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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2021

PRONOUNCED ON : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.1256 OF 2019

AND

CRL.M.P.NO.16907 OF 2019

P.Jagadeeswaran

... Revision Petitioner/
Accused(25)

.Vs.

The State Rep. By
The Deputy Superintendent of Police,
CBCID, Metro Unit-I,
Egmore, Chennai - 600 008.

... Respondent/Complainant

PRAYER:-

Criminal Revision Petition filed u/s.397 and 401 of Cr.P.C., praying to call for the entire records in Crl.M.P.No.2559 of 2019 in C.C.No.6756 of 2018 and to set aside the order passed by the learned Special Metropolitan Magistrate for CCB and CBCID, Egmore, Chennai on 18.10.2019 in Crl.M.P.No.2559 of 2019.

For Petitioner : Mr.V.Ramamurthy

For respondent : Mr.S.Sugendran,
Government Advocate [Crl. Side]

O R D E R

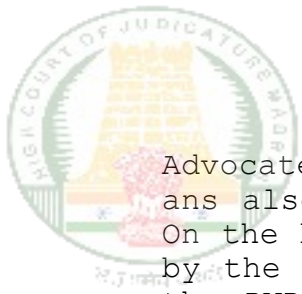
The respondent is the complainant. The petitioner is Accused No.25 before CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8 in C.C.No.6756 of 2018 and filed this Criminal Revision case against the order passed in Crl.M.P.No.2559 of 2019 in C.C.No.6756 of 2018 by the learned Special Metropolitan Magistrate for CCB and CBCID, Egmore, Chennai on 18.10.2019.



2. The respondent Police registered a case in Crime No.8 of 2015 for the offence under Sections 147, 506(i), 153, 152, 353, 451 read with 109 and 149 of IPC. After the investigation, they laid the charge sheet before the Metropolitan Magistrate for exclusive trial in the court of CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8. The learned Magistrate, taken the charge sheet on file in C.C.No.6756 of 2018. During the pendency of the case, the petitioner filed the petition for discharging him from the said case by invoking Section 239 Cr.P.C in CrI.M.P.No.2559 of 2019. Likewise, other accused viz., A-24, A-66, A-72 and A-74 also filed similar petitions and the learned Metropolitan Magistrate taken all the petitions together and passed the common order and dismissed the petitions by way of passing the impugned order. Now the petitioner/A-25 alone has filed the present Revision before this court.

3. The learned counsel for the petitioner would submit that the case was registered only based on the video recording of the occurrence captured by the Polimer TV, but the DVD footage was not furnished to the petitioner. As per the prosecution case, the petitioner is not found in the said picture. Witness No.27 had seen the video display of the recording but that was recorded by the police as well as Polimer TV. After seeing the video, witness categorically stated the name of the persons who was found in the occurrence place. The witness does not mention the presence of the petitioner or the petitioner's name specifically. The petitioner as an advocate, he hails from Dharmapuri District. Every weekends, he visit his native as his wife is working at Dharmapuri District. The alleged occurrence is said to have taken place on Saturday i.e., on 04.04.2015 and further Good Friday was on 03.04.2015 and it was declared as holiday for the courts. Since there was a holiday for four days, during the relevant point of time, the petitioner left to his native place on 02.04.2015 and he returned only on 06.04.2015 and in the mean time only, the occurrence took place and there is no material to show that the petitioner was present at the time of occurrence place. Therefore, the petitioner moved the Magistrate by invoking Section 239 Cr.P.C., seeking to discharge him from the case. The learned Magistrate failed to consider the same and dismissed the petition which warrants interference of this court.

4. The learned Government Advocate (Criminal Side) would submit that during the investigation, five advocates viz., T.Kannan, P.Kannan, Suresh, P.Iyyappan and S.Vinothkumar appeared for enquiry and gave their statements under section 164 Cr.P.C., before the learned Magistrate on their own volition. Since many of the other Advocates who involved in this case suppressed the facts during enquiry, the above five advocates narrated the entire facts about case and the involvements of



Advocates who committed the offences, including the petitioner and also the Advocates who were not found in the video footage. On the basis of DVD footage, the accused persons were identified by the witnesses. Even though the petitioner does not appear in the DVD footage, the advocates who were present at the time of the occurrence themselves have stated about the presence of the petitioner also. Therefore, there is prima facie case against the petitioner and the Magistrate rightly dismissed the petition and there is no merit in the Criminal Revision Case.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the records.

6. The respondent Police registered the case against the petitioner and others in Crime No.8 of 2015 for the offence under Sections 147, 506(i), 153, 152, 353, 451 read with 109 and 149 of IPC. The petitioner has been shown as A-25 in the said case. After investigation, they laid the charge sheet and the case was also taken on file in C.C.No.6756 of 2018. Pending the case, the petitioner approached the Magistrate by invoking Section 239 Cr.P.C., for discharging him from the said case. According to the learned counsel for the petitioner, the case was registered based on the telecast, however, the DVD footage was not provided and he was not found in the said DVD footage. However, the learned Government Advocate would submit that during the investigation, some of the advocates voluntarily appeared and gave statement and the same was recorded under Section 164 Cr.P.C., and they have named the petitioner also.

7. It is well settled proposition that at the time of deciding the petition filed under Section 239 Cr.P.C., the court has to see the materials like the final report filed by the investigating agency under Section 173 Cr.P.C., and the documents annexed to it and the defence taken by the accused need not be gone into at that stage. The court cannot conduct roving enquiry regarding the materials placed by the prosecution.

8. Therefore, on a reading of the entire materials, it is found that there is prima facie case against the petitioner also and this is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution against the accused. The veracity and truthfulness of the materials will be gone into after the trial and not at this stage and therefore, this court does not find any reason to interfere with the order of the learned Magistrate. This court does not find any perversity, illegality or infirmity in the order passed by the Magistrate and there is no merit in the Revision and the Revision is liable to be dismissed. Accordingly, this Criminal



Revision case is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Deputy Superintendent of Police,
CBCID, Metro Unit-I,
Egmore, Chennai - 600 008.
2. The Special Metropolitan Magistrate
for CCB and CBCID,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section Record,
High Court, Madras.

CRIMINAL REVISION CASE
NO.1256 OF 2019

NR (CO)
PBS/15/02/2022