



RESERVED ON : 26.09.2023 | **PRONOUNCED ON : 23.11.2023**

THE HONOURABLE MR. JUSTICE P.DHANABAL

and

Rama Karthikeyan S/o. Ramalingam Petitioner

State represented by:

The Inspector of Police,
CBCID-South, Dindugal,
Dindugal District.

Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the order dated 09.03.2021 made in CrI. M.P. No.7915 of 2018 in C.C. No.187 of 2018 on the file of the Judicial Magistrate No.I, Dindugal.

For Petitioner : Mr. V.M. Balamohan Thampi

For Respondent : Mr. R.M. Anbu Nithi,
Additional Public Prosecutor.



Crl.R.C.(MD) No.324 of 2021

ORDER

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This Criminal Revision in Crl. R.C. (MD) No.324 of 2021 has been preferred by the revision petitioner/A1 as against the order passed by the learned Judicial Magistrate No.I, Dindigul in Crl. M.P. No.7915 of 2018 in C.C. No.187 of 2018 wherein the 1st accused along with 10 others have filed a petition to discharge them under Section 239 of Cr.P.C.

2. The case of the petitioner before the Trial Court is that this petitioner and 11 others are the accused in the main case in Kodaikanal P.S. Cr. No.86 of 2006 for the offences under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC. Thereafter, the petitioner/accused had filed Crl. O.P.(MD) No.19089 of 2013 before the Madurai Bench of Madras High Court to quash the FIR in Cr. No.86 of 2006. In that case, the Kodaikanal Police had arrayed as 1st respondent and the defacto complainant was arrayed as 2nd respondent. While the case came up for final hearing on 18.03.2018, the Kodaikanal Police represented before the Court that the FIR has been closed by the Court concerned vide order in R.C.S. No.55 of 2011. Hence the Madurai Bench of Madras High Court dismissed the said petition as “infructuous”, since the FIR was already closed vide R.C.S. No.55 of 2/14



Crl.R.C.(MD) No.324 of 2021

2011. The petitioner has also filed a Copy Application before the Judicial Magistrate Court No.1, Kodaikanal in the case in Kodaikanal P.S. Cr. No.86 of 2006 and the same was returned with endorsement that “this FIR was already closed in R.C.S. No.55 of 2011 dated 18.04.2011”. Suppressing the above said fact, the CBCID Police, Dindigul took up the case for investigation on 27.05.2016 i.e., after 10 years from the date of occurrence and after 5 years when the case was closed in R.C.S. No.55 of 2011. Now the respondent police have filed charge sheet suppressing the real facts and closure of the case.

2.1. The occurrence said to be happened due to the property dispute between the defacto complainant and A12 Senathipathi. In fact, the property was originally belonging to the Ex-Minister Raja Mohammed and he executed a Power of Attorney in favour of one Giritharaprasath. The said Power Agent sold the property to A12, Senathipathi and Dr. Chandrika, wife of Senathipathi. The wife of this petitioner, only had purchased the property from the said Senathipathi A12 and Chandrika. Thus the defacto complainant is no way connected with the property at any point of time. The defacto complainant lodged a complaint on 18.02.2004 as against this



Crl.R.C.(MD) No.324 of 2021

petitioner and A12 Senathipathi by making false allegations, filed a counter complaint on the petitioner/accused. Thereafter proceedings under the provision of Section 145 Cr.P.C. was initiated by the Revenue Divisional Officer and the same was also challenged before the High Court. Further, the wife of A1, Amuthavalli also filed a Suit for Permanent Injunction in O.S. No.46 of 2006 in Palani Sub Court against the defacto complainant and others in respect of the property and the same was decreed on 18.10.2006. This petitioner/A1, Rama Karthikeyan was charged for the offence under Section 392 IPC for committing robbery of Rs.71,000/- and 10 painting boxes from DMDK Officee. The weapons were said to be recovered from Kodaikanal Police Station locker room after 10 years of the alleged date of occurrence. Therefore the accused are to be discharged from the offences charged against them.

3. The respondent Police / CBCID, Dindigul had filed a counter affidavit, in the discharge petitioner filed by the accused, stating that the defacto complainant V.N.A.S. Chandran lodged a complaint before the Kodaikanal Police Station stating that all the accused formed unlawful assembly and looted a sum of Rs.71,000/- kept in the complainant's building



Crl.R.C.(MD) No.324 of 2021

and thereby Cr. No.86 of 2006 was registered for offences under Sections 147, 148, 448, 323, 506(ii), 452 and 380 IPC. Thereafter, the case was transferred to CBCID Police vide order dated 10.05.2016.

3.1. The investigation reveals that the defacto complainant Chandran gave some amount to Raja Mohammed for need of money and as per the desire of the defacto complainant, the said Raja Mohammed had made General Power of Attorney to S. Giridharaprasad, who was the then Manager of the complainant at Sub Registrar Office, Coimbatore. The disputed property is situated at Woodwill Road, Kodaikanal to the extent of 2.3 cents and since the complainant was in abroad, he developed friendship with A12, Senathipathi. The complainant directed the Manager Giridharaprasad and made a Sale Deed to A12 Senathipathi for developing business without having any amount. As such, the said disputed property was sold to the A12 Senathipathi. The Senathipathi had executed a Sale Deed in favour of Amuthavalli, wife of the petitioner Rama Karthikeyan. Thereafter, motive raised between the parties and proceedings under Section 145 of Cr.P.C. was also initiated by the revenue authorities and the petitioner Rama Karthikeyan was directed not to interfere on the issued



Crl.R.C.(MD) No.324 of 2021

related to the dispute property.

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3.2. Thereafter A12 Senathipathy filed a petition before the High Court in Crl. O.P. No.5444 of 2004 and obtained stay on the execution of the order of the Revenue Divisional Officer, Kodaikanal. Thereafter, since the said stay was not extended and the order of RDO, Kodaikanal was implemented and the disputed property was restored to the Chandran. During the order of RDO, Kodaikanal, the petitioner Rama Karthikeyan and A12 were taken criminal intention and preplanned and formed unlawful assembly and committed offences. On 26.02.2006, the accused A1 to A11 had criminally trespassed into the place of occurrence with deadly weapons, abused with filthy language, assaulted the labours and DMDK party members, caused simple injuries and criminal intimidation. Further they scattered paints, DMDK political banners, flags, posters and chairs worth about Rs.500/- and looted a sum of Rs.71,000/- and taken away 10 small paint boxes and thereby, FIR has been registered and after investigation, charge sheet was filed against the accused. As per the final report, prima facie offences are made out and thereby the Trial Court has taken cognizance and therefore, at that stage, the petition was filed. After hearing



Crl.R.C.(MD) No.324 of 2021

both sides, the Trial Court dismissed the discharge application. As against the said dismissal order, the present revision petition has been filed by the 1st accused Rama Karthikeyan.

4. The learned counsel appearing for the petitioner would contend that the respondent police have registered the case in Cr. No.1 of 2016 for the offences under Sections 147, 148, 448, 323, 506(ii), 452 and 380 IPC @ 147, 148, 448, 452, 294(b), 323, 427, 506(ii), 392 r/w 109 IPC. Already the Kodaikanal Police had registered the case in Cr. No.86 of 2006 and the same was closed vide order in R.C.S. No.55 of 2011. The same was revealed to the petitioner while passing orders in Crl O.P. No.19089 of 2013 dated 14.03.2018. The said Criminal O.P. was filed by the petitioner to quash the FIR in Cr. No.86 of 2006 wherein the respondent police had represented that the case in Cr. No.86 of 2006 on the file of Kodaikanal Police Station was closed vide order in R.C.S. No.55 of 2011. Based on the said representation, the Criminal O.P. No.19089 of 2013 was closed as “infructuous”. As per the records of the Judicial Magistrate No.I, Kodaikanal, the R.C.S. No.55 of 2011 was closed on 18.04.2011 itself. While the facts are being so, the case in Cr. No.86 of 2006 was transferred



Crl.R.C.(MD) No.324 of 2021

to the file of CBCID Police, Dindigul vide Proceedings of Director General of Police, Tamil Nadu, Chennai in RC. No.067740/Crime 3(1)/2016 dated 10.05.2016. Thereafter the CBCID Police, Dindigul has assigned new Cr. No.1 of 2016 and registered a case under Sections 147, 148, 448, 323, 506(ii), 452 and 380 IPC @ 147, 148, 448, 452, 294(b), 323, 427, 506(ii), 392 r/w 109 IPC and after completion of investigation, filed final report.

4.1. Based on the final report, the Trial Court has taken cognizance in C.C. No.187 of 2018. Since the FIR was closed on 18.04.2011 itself, there is no question of transferring the case and reinvestigation. Therefore the accused are liable to be discharged from the offences charged against them. But the Trial Court failed to consider that already the case in Cr. No.86 of 2006 was closed through order in R.C.S. No.55 of 2011. The Director General of Police cannot transfer the case through his proceedings dated 10.05.2016 and the CBCID Police has also no jurisdiction to register the FIR since the FIR has already been closed by the judicial order. This dispute is related to the civil dispute and the wife of the petitioner is the owner of the property and she purchased the property in the year 2004 and thereafter she has filed a suit for permanent injunction in O.S. No.46 of 2006 and the same was also decreed in her favour. Therefore, the learned



Crl.R.C.(MD) No.324 of 2021

Judicial Magistrate has failed to see the above said facts and dismissed the discharge application. Therefore the order passed by the learned Judicial Magistrate No.I, Dindigul is liable to be set aside by allowing this revision petition.

5. Per contra, the learned Additional Public Prosecutor would contend that based on the complaint given by the defacto complainant, the Kodaikanal Police have registered the case in Cr. No.86 of 2006 for the offences under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC. Thereafter, the case was transferred to the file of CBCID Police, Dindigul vide order dated 10.05.2016 and thereafter the CBCID, Dindigul police have registered the case in Cr. No.1 of 2016 for the offences under Sections 147, 148, 448, 323, 506(ii), 452 and 380 IPC @ 147, 148, 448, 452, 294(b), 323, 427, 506(ii), 392 r/w 109 IPC and thereafter the CBCID investigated the matter thoroughly and filed final report against the petitioner and others and thereafter as per the investigation, the prima facie offences are made out against the petitioner and others and thereby the above said discharge petition was dismissed by the Trial Court. Further, already this petitioner had filed a petition in Crl. O.P. (MD) No.19089 of 2013 and the same was



Crl.R.C.(MD) No.324 of 2021

dismissed by the order of this Court dated 14.03.2018 by holding that the case in Cr. No.86 of 2006 was already closed vide order in R.C.S.No 55 of 2011. Later it was found that, the records were manipulated in RCS Register and to that effect, the respondent police have filed a recall petition before this Court and the same is also pending. This petitioner suppressed the fact before the Court while obtaining order in Crl. O.P.(MD) No.19089 of 2013. As per the investigation, the petitioner and other accused have involved in serious offences and thereby, the Trial Court has correctly dismissed the discharge application. Therefore, the present revision petition is liable to be dismissed.

6. Heard both sides and perused the entire materials available on record.

7. It is an admitted fact that the case in Cr. No.86 of 2006 was transferred from the file of Kodaikanal Police Station to the file of CBCID, Dindigul vide proceedings dated 10.05.2016.

8. But the petitioner's contention is that the case in Cr. No.86 of 2006 was already closed vide R.C.S. No.55 of 2011 dated 18.04.2011. Therefore



Crl.R.C.(MD) No.324 of 2021

the question of transfer would not arise. The above said closure of the FIR has been brought to the knowledge of this Court in earlier proceedings in Crl. O.P. (MD) No.19089 of 2013.

9. The respondent's contention is that the above said closure report in R.C.S. No.55 of 2011 is not pertaining to this crime number and the crime number altered in the RCS Register. Even as per the RCS Register, No.55 of 2011 is pertaining the offences under Sections 341, 323 and 506(i) IPC. But the Cr. No.86 of 2006 was registered for the offences under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC. Therefore, the records were manipulated and thereby, the case has not been closed as alleged by the petitioner.

10. This Court already in the application filed by the Kodaikanal Police / CBCID Police in Crl. M.P. (MD) No.6511 of 2019 in Crl.O.P.(MD) No.19089 of 2013, has recalled the order passed by this Court by holding that the records of RCS Register maintained in the concerned Judicial Magistrate Court, are manipulated and the parties have suppressed the material facts.



Crl.R.C.(MD) No.324 of 2021

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11. In fact, the Crl. O.P. (MD) No.19089 of 2013 was filed by stating that the petitioner is the sole accused but the FIR has been registered as against the petitioner and 11 others. Further there is no record found to show that the case was closed through RCS No.55 of 2011. Even as per the records, RCS No.55 of 2011 was closed on the ground of limitation under Section 468 of Cr.P.C. But the FIR in Cr. No.86 of 2006 was pertaining to Sections 506(ii) and 380 of IPC. Sections 506(ii) and 380 of IPC are the offences punishable upto 7 years. Therefore there is no scope to close the case under Section 468 of Cr.P.C. Therefore the contention of the petitioner is not an acceptable one. But at the same time, the petitioner is at liberty to agitate the grounds raised in this petition as defence before the Trial Court.

12. Even as per the investigation, there are some prima facie materials available to proceed as against the petitioner and others. It is well settled law that the Court, at any stage, of discharge the accused, cannot see the veracity of the records and statements submitted by the prosecution and only whether prima facie materials available to frame charges or not has to be decided. In this case, as per the investigation, there are prima facie



Crl.R.C.(MD) No.324 of 2021

material available and thereby, the accused has to face the trial.

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13. The main ground raised by the petitioner is that the petitioner suppressed the material facts before the Trial Court. Therefore the learned Judicial Magistrate, after thorough consideration, has correctly held that there are prima facie materials available as against the petitioner and others to proceed with the case and thereby dismissed the discharge application. The Trial Court without being influenced by any observations made in this petition shall independently decide the case on merits.

13. Therefore, this Court is of the opinion that there is no infirmity found on the order of the Trial Court and no warrant to interfere with the order passed by the Trial Court. Hence this Criminal Revision petition is devoid of merits and it deserves to be dismissed.

14. IN THE RESULT, this Criminal Revision petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

23.11.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/No
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13/14



Crl.R.C.(MD) No.324 of 2021

P.DHANABAL., J.

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To

1. The Judicial Magistrate No.I, Dindugal.

2. The Inspector of Police,
CBCID-South, Dindugal,
Dindugal District.

Crl.R.C.(MD) No.324 of 2021

23.11.2023