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CRL.R.C. No.682/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
07.06.2024	14.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRL. R.C. NO. 682 OF 2024
AND
CRL. M.P. NO. 6371 OF 2024**

Thangavel

.. Petitioner

- Vs -

1. The State, by
Inspector of Police
CB-CID, Namakkal.

2. Marimuthu

.. Respondents

Criminal Revision case filed u/s 397 r/w 401 Cr.P.C. to call for the records and set aside the order passed in Crl. M.P. No.1/2024 dated 03.04.2024 in S.C. No.6/2024 by the learned Addl. District Judge, Namakkal.

For Petitioner : Mr. B.Kumar, SC, for
M/s. S.Senthil

For Respondents : Mr. A.Gopinath, GA (Crl. Side)



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For R-1
Mr. Sankarasubbu for R-2

ORDER

The unsuccessful petitioner, who had sought discharge u/s 227 Cr.P.C. before the learned Additional District Judge, Namakkal, in Crl. M.P. No.`of 2024 in S.C. No.6 of 2024, aggrieved by the dismissal of the said petition, has filed the present revision assailing the said order.

2. The short facts, that are necessary for appreciation of the present petition are as under :-

One Mohanraj, since deceased, was studying in the school of which the petitioner/A-2 is the Correspondent. Due to certain altercations between two factions of students in the school, of which the deceased belonged to one faction and one Karthikeyan @ Karthi, who has been arrayed as A-1 in the aforesaid case, belonged to another faction. Due to one student Prakash, without the knowledge of one Nithinkrishna, belonging to the faction of Mohanraj, having utilised his physical aid equipment, there arose a quarrel, which has led to the two factions being at loggerheads. According to the prosecution, though the



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deceased wanted to amicably settle the issue with A-1, however A-1 ridiculed him and castigated him in abusive and filthy language and had also scolded the parents of the deceased in filthy language. It is the further case of the prosecution that said tussle between the two factions reached the ears of the Principal, which was heard, but no constructive action was taken. In this scenario, the matter was taken to the knowledge of the petitioner/A-2, who called A-1 as well as the deceased to meet him. When the deceased went to meet him, A-1, who had already come there had misrepresented the case as if the deceased was the aggressor, who had used abusive and filthy language and without properly hearing the deceased, the petitioner/A-2 abused him in very harsh words, touching upon his character and even threatened him that he will take the matter up with his father and send the deceased out of the school. The deceased pleaded with the petitioner/A-2 not to take the matter to the ears of his father, as his father was not well and submitting himself to the wrath of A-2 and seeking apology and pardon, the deceased left the place. Thereafter, the deceased and A-1 was called upon by the warden/A-3, who once again abused the deceased maligning his character and scolded the deceased, while A-1 was allowed to go scot-free without even being reprimanded.



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3. It is the further case of the prosecution, that upon reaching his room, as the other roommates were not in the room, the deceased bolted the door from inside and hanged himself with the use of a nylon rope. Upon the suicide being found out by the students, who had knocked the door and found it bolted from inside and finding the hanging of the deceased, information was given to the school authorities resulting in the complaint given by one V.Raju, Accountant of the school at around 23.30 hrs., on 13.09.2013.

4. It is the further case of the prosecution that the complaint was registered by registering an FIR in Crime No.932 of 2013 u/s 174 Cr.P.C. by the Inspector of Police, Namakkal Police Station, who visited the scene of occurrence and went through the formalities by preparing observation mahazar, rough sketch, recovery of material objects and examination of witnesses by conducting inquest over the dead body of the deceased. Thereafter, the body of the deceased was sent to the Government Mohan Kumaramangalam Medical College Hospital, Salem, for autopsy.



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5. In this backdrop of the events, the father of the deceased, viz., the 2nd respondent herein filed Crl. O.P. No.26000 of 2013 before this Court seeking transfer of investigation to CB-CID being not satisfied with the investigation of the law enforcing agency, as police filed closure report dropping further action. CB-CID, the 1st respondent herein, upon taking up investigation in the renumbered crime No.1/2014, altered the section of offence to one u/s 306 IPC from 174 Cr.P.C. Witnesses were examined and their statements were recorded u/s 161 (3) Cr.P.C. and final report was filed against the petitioner/A-2 and A-1 and A-3 before the Chief Judicial Magistrate, Namakkal. After furnishing copies of the same to the defacto complainant, who filed objections to the final report, the Chief Judicial Magistrate rejected the final report filed by the prosecution and took cognizance against the three persons, viz., A-1 to A-3 by assigning P.R.C. No.2 of 2016 dated 12.9.2016 and directing the accused to appear before the trial court and answer the charges.

6. It is the further case of the prosecution that the petitioner/A-2 filed Crl. O.P. No.25694/2016 in Crl. M.P. No.12537/2016 seeking stay and A-3 filed Crl. O.P. No.25946/2016 in Crl. M.P. No.12834/2016 seeking stay in which an order of



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stay was granted on 25.11.2016. Pending hearing of the original petition, A-3 died and, therefore, Crl. O.P. No.25946/2016 stood disposed of. Insofar as Crl. O.P. No.25694/2016 filed by the petitioner/ A-2 is concerned, the same was considered and vide order dated 18.08.2023, stood dismissed holding that a prima facie case exists for proceeding against the petitioner/A-2. Against the said order of dismissal, the petitioner/A-2 preferred SLP (Crl.) No.12031/2023, which was dismissed on 25.9.2023, by granting liberty to the petitioner/A-2 to move the appropriate Court for the purpose of discharge at the appropriate stage.

7. In the aforestated scenario, upon committal of the case in S.C. No.6/2024, Crl. M.P. No.1/2024 was filed by the petitioner/A-2 seeking discharge from the case u/s 227 Cr.P.C. However, the court below, considering that prima facie materials exists with regard to the complicity of A-2 in the commission of the offence u/s 306 IPC, dismissed the discharge petition filed by the petitioner/A-2 aggrieved by which the present revision has been filed by the petitioner herein.



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8. Learned senior counsel appearing for the petitioner submits that the court below lost sight of the scope of a petition u/s 227 Cr.P.C. and had mechanically dismissed the discharge petition holding that a prima facie case exists against the petitioner, which is wholly misconceived.

9. It is the submission of the learned senior counsel that there are no materials, which attracts the offence of abetment u/s 107 IPC. The statements on record, recorded by the 1st respondent do not reveal any material to show that the petitioner had abetted the deceased and instigated him to commit suicide, as no *mens rea* can be attributed to the petitioner.

10. It is the further submission of the learned counsel that the element of abetment is absent in the statements recorded by the 1st respondent. The mere act of the petitioner/A-2 in reprimanding the deceased in order to discipline him cannot be brought within the ambit of abetment and the petitioner cannot be held liable for an offence u/s 306 IPC. To stress upon this Court the aforesaid submission, learned senior counsel placed reliance on the decision of the Apex Court in ***Geo Varghese – Vs – State of Rajasthan (2021 (19) SCC 144)***, wherein in



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identical circumstances, the Apex Court had held that the act of a teacher in disciplining and reprimanding a student, who thereafter commits would not fall within the ambit of abetment to attract the offence of Section 306 IPC.

11. It is the further submission of the learned senior counsel that all the statements recorded u/s 164 Cr.P.C. do not disclose any offence u/s 306 IPC. Further the statement of one of the set of students are based on hearsay statements and further there are very many contradictions in the evidence of the students.

12. It is the further submission of the learned senior counsel that the statement of some of the students recorded u/s 161 (3) Cr.P.C. is at variance with the statements u/s 164 Cr.P.C. It is therefore clear that the said statements u/s 164 Cr.P.C. are clear improvements by the students upon hearsay statements of other persons, which cannot form the basis of an offence u/s 306 IPC.

13. It is the further submission of the learned senior counsel that the whole case of the prosecution is premised on the statement of certain students,



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more particularly, Bharatkumar and Gokul, who have spoken about some written suicide note by the deceased attributing the cause of suicide to A-1 and the school. However, there is no specific attribution of the offence to A-2. It is the further submission of the learned senior counsel that the Sub Inspector of Police, in his statement u/s 161 (3) Cr.P.C., who had surveyed the scene of occurrence, has stated that there was no such note recovered from the scene of occurrence, which statement is corroborated by the photographer, who had photographed the scene of occurrence. It is the further submission that the photographer in clear and unambiguous terms has spoken that the entire photographing and video recording did not capture any such incident, as spoken to by Bharatkumar and Gokul relating to the suicide note being taken and pocketed by one of the police constables. It is the further submission that neither Bharatkumar nor Gokul had identified the police constable, who had taken the suicide note and in the absence of any specific material, placed by the prosecution, to establish such a suicide note, no case can be made against the petitioner, as even in the said note the petitioner has not been implicated.



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14. In the above backdrop, it is the submission of the learned senior counsel that all the points aforesaid clearly establish that the petitioner has in no way instigated the deceased or abetted the deceased in committing suicide and, therefore, is entitled for a discharge. However, without considering all the aforesaid aspects, the court below had mechanically dismissed the discharge petition, which deserves interference at the hands of this Court.

15. Per contra, learned Government Advocate (Crl. Side) appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent, taking this Court through the materials, which had prevailed upon this Court, in the earlier round of litigation, where the petitioner had sought for quashment of the case, submitted that the statements of the witnesses recorded u/s 161 (3) as also u/s 164 Cr.P.C., had prevailed upon this Court to dismiss the relief of quash to the petitioner and the unsuccessful attempt to the petitioner before the Apex Court had only yielded the grant of liberty to the petitioner to file a petition for discharge at the appropriate stage.



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16. It is the further submission of the learned counsel that the discharge petition u/s 227 Cr.P.C. mandates the trial court to consider the materials and upon such consideration of the records of documents submitted and after hearing the submissions of the accused and the prosecution considers that there is no sufficient ground for proceeding, then acceding for discharge is permissible. However, if there are grounds for presuming that the accused has committed the offence, then charges have to be framed. It is the submission of the learned counsel that the court below had considered the materials and passed a well considered order and, therefore, when there are triable issues, the petitioner cannot be discharged on certain trivial discrepancies or contradictions, which could very well be cured at the time of examination of the witnesses. Therefore, they pray that no interference is warranted with the order passed by the trial court.

17. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decision relied on, on behalf of the petitioner.



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18. There could be no quarrel with regard to the ratio that the reprimand by a teacher for disciplining a student could never form the basis of a criminal prosecution u/s 306 IPC holding the same as abetment, but the extent of reprimand and the circumstances surrounding the reprimand and the factors contributing to the same all should be given due weightage before coming to a conclusion as to whether the reprimand of the student is for disciplining the student or has it crossed the threshold, which is beyond disciplining and borders on an instigation, in the nature of threatening the student, driving the student to resort to unforeseen acts, even to end his life. Therefore, there cannot be a straightjacket formula with regard to the same and each and every case has to be looked at on its own facts and circumstances, though with due prudence and appreciation of the materials, which could only be done at the time of trial and not at all times, including the time of discharge.

19. In the aforesaid backdrop, a perusal of the materials reveal that this is the second round of litigation at the instance of the petitioner, who is arrayed as A-2, who had initially filed a petition for quash seeking the indulgence of this Court to quash the proceedings, during which time, a learned single Judge of this



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Court had gone in extenso with regard to the statements recorded u/s 161 (3) as also 164 Cr.P.C. and had given a finding that the duty of the court below was only to find out whether there exists *prima facie* materials to proceed with the case and it is not for the court below to find out whether the said materials will lead to conviction. The learned single Judge, appreciating the statement of the witnesses with regard to suicide note and also the acts of the petitioner had gone on to reject the plea for quashment of the case.

20. Upon dismissal of the said petition, the matter was taken before the Supreme Court, wherein, the Apex Court did not think it fit to entertain the Special Leave Petition for quashing the criminal proceedings. However, it granted liberty to the petitioner to move the appropriate court for the purpose of discharge at the appropriate stage, if so advised, based on which the present discharge petition was filed, which was ultimately dismissed ending in the present petition before this Court.

21. As aforesaid, the entire materials, which are now placed before this Court on the basis of which contentions were advanced were considered by the



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learned single Judge in the earlier petition and upon analysis of the same, it was held that the court below had been convinced that there are *prima facie* materials to proceed with the case and dismissed the petition, which findings recorded by the learned single Judge, were affirmed by the Apex Court.

22. In fine, the Apex Court had not only affirmed the findings of the learned single Judge, but what is material to be noted here is the fact that the materials, which formed the basis of the learned single Judge giving the said view had been taken into consideration by the Apex Court while negating the case of the petitioner. In such a situation, it would not be right for this Court to reappreciate the very same materials which have formed the basis of opinion of the learned single Judge, which has since been confirmed by the Apex Court.

23. What is material to be noted by this Court now is whether in the petition for discharge, any new material had been placed before the trial court and whether the trial court had considered all the materials on record and heard the submission of the accused and the prosecution in this behalf before rendering a finding with regard to the discharge.



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24. Before proceeding to address the said issue, it is necessary to look into Section 227 Cr.P.C., which provides for the discharge of the accused before the framing of charges, which reads as under :-

“227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

25. Section 227 Cr.P.C., therefore, mandates that the duty cast on the trial court is to scan through the documents submitted and after hearing the submissions of the accused and the prosecution, if there are no sufficient grounds to proceed against the accused, only in such cases, the trial court can discharge the accused by recording reasons.

26. From the language employed in Section 227 Cr.P.C., it is evident that what is required to be looked into by the trial court is whether there are



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sufficient grounds to proceed against the accused and only in its absence discharge is permissible, that too upon recording reasons. In the case on hand, even in the earlier round of litigation, this Court had observed that there are *prima facie* materials available, which had prevailed upon the matter being taken cognizance of. The Court had further held that whether there are *prima facie* materials available to proceed with the case and not with regard to whether the said materials will lead to conviction of the accused.

27. As stated above, the court below, while committing the case, had relied on the materials which prima facie established that there are grounds to proceed against the accused, which findings have attained finality by the Apex Court giving its seal of approval and, therefore, this Court cannot go into the said materials. If any new materials have surfaced in the interregnum, which have a bearing on the present case and which materials, are alleged to have not been considered, that alone could be looked into by this Court while appreciating the contention for discharge.



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28. However, the entire arguments of the learned senior counsel is premised only on the very same materials, which had led to the committal of the case, which were already considered and have been given the seal of approval by the Apex Court, and in this scenario, this Court cannot sit in appeal over the said approval, merely because the Apex Court had given liberty to seek discharge at the appropriate stage. What is necessary to be looked into is whether for the purpose of seeking discharge, any new materials have been placed, which shows that there are no sufficient grounds to proceed against the accused.

29. When already the materials, which were placed at the time of committal were considered to come to a conclusion that a prima facie case exists for proceeding with the accused, which has found favour with this Court as also the Apex Court, without placing any new material, which would negate the complicity of the accused/petitioner in the commission of the offence, the prima facie nature of the materials already concluded, which prevailed upon in the earlier round of litigation would be binding on this Court and this Court cannot give a different finding with regard to proceeding against the petitioner on the very same set of materials.



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30. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)*** wherein the Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima



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facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is



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a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(Emphasis Supplied)

31. The above decision of the Supreme Court unambiguously makes it clear extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of Code of Criminal Procedure can be exercised either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, then the Court can interfere with the charge sheet.



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32. In the aforesaid decision, the invocation of the extraordinary and inherent jurisdiction of this Court under Article 226 of the Constitution and Section 482 Cr.P.C. for quashing a case was dealt with in which the Apex Court postulated the guidelines, which should form the basis while exercising the power. The aforesaid guidelines clearly reveal that interference could be made only where there is no evidence to support the commission of the crime or the prosecution is maliciously instituted with ulterior motive for wreaking vengeance. However, such is not the contention in the present case. The contention is based on the materials, which have already been appreciated.

33. In the case on hand, even in the earlier round of litigation it was held that there are prima facie materials and, therefore, exercise of the extraordinary jurisdiction was not invoked, which has been approved by the Apex Court as well. Such being the case, on the very same materials, the petitioner seeks discharge from the case, which cannot be permitted, as it would be against the decision of the Apex Court. Further, sitting under the revisional jurisdiction, this Court cannot exercise the extraordinary/inherent power, which would otherwise be judicial overreach.



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34. Further, the evidences, though pointed out on behalf of the petitioner by the learned senior counsel on the basis of which it is contented that the said evidences are shrouded with contradictions, yet, at the initial stage, without putting the matter to trial, it would not be in the interest of justice to discharge the petitioner, as such discharge is permissible only when the materials show that there is no scope for proceeding against the petitioner on the materials available. Contradictions in the evidence are a matter for trial and mere contradictions cannot be the basis to throw the case of the prosecution at its inception. Further, in the case on hand, there are prima facie materials, which forms the basis of trial, though they may, after trial, result in the verdict one way or the other, which is definitely not the concern of this Court at this point of time, as it is only prima facie satisfaction which is material to allow the continuance of a case.

35. When the materials on which the contentions are placed are the materials on which findings were already rendered, which has become final by the dismissal of the Special Leave Petition, the very same materials cannot form



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the basis for discharge, as it formed the basis for arriving at a prima facie view.

Therefore, unless some material, not connected with the materials already relied upon is placed before this Court, which clearly absolves the petitioner of the accusation, the contention on behalf of the petitioner on the very same materials cannot be enough for this Court to take a view different from the one taken by the trial court.

36. Though contradictions in the statement of witnesses have been pointed out, however, the said contradictions are matters for trial and it cannot be appreciated at the time of discharge to give a finding one way or the other, as the said materials cannot be said to be insufficient so as to discharge the petitioner at this point of time. The sufficiency of the said materials is a matter to be considered at the time of trial for the purpose of finding an accused guilty and it cannot be a matter to be considered at the time of discharge.

37. The trial court, analysing all the materials placed before it, had come to the conclusion that there are materials, which are sufficient for proceeding against the petitioner with the trial and, therefore, by recording reasons, had



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rejected the plea of the petitioner. This Court, upon careful analysis of the materials as also the decision of the trial court, is of the considered view that the view arrived at by the trial court cannot be said to be erroneous and the guidelines set forth in *Bhajan Lal's case* cannot form the basis for discharge of the petitioner, more so, as the present petition is a revision petition and the scope of revisional jurisdiction is very limited and not as that of the extraordinary or inherent jurisdiction under Article 226 of the Constitution or Section 482 Cr.P.C. Therefore, for the reasons aforesaid, this Court is not inclined to interfere with the order passed by the court below.

38. For the reasons aforesaid, this criminal revision fails and, accordingly, the same is dismissed. Consequently, connected criminal miscellaneous petition is closed.

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1. The Addl. District Judge
Namakkal.
2. Inspector of Police
CB-CID, Namakkal.
3. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CRL. R.C. NO. 682 OF 2024**

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