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Crl.R.C.No.760 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. No.760 of 2024

P.V.Jayanthi Aiyengar

.. Petitioner

- Vs -

M.Chellamuthu

Dy. Superintendent of Police

SC/ST Vigilance Cell

8th Floor, Collectorate

Chennai 600 011.

.. Respondent

Criminal Revision Case filed u/s 397 Cr.P.C. to call for and examine the records in Crl. M.P. No.2938/2020 in C.C. No.8592/2019 in order dated 09.04.2021 pending before the CCB and CB-CID Metropolitan Magistrate, Egmore, Chennai and set aside the same.

For Petitioner	:	Mr. X.Gerald
For Respondent	:	Mr. T.N.Buvasneswaran

ORDER

Assailing the order dated 9.4.2021 of the learned Metropolitan Magistrate, CCB/CB-CID, Egmore, Chennai in Crl. M.P. No.2938/2020 in C.C. No.8592/2019 in discharging the respondent, the present revision has been filed by the petitioner/defacto complainant.

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2. It is the case of the defacto complainant/petitioner that the respondent herein had registered a case against the petitioner and others u/s 190 (1) r/w 200 Cr.P.C. for the offences u/s 420, 419, 465, 467, 478 and 120-B IPC with regard to a case of land grabbing. The said case originated from the complaint alleged to have been filed by one Kalaivanan with the Commissioner of Police, CCB against the petitioner herein and K.K. Builders and upon conduct of preliminary enquiry and recording of the statement, the FIR in Crime No.249.2015 came to be registered against the aforesaid persons and after investigation, it is alleged that a prima facie case was made out resulting in the arrest of the petitioner and her son and one of her family friend Kumaravel and they were remanded to judicial custody on 11.07.2015. However, upon transfer of the respondent herein, another investigation officer was appointed, who took up the case and filed the final report, referring the case as mistake of fact on 6.5.2017. In the aforesaid backdrop, the present complaint was filed by the petitioner herein before the Metropolitan Magistrate, CCB/CB-CID, Egmore u/s 191 (a) r/w 200 Cr.P.C. for the offences u/s 420, 419, 463, 465, 467, 468, 471 and 120-B IPC.

3. The court below, upon taking cognizance of the complaint, upon examination of the petitioner under oath and scrutinizing of the documents and



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also the deposition of the witness, Kumaravelu, issued summons to the accused, numbering seven and the A-5/respondent herein entered appearance before the court below and filed vakalat. Alongwith the filing of vakalat, the respondent herein also filed a petition u/s 239 r/w 251 and 258 Cr.P.C. seeking his discharge from the case in C.C. No.8592/2019.

4. The trial court, though did not proceed with further trial of the case, kept the case on board for more than a year and four months and, thereafter, passed the order in the discharge petition holding that the respondent herein was only discharging his official functions and that there being no complaint against the respondent herein before any other authority and that no document has been filed by the petitioner herein to show that similar complaint has been pending against the respondent herein, the court below held that the respondent herein cannot be proceeded u/s 120-B IPC and, accordingly discharged the respondent herein. Aggrieved by the said order, the present revision has been filed by the revision petitioner.

5. Learned counsel appearing for the petitioner submitted that the discharge petition was filed u/s 239 Cr.P.C., which discharge could be



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considered only if the case had been taken up on a police report. However, in the present case, the case having been taken up on a private complaint filed by the petitioner herein, the mandatory procedure prescribed u/s 244 and 245 Cr.P.C. have to be adhered before passing any order on the discharge. However, not only the discharge has been allowed on an erroneous provision of law, but the procedures prescribed u/s 244 and 245 Cr.P.C. have not been adhered to.

6. It is the further submission of the learned counsel that even otherwise, the order of the court below is bad, as the petitioner the materials placed by the petitioner, both oral and documentary have not been considered properly, as there is no discussion on the same in the order passed by the court below.

7. It is the further submission of the learned counsel that the order of the court below is further perverse, in that, a finding is recorded that there is no complaint pending against the respondent herein before any other authority, however, what the court below has failed to notice is that complaint has been forwarded by the Ministry of Home Affairs, Government of India to the

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Director General of Police and the order of the Director General of Police, in para-6 of the said order has noted the lapses on the part of the respondent herein and has made a reference that enquiry is pending against the respondent herein and the investigation was transferred based on the said complaint to the succeeding investigating officer. However, without taking into consideration the materials, or even making a reference to the same, an erroneous finding has been recorded by the court below while ordering discharge, which is *per se* perverse, illegal and liable to be interfered with.

8. Per contra, learned counsel appearing for the submits that the court below has rightly allowed the discharge petition by rendering a finding that the act of the respondent herein is in the course of discharge of his official duties and regarding the same there is no complaint against him before any other authority and, therefore, ordered discharge of the respondent herein. It is the further submission of the learned counsel that merely because a wrong provision of law has been taken in aid of to order discharge, would not make the discharge, which is otherwise in order, liable to be set aside. The findings of the court below are based on materials available on record and, therefore, the same does not require any interference at the hands of this Court.



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9. This Court gave its anxious consideration to the submissions made by the learned counsel appearing on either side and perused the materials available on record.

10. The facts in the present case are not in dispute. The private complaint in Crl. M.OP. No.3538/2019 filed by the petitioner u/s 191 r/w 200 Cr.P.C. was taken cognizance of by the court below by issuing summons after recording the statement of the petitioner herein on oath. Upon the appearance of the respondent herein before the court by filing vakalat to the summons issued, discharge petition was filed u/s 239 Cr.P.C. seeking discharge of the respondent herein. The stand of the petitioner herein is that the said discharge is *per se* bad as the said discharge pertains to a case, which has been instituted upon a police report and the present complaint being a private complaint, discharge could be sought for only by complying with the provisions of Sections 244 and 245 Cr.P.C.



11. For better appreciation, Section 239, 244 and 245 Cr.P.C. are quoted hereunder :-

“239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge

against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

244. Evidence for prosecution. (1) *When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.*

(2) *The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.*

245. When accused shall be discharged. (1) *If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.*

(2) *Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.*



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12. A perusal of Section 239 Cr.P.C. reveals that discharge sought for by an accused in a case, which is taken up based on a police report, which is filed u/s 173 Cr.P.C. In the case on hand, the complaint is a private complaint moved by the petitioner u/s 191 r/w 200 Cr.P.C. and, therefore, necessarily, Section 239 Cr.P.C. would not have application while considering the case for discharge. Therefore, the provision of law under which discharge has been granted is erroneous and cannot be sustained.

13. Turning back to Section 244 and 245 Cr.P.C., which pertains to cases instituted otherwise than on a police report, on the appearance of the accused before the Magistrate, u/s 244 Cr.P.C. the Magistrate is bound to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. The Magistrate may also, on application of the prosecution, issue summons to any of the witnesses directing him to attend or to produce any document or other thing. Thereafter, after taking all the evidence referred to in Section 244 Cr.P.C., the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out, which, if unrebutted, would warrant his conviction, the Magistrate shall



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discharge him. Sub-section (2) of Section 245 Cr.P.C. empowers the Magistrate to discharge the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, if the Magistrate considers the charge to be groundless.

14. The provision, which is applicable to the case of discharge of the respondent herein is Section 245 Cr.P.C. However, it is necessary for the Magistrate to follow the procedure prescribed u/s 244 Cr.P.C. before considering the case for discharge.

15. Keeping the provisions of law in mind, even a bare perusal of the order passed by the court below reveals that while summons have been issued to the accused upon taking the statement of the defacto complainant on oath, upon their appearance, the discharge petition was allowed in favour of the respondent herein. The Magistrate has recorded certain reasons for discharging the respondent herein. However, even a cursory look at the said findings and reasonings would clearly show that the reasonings are not worth the paper on which it is written.



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16. The basis for discharge of the respondent herein is that the act done by him is in the discharge of his official duty. Merely because the act of the respondent herein is alleged to be in the discharge of official duty, without subjecting to trial to find out whether such act is in the discharge of official duty and without even browsing through the materials placed before the court, the Magistrate cannot, *per se*, render a finding that any act done in the discharge of official duty is protected.

17. The highhanded act of the respondent herein, in collusion with other accused, is the basis for the complaint of the petitioner. Moreso, the case has been registered by the respondent herein, which has been referred to as a mistake of fact by the succeeding investigating officer. In such a situation, it is necessary for the court below to have applied its mind to the materials placed by the petitioner herein before arriving at a finding that the act of the respondent herein is protected under the garb of official duty. Further, the discharge, even otherwise, could not have been granted u/s 239 Cr.P.C., as the case was not instituted on a police report, but it is a private complaint and, therefore, without a petition filed u/s 245 Cr.P.C., no discharge could be granted, that too without following the procedure prescribed u/s 244 Cr.P.C.



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18. Further, in the case on hand, no petition has been filed u/s 245 Cr.P.C. Even if it is to be held that the quoting of erroneous provision, viz., 239 Cr..P.C., the Court below could very well take up the petition as one filed u/s 245 Cr.P.C., even then, it becomes necessary for the court below to consider the mandatory conditions prescribed u/s 244 Cr.P.c. before considering extending the benefit u/s 245 Cr.P.C.

19. A perusal of the order passed by the court below reveals that the mandatory guidelines prescribed u/s 244 Cr.P.C. have not been followed. Though the statements of the defacto complainant and one other witness, who were examined on oath were available, but trivial contradictions have been blown out of proportion to give the benefit to the respondent herein. Further, the court below has discharged the respondent on the ground that no independent witness or neighbours of the defacto complainant were examined. One other aspect, which has weighed with the court below is that there was no complaint before any other authority against the respondent herein. But the documents, which have been placed by the petitioner in the typed set of paper clearly shows that disciplinary action has been taken against the respondent



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herein by his higher authority on the basis of the complaint of the petitioner with regard to the present issue and that the investigation of the case has been taken out from him and handed over to the other investigating officer. In fact, the reason for such a course of action by the Director General of Police is spelt out in the order passed therein. Though the said documents were very much available in the typed set of paper, however, for reasons best known, the said documents have not been taken into consideration while the order of discharge had come to be passed. It is also to be pointed out that this Court had also intervened in the matter at the instance of the petitioner earlier and had directed the investigation to be conducted by an officer of the rank of Assistant Commissioner. All these materials are available on record, yet they have not been taken into consideration when the petition for discharge was considered by the court below.

20. Section 244 Cr.P.C. clearly stipulates that it is the bounden duty of the Magistrate to hear the prosecution and take all such evidence as may be produced before deciding the discharge of the accused u/s 245 Cr.P.C. However, it is patently evident from the order passed by the court below that none of the stipulations found in Section 244 Cr.P.C. have been followed while



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discharging the respondent herein, even be it under an erroneously spelt out provision. The necessary documents, which have been filed in the typed set before the court below have not been properly considered before passing the order of discharge, which makes the order perverse and illegal.

21. For the reasons aforesaid, the order passed by the court below holding that the respondent herein cannot be proceeded for the offence u/s 120-B IPC and the consequent discharge of the respondent herein is wholly perverse and illegal and the same is liable to be interfered with.

22. Accordingly, this revision is allowed setting aside the order of discharge passed by the learned Metropolitan Magistrate, CCB-CB-CID, Egmore, Chennai, in Crl. M.P. No.2938/2020 in C.C. No.8592/2019 dated 9.4.2021. The court below is directed to take up the case on file and proceed with the matter in accordance with law.

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Index : Yes / No

MSV/GLN

To

The Metropolitan Magistrate

CCB/CB-CID, Egmore

Chennai.

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M.DHANDAPANI, J.

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