugned order, the learned Magistrate has categorically stated that there was a prima facie case and also a ground for framing charge. As rightly pointed



out by the learned Government Advocate that the statement given by the witnesses are all in support of the case of the prosecution that for fabricating a false document, the petitioners also conspired with the other accused and put their signature. Therefore, it cannot be said that there is no ground for framing the charges.

10. Therefore in view of the above, I am of the considered opinion that the impugned order dated 08.10.2021 passed in CrI.MP.No.758 of 2020 in CC.No.123 of 2019 by the learned Judicial Magistrate, Paramathy is having much reasoning and accordingly, this criminal revision is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

lok

To

1. The learned Judicial Magistrate,
Paramathy,
Namakkal District.

2. The Inspector of Police,
District Crime Branch,
Namakkal,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.S.Lakshmanasamy, Advocate, S.R.No.26844

CrI.R.C.No.489 of 2022

SKM(CO)
RGA(05/05/2022)