



Crl.R.C.(MD).No.360 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.03.2023

Pronounced on : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.360 of 2023

and

Crl.M.P.(MD)Nos.5144 and 5145 of 2023

Anantha Babu

... Petitioner/2nd Accused

Vs.

The Inspector of Police,
Kadayam Police Station,
Tenkasi District.
(Crime No.120 of 2019)

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records in connection with the order passed by the Mahila Court, Tirunelveli in Crl.M.P.No.4074 of 2022 in S.C.No.485 of 2021 dated 06.12.2022 and set aside the same as illegal.

For Petitioner : Mr.M.Solaisamy

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



WEB COPY



Crl.R.C.(MD).No.360 of 2023

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 4074 of 2022 in S.C.No.485 of 2021 dated 06.12.2022 on the file of the Mahila Court, Tirunelveli, dismissing the discharge petition filed under Section 227 of the Code of Criminal Procedure.

2. On the basis of the complaint lodged by one Vellathamalai, FIR came to be registered in Crime No.120 of 2019 on 31.03.2019 for the offences under Sections 294(b) and 506(2) IPC, Section 3 of TN Public Property (Prevention of Damage and Loss) Act, 1992 and Section 4 of TN Prohibition of Harassment of Woman Act, 2002 against four persons including the petitioner herein.

3. The respondent police, after completing the investigation, has laid a final report dated 24.04.2019 against four persons including the petitioner herein for the alleged offences under Sections 294(b) and 506(2) IPC, Section 3 of TN Public Property (Prevention of Damage and Loss) Act, 1992 and Section 4 of TN Prohibition of Harassment of Woman Act, 2002 and the case was taken on file in P.R.C.No.30 of 2021 on the file of the Court of Judicial Magistrate,



Crl.R.C.(MD).No.360 of 2023

Ambasamudram. Subsequently, the case was committed to the Sessions Court and the same is now pending in S.C.No.485 of 2021 on the file of the Mahila Court, Tirunelveli.

4. The petitioner and the other accused are facing the case for the offences under Sections 294(b) and 506(2) IPC, Section 3 of TN Public Property (Prevention of Damage and Loss) Act, 1992 and Section 4 of TN Prohibition of Harassment of Woman Act, 2002. Subsequently, the third accused had died and hence, charges as against him were ordered to be abated.

5. When the Sessions Case was pending, the petitioner/second accused has filed a petition under Section 227 Cr.P.C. for discharging him from the above case. The respondent police has filed a counter statement raising serious objections. The learned Sessions Judge, after enquiry, has passed the impugned order dated 06.12.2022 dismissing the discharge petition. Aggrieved by the said order of dismissal, the second accused has come forward with the present revision.

6. The case of the prosecution is that there existed previous enmity



Crl.R.C.(MD).No.360 of 2023

WEB COPY

between the first accused and the husband of the defacto complainant with regard to non-payment of chit amount by the first accused, that on 30.03.2019 at about 11.30 p.m., all the accused including the petitioner came to the house of the defacto complainant in Naraiappapuram North Street by two motor cycles, that the first accused had thrown big concrete stone towards the house of the defacto complainant and caused damage to the door and that the petitioner and the other accused had abused the defacto complainant and her husband in filthy language and threatened that they would set fire the entire family.

7. The learned counsel appearing for the petitioner would submit that though the occurrence was alleged to have taken place at about 11.30 p.m. on 30.03.2019, complaint was lodged by the defacto complainant on 31.03.2019 at about 03.00 p.m., that the defacto complainant has not offered any reason or explanation for preferring the complaint with delay and that FIR was registered only, after the arrest of the first accused.

8. The learned counsel appearing for the petitioner would further submit that the petitioner was celebrating the birthday of his son on 31.03.2019, that the first accused came to his house and while he was in the house of the petitioner,



Crl.R.C.(MD).No.360 of 2023

Kadayam Police came to the petitioner's house in normal dress and questioned the whereabouts of the first accused and despite of objections of the petitioner and others, the police had taken the first accused with them and that since the petitioner and others had questioned the police, they have been falsely implicated in the above case.

9. The learned counsel appearing for the petitioner would further submit that the petitioner is the District Secretary of Pattali Makkal Katchi and the President of his village street, that the petitioner is doing civil construction contract works in the village, that the petitioner is not having any previous cases against him, that since the respondent police has filed a false case, the petitioner's business has come down and his name will be damaged in the locality and in the political party, that the petitioner has been regularly appearing before the trial Court for more than 3 years and that the petitioner's application before the Superintendent of Police, Tirunelveli and the District Collector, Tirunelveli were of no avail.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner has been charged for the offences under



Crl.R.C.(MD).No.360 of 2023

Sections 294(b) and 506(2) IPC, Section 3 of TN Public Property (Prevention of Damage and Loss) Act and Section 4 of TN Prohibition of Harassment of Woman Act, that the guilt of the accused can be established by letting in evidence by the prosecution witnesses and even before the letting of evidence it cannot be stated that the accused has not committed any offence, that the accused has to face the trial of the case and only after full fledged trial, it can be decided whether the second accused is guilty or not and that therefore the discharge petition is liable to be dismissed.

11. Before entering into further discussion, it is 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, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja



Crl.R.C.(MD).No.360 of 2023

(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) 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”

12. It is settled law that at the stage of framing charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.



Crl.R.C.(MD).No.360 of 2023

WEB COPY

13. The main contention of the petitioner is that the petitioner was not at all involved in the alleged occurrence, that when the first accused was in the house of the petitioner, the police came to the petitioner's house enquiring whereabouts of the first accused and that since the petitioner and others have raised objections for arresting the first accused, the respondent police has foisted a false case implicating the petitioner also.

14. It is pertinent to note that the petitioner's name finds place in the FIR. Moreover, the defacto complainant in her statement and other witnesses in their statements recorded under Section 161(3) Cr.P.c. have specifically stated that the petitioner was very much available at the occurrence place and that the petitioner along with the other accused had committed the offences.

15. As rightly contended by the learned Additional Public Prosecutor, even assuming for arguments sake that there are some contradictions or discrepancies in the statements of the witnesses recorded in the course of investigation, those aspects cannot be decided at this stage and the same can be decided only at the trial.



Crl.R.C.(MD).No.360 of 2023

WEB COPY

16. 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.

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

18. The next contention of the petitioner is that the petitioner is the District Secretary of Pattali Makkal Katchi and the President of his village street and that he is doing civil construction works in the village.

19. As rightly contended by the learned Additional Public Prosecutor, the petitioner's so called status in the society and his nature of the avocation and the alleged apprehension that his name will be spoiled in the locality and in the



Crl.R.C.(MD).No.360 of 2023

political circles and the business would also get affected due to the foisting a false case, by no stretch of imagination can be considered as reasons or grounds for discharging any accused.

20. On considering the final report and the statements of the witnesses produced along with the charge sheet and the other case records, this Court is of the clear view that 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.

21. In the result, this Criminal Revision Petition is dismissed.
Consequently, connected Miscellaneous Petitions are closed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm



Crl.R.C.(MD).No.360 of 2023

WEB COPY

To

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



WEB COPY



Crl.R.C.(MD).No.360 of 2023

K.MURALI SHANKAR, J.

csm

Pre-Delivery order made in
Crl.R.C.(MD)No.360 of 2023
and
Crl.M.P.(MD)Nos.5144 and 5145 of 2023

Dated : 05.04.2023