



Crl.R.C.(MD).No.168 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.03.2023

Pronounced on : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.168 of 2023

and

Crl.M.P.(MD)No.2425 of 2023

A.Ramjan Beevi

... Revision Petitioner/Petitioner/
Accused No.4

Vs.

State represented by
The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.
(Crime No.598 of 2015)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records from the Lower Courts and set aside the order of the trial Court passed by the learned Judicial Magistrate No.VI, Madurai in Crl.M.P.No.597 of 2021 in C.C.No.355 of 2018 dated 30.12.2022 and discharge the revision petitioner/accused No.4 from the alleged offences punishable under Sections 120B r/w 417, 419, 420, 465, 468, 471 of IPC by allowing this revision.



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For Petitioner : Mr.M.Asif Mohamed
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 597 of 2021 in C.C.No.355 of 2018 dated 30.12.2022 on the file of the Court of Judicial Magistrate No.VI, Madurai, dismissing the discharge petition filed under Section 239 of Criminal Procedure Code.

2. On the basis of the complaint lodged by one Sulthan Alvudeen, FIR came to be registered in Crime No.598 of 2015 on 01.12.2015 for the offences under Sections 120B, 417, 468, 471 and 420 IPC against four persons including the petitioner herein.

3. The respondent police, after completing the investigation, has laid a final report dated 15.01.2018 for the alleged offences under Sections 120B, 417, 468, 471, 420, 419 and 465 IPC against four persons including the petitioner herein and the case was taken on file in C.C.No.355 of 2018 on the file of the



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Judicial Magistrate No.VI, Madurai.

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4. When the case was pending, the petitioner/fourth accused has filed a petition under Section 239 Cr.P.C. for discharging her from the above case. The respondent police has filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 30.12.2022 dismissing the discharge petition. Aggrieved by the said dismissal order, the fourth accused has come forward with the present revision.

5. The case of the prosecution is that the defacto complainant's grandfather Vava Buhardeen was living along with his wife Pichai Ammal in Keelmathur Village, Madurai District, that since they were not having any child, they adopted the defacto complainant's father as their child, that the said Vava Buhardeen and Pichai Ammal had died in the year 1995 and their funeral was done by Vava Buhardeen's neighbours, namely, Hanifa, Asad and Ibrahim/accused 1 to 3, that subsequently, in the year 2004, the first accused has opened a bank account in Primary Agricultural Cooperative Bank, Kochadai Branch, in the name of the deceased Vava Buhardeen by impersonating him and obtained a loan for Rs.16,000/- from the Slum Clearance Board, that the first accused, by



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producing the original patta standing in the name of Vava Buhardeen in respect of the property situated in Survey No.9 Patta No.199 of Keelmathur Village with the Tamil Nadu Slum Clearance Board, had obtained a loan of Rs.20,000/- and monetary benefit of Rs.20,000/-, that the petitioner and the accused 1 to 3 had conspired together to grab the property of Vava Buhardeen and the petitioner and the accused 2 and 3 had abetted the first accused in creating the false records and using the same as true records and thereby cheated the officials and that thereby the first accused has committed the offences under Sections 417, 419, 420, 465, 468 and 471 IPC and the petitioner and the accused 2 and 3 have committed the offences under Sections 420, 465, 468, 471 r/w 120B IPC.

6. The learned counsel appearing for the petitioner would submit that since there is absolutely no *prima facie* material to frame the charge against the petitioner, continuing the case against the petitioner is nothing but futile exercise, that out of the documents submitted under Section 173(2) Cr.P.C., only L.W.1 to L.W.5 statements are against the petitioner, that the statements of L.W.1 to L.W.5 have just made bald allegations against the petitioner, as if, she had conspired with the other accused, that there is no iota of material to indicate as to how the petitioner had conspired with the other accused, that there is no



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agreement and there is no meeting of minds between the co-accused and that the statements did not make out even a *prima facie* case for conspiracy.

7. The learned counsel appearing for the petitioner would further submit that there is no direct evidence to prove the conspiracy fully, that the statements under Section 161(3) Cr.P.C. of L.W.1 to L.W.5 create only some suspicion and not grave suspicion and that the trial Court, without considering the above aspects, has dismissed the discharge petition mechanically.

8. The learned Additional Public Prosecutor appearing for the respondent would submit that after elaborate investigation done by the respondent police, charge sheet has been laid along with necessary documents, that the prosecution is having *prima facie* and strong case against all the accused for framing charges, that the grounds stated in the petition are baseless, frivolous and untenable, that the final report filed under Section 173(2) Cr.P.C. and the statements recorded under Section 161(3) Cr.P.C. clearly established the *prima facie* case and strong grounds to frame the charges against the petitioner, that the points now raised by the petitioner cannot be gone into at this stage and that therefore, the learned Magistrate has rightly dismissed the discharge petition.

9. The learned counsel appearing for the petitioner has relied on the



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judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Mohanlal Soni*** reported in **(2000) 6 SCC 338**, whereunder, the Hon'ble Apex Court has held as follows:-

“At the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceedings further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that accused committed the particular offence, then the charge can be quashed.”

10. The learned counsel appearing for the petitioner has further relied on the judgment of the Hon'ble Apex Court in ***Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao*** reported in **(2012) 9 SCC 512**,

“20. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself



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may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.”

11. The learned counsel appearing for the petitioner has further relied on the decision of the Hon'ble Apex Court in ***Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra*** reported in ***(2008) 10 SCC 394***,

“23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless,



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existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.”

12. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***,

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjan Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjaya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases)



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has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial”

13. As rightly contended by the learned Additional Public Prosecutor, there is no dispute about the legal position settled in the above decisions.

14. As rightly contended by the learned Additional Public Prosecutor, the petitioner in the grounds of revision has specifically stated that the statements of L.W.1 to L.W.5 are against the petitioner and that in those statements, they have just made bald allegations against the petitioner, as if, she had conspired with the



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other accused.

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15. The main contention of the petitioner is that there is no evidence to show that there was an agreement and meeting of minds between the accused.

16. In the case on hand, the accused 1 to 3 are brothers and sons of one Nagoor Pitchai and that the petitioner is none other than the wife of the second accused and as rightly pointed out by the learned Additional Public Prosecutor, it has been specifically mentioned that all the accused were residing jointly.

17. It is settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

18. Even assuming for arguments sake that there are any contradictions or discrepancies in the statements of the witnesses recorded in the course of the investigation, that can be decided only at the time of trial and not at the present stage.



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19. It is pertinent to note that the Courts while dealing with the application for discharge, are required only to see whether a *prima facie* case is made out against the accused and detailed enquiry is not required at this stage and when the charge is groundless, the accused can be discharged.

20. In the case on hand, as already pointed out, considering the relationship between the accused and the place of residence and the nature of the accusation levelled against them, at this stage it is not necessary for the prosecution to show that there was an agreement and there was a meeting of minds between the co-accused.

21. As rightly observed by the learned Magistrate, whether there was any conspiracy and whether the petitioner has abetted the other accused in the commission of the offence are the aspects that can be decided only at the trial. As rightly observed by the learned Magistrate, the prosecution has shown a *prima facie* case to proceed against the accused including the petitioner and as such, the impugned order dismissing the discharge petition cannot be found fault with. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.



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22. In the result, this Criminal Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in
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and
Crl.M.P.(MD)No.2425 of 2023

Dated : 29.03.2023