



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2022

Pronounced on : 07.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

WEB COPY

CRL.R.C. (MD) .No.616 of 2019

and

CRL.M.P. (MD) No.7595 of 2019

Ganesan

: Petitioner / Petitioner/Accused

Vs.

State rep.by

The Inspector of Police,
Railway Police Station,
Madurai.

(Crime No.416 of 2007)

: Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records pertaining to the order dated 07.08.2019 made in C.M.P.No.4195 of 2014 in C.C.No.272 of 2012 on the file of the Judicial Magistrate No.VI, Madurai and set aside the same.

For Petitioner : Mr.P.M.Vishnuvarthanan,
for Mr.V.R.Appaswamee.

For Respondent : Mr.R.M.S.Sethuraman,
Additional Public Prosecutor.

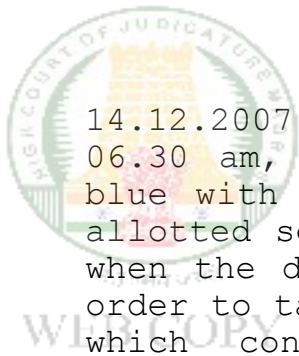
ORDER

The Criminal Revision Petition is directed against the order passed in Cr.M.P.No.4195 of 2014 in C.C.No.272 of 2012, dated 07.08.2019 passed by the learned Judicial Magistrate No.VI, Madurai, in dismissing the discharge petition filed under Section 245 of the Code of Criminal Procedure.

2.The petitioner is the sole accused in C.C.No.272 of 2012 on the file of the Judicial Magistrate No.VI, Madurai for the offence under Section 379 IPC in connection with the Crime No.416 of 2007 of Railway Police, Madurai.

3.The case of the prosecution is that the defacto complainant P.V.Gokulan and his wife Geetha, who came to the defacto complainant's brother's home at Madurai and returned to Chennai on

<https://hcservices.ecourts.gov.in/hcservices/>



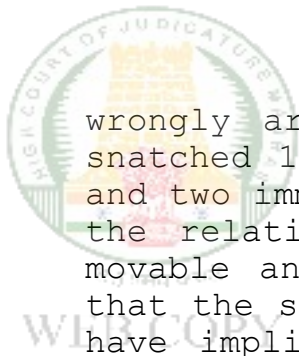
14.12.2007 through Vaigai Express, that on the said date at about 06.30 am, the defacto complainant and his wife placed their dark blue with brown rexin suitcase above their seat and seated on the allotted seat numbers 100 and 103 of D6 Coach, that after sometime, when the defacto complainant, who looked for the above suitcase in order to take his specs pouch, found that his suitcase was missing, which contained their clothes and jewels of the defacto complainant's wife and mother about 17 3/4 sovereigns and that the defacto complainant immediately, made a complaint before the respondent Police.

4.It is the further case of the prosecution that on 06.03.2012 at about 15.00 hours, the Railway Police, Coimbatore arrested the petitioner in connection with Crime No.392 of 2012 for the offence under Section 379 IPC, that the petitioner has given a voluntary confession statement, wherein he had confessed to have committed the similar offence in nine other cases including the case on hand and that therefore, the petitioner has been included as accused in the present case and after formal arrest, he was produced before the jurisdictional Court and was remanded to judicial custody.

5.It is evident from the records that the respondent Police, after investigation, has laid the final report and the case was taken on file in C.C.No.272 of 2012 for the offence under Section 379 IPC and the same is pending on the file of the Court of the Judicial Magistrate No.VI, Madurai.

6.It is further evident that when the case was adjourned for framing of charges, the petitioner has filed a petition under Section 245 of Cr.P.C for discharge in Cr.M.P.No.4195 of 2014, that the respondent Police has filed a counter statement raising objections and that the learned Judicial Magistrate has passed the impugned order, dated 07.08.2019, dismissing the said petition. Aggrieved by the said order of dismissal, the present revision came to be filed.

7.The main contention of the petitioner is that he was wrongly arrested by the Coimbatore Police instead of another Ganesan, that the petitioner is the son of one Mariyappan, but the accused involved in the Railway theft cases is the son of one Ramasamy, that the Coimbatore Railway Police has recorded the confession statement by themselves as if, the petitioner has confessed his involvement in 10 Railway Cases, that though the petitioner was residing in Door No.12-D, Ramalinga Nagar, 5th Cross Street, Saibaba Colony, Coimbatore, the Police has recorded as if, the petitioner was residing at 416/125, N.S.R.Road, Saibaba Colony, Coimbatore, that the petitioner's father's name and address are entirely different, that though FIR was laid as if 17 3/4 sovereigns of jewels were found missing, the Police has shown recovery of 10 1/4 sovereigns of jewels and no explanation was given for the balance 7 1/2 sovereigns of jewels, that the Coimbatore Railway Police, after



wrongly arresting the petitioner has tortured the petitioner and snatched 1009 grams of gold jewels worth about Rs.2,54,000/- and two immovable properties, which has been forcibly transferred in the relative names of the Police Officials, that the above said movable and immovable properties were owned by the petitioner and that the said Police in order to suppress their illegal activities, have implicated the petitioner in various cases pending with the Coimbatore Railway Police and also included his name in the different cases registered by the Railway Police, Madurai, Egmore and Chennai Central, that neither the Coimbatore Railway Police nor the respondent Police has conducted proper investigation and that there is absolutely no *prima facie* evidence to frame charges against the petitioner for the offence alleged and the charges alleged are ground less.

8.The respondent Police has filed counter objections to the discharge petition and wherein they have stated that the final report filed under Section 173 (2) Cr.P.C and the statement recorded under Section 161(3) Cr.P.C clearly establish the *prima facie* case and there are grounds to frame the charges against the petitioner; that the petitioner has been arrested only on the basis of the confession statement, which was voluntarily given before the Railway Police, Coimbatore, that the petitioner had intentionally mislead the Railway Police, Coimbatore and changed his father's name and after detailed enquiry, Police has collected necessary materials and altered the petitioner's father name and that the materials brought on record by the prosecution has to be accepted as true at this stage and the probative value of the materials produced cannot be gone into at this stage and that the same can be gone into only at the trial.

9.As already pointed out, the petitioner was originally arrested in connection with the case in Crime No.392 of 2012 under Section 379 IPC on 06.03.2012 by the Railway Police, Coimbatore and on the basis of the confession alleged to have taken from the petitioner, he was implicated in 9 other cases including the case on hand.

10.The main contention of the petitioner is that he is in no way connected with the cases registered by the Railway Police, Coimbatore or in the cases registered by the Railway Police, Madurai, Chennai Central and Egmore, as he is the son of one Mariappan and not the son of one Ramasamy as alleged by the prosecution. Even according to the prosecution, the petitioner is not the son of the said Ramasamy, but he is the son of Mariappan.

11.No doubt, the respondent Police has taken a stand that the petitioner has given a confession admitting his involvement, after coming to know that the said person was involved in nine other Railway theft cases, they have not chosen to take necessary steps to



ascertain the identity of the accused, but on the other hand, the Railway Police, Coimbatore, Madurai, Chennai Central and Egmore have charge sheeted the petitioner as if, he is the son of Ramasamy.

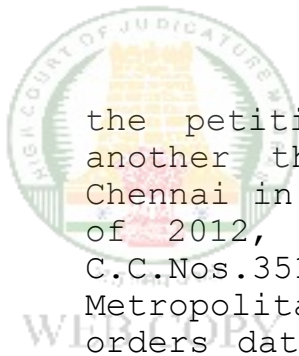
12.As already pointed out, according to the learned counsel for the petitioner, the petitioner is shown to be residing at D.No.416/125, N.S.R.Road, Saibaba Colony, Coimbatore as per his confession statement, but whereas he is residing at Door No.12-D, Ramalinga Nagar, 5th Cross Street, Saibaba Colony, Coimbatore. No doubt, they have also mentioned that, that area is lying within the limits of K.K.Pudur, viz., Kuppakonam Pudur, but whereas in the charge sheet, the respondent has mentioned as Kumbakonam Pudur.

13.It is pertinent to note that in three cases registered by the Railway Police, Coimbatore in Crime Nos.1755, 1176 of 2011 and Crime No.392 of 2012 charge sheets have been laid and the cases were taken on file in C.C.Nos.675, 374 and 673 of 2012 and the petitioner after the dismissal of the discharge petitions filed before the Judicial Magistrate Court No.VI, Coimbatore, preferred the revision petition in Crl.R.C.Nos.1101, 1102 and 1103 of 2015 and the learned Judge of this Court vide order dated 08.12.2015 allowed the criminal revisions and set aside the orders passed in the discharge petitions and consequently discharged the petitioner from all the said three cases. It is necessary to refer the following passage in the said order;

"5.It is not in dispute that the name of the father of the present petitioner/accused is Mariappan. This Court is of the view that where serious doubt arises as to the person involved in the commission of offence and the entire prosecution records inform the name of the father of the accused to be one other than the petitioner/accused put up for trial, these revisions would have to succeed. The prosecution, having informed the father of the accused to be one of Ramasamy, cannot be permitted to prove that the son of Mariappan, i.e., the petitioner is the real accused. It is for the prosecution to prove its case and when the records of its case do not, on the face of it, disclose any allegation of offence against the petitioner, the petitioner ought to be discharged."

14.It is evident that the Railway Police, Chennai Central has also registered three cases in Crime No.467 of 2011, Crime No.525 of 2011 and Crime No.663 of 2011 and laid final reports and the cases were taken on file in C.C.No.2246 of 2012, C.C.No.2168 of 2012 and 2059 of 2012, respectively, on the file of the XVI Metropolitan Magistrate, George Town, Chennai.

15.It is not in dispute that the petitioner has filed discharge applications and the learned Metropolitan Magistrate vide separate orders, dated 29.03.2016 has allowed the petitions and discharged



the petitioner from the above said three cases. Similarly, in another three cases registered by the Railway Police, Egmore, Chennai in Crime No.412 of 2011, Crime No.27 of 2012 and Crime No.83 of 2012, and the charge sheets which were taken on file in C.C.Nos.3518, 3519 and 3520 of 2012 respectively, the learned XVI Metropolitan Magistrate, Egmore at Allikulam, Chennai vide separate orders dated 20.07.2017 has allowed the discharge applications and discharged the petitioner from the above said three cases. The present case is the only remaining case pending against the petitioner, which came to be registered by the Railway Police, Madurai.

16.As rightly contended by the learned counsel for the petitioner, in the main and first case registered in Crime No.392 of 2012 by the Railway Police, Coimbatore, the petitioner has been discharged by this Court. It is pertinent to note that the petitioner was implicated in the present case, only on the basis of the confession alleged to have taken in Crime No.392 of 2012.

17.As rightly contended by the learned counsel for the petitioner, since the petitioner has been discharged from the main case itself, the question of relying the confession alleged to have taken in that case for the present case does not arise at all.

18.The learned Government Advocate (Criminal Side) appearing for the State would submit that in the present case, charges have already been framed and the learned Magistrate has also given a finding that since charge has been framed, accused cannot be discharged.

19.It is evident from the records that the petitioner has filed the discharge petition as early as on 27.08.2014 and the petition was taken on file in Cr.M.P.No.4195 of 2014 and that the respondent Police has also filed their counter objections on 18.12.2014. Admittedly, discharge application and the counter objections were filed prior to the framing of charges by the concerned Court. But, it is shocking to note that the impugned order was passed on 07.08.2019 after the lapse of more than five years, since the filing of the discharge petition. Moreover, this Court is at loss to understand as to how the learned Magistrate has framed the charges, by keeping the discharge petition pending and as such, the very framing of charges is not only improper, but is illegal.

20.Considering the above, this Court has no hesitation to hold that the impugned order passed in Cr.M.P.No.4195 of 2014 is not good in law and the same is liable to be set aside. Consequently, this Court concludes that the petitioner is entitled to get the relief claimed.



21. In the result, the Criminal Revision is allowed. The petitioner shall stand discharged in the above case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

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/ /2022

Sub Assistant Registrar(CS)

das

To

1.The Judicial Magistrate No.VI, Madurai.

2.The Inspector of Police,
Railway Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.P.M.VISHNURVARTHANAN, Advocate (SR-24674[F] dated
08/06/2022)

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and
CRL.M.P. (MD) No.7595 of 2019
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