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Crl. O.P.No.26049 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.26049 of 2024
and Crl.M.P. No.14453 of 2024

E.Rajkumar @ Ranjith Kumar

.. Petitioner

Vs.

1.The Deputy Superintendent of Police,
Anti Land Grabbing Special Cell (D.C.B.),
Salem District.
(Crime No.17/2013)

2.D.Senthilkumar

.. Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, to set aside the docket order passed on 25.09.2023 by the Special Court for Cases under SC/ST (POA) Act, Salem made in Spl.S.C. No.26 of 2019.

For Petitioner : Mr.C.Iyyappa Raj

For Respondents : Mr.S.Udaya Kumar
Government Advocate for R1

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ORDER

The petitioner herein is the 5th accused in Spl. S.C. No.26 of 2019 pending on the file of Special Court for SC/STC (Prevention of Atrocities) Act, Salem. He has filed the discharge petition under Section under Section 227 of the Cr.P.C. The said discharge petition is returned with an endorsement that the petitioner has already filed quash petition before the High Court and therefore the petition for discharge is not maintainable and to re-present it with authorities, how the petition is maintainable.

2. The learned counsel appearing for the petitioner states that the right of the accused to file discharge petition does not get familiar intent by filing petition for quash before the High Court under Section 227 of Cr.P.C. On dismissal of the quash petition filed under Section 482 of CrP.C, the learned counsel would submit that the domain of the Hon'ble High Court exercise power under Section 482 of Cr.P.C is not withstanding anything containing in the Court including Section 227 of Cr.P.C and the quash petition filed under Section 482 of Cr.P.C and its dismissal is not a bar for the accused seek for discharge.



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3. The learned Government Advocate (Crl.Side) appearing for the respondent police submits that the trial Court can entertain the discharge petition before framing of charge and dehorse of the fact that the petitioner has approached the High Court quash the final report under Section 227 of Cr.P.C is read as below:

“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.”

4. This provision confers right to the accused seek for discharge before framing of charge if he has any material to show that the case of the prosecution is bereft of material to frame charge of any cognizable offence. The right of the petitioner to file discharge petition cannot be denied on the ground that the quash petition filed by him before High Court is dismissed.



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5. The trial court has to independently consider the discharge petition and pass appropriate order. Since the quash petition was dismissed not on merits of the facts involved in this case but on technical reason that the plea of the accuse, final report filed under the amended provision of SC/ST Act 1989 will not apply to the occurrence which took place in the year 2013 and left to open to the trial court to frame appropriate charge either under the old act or new act whichever is applicable. Hence, discharge petition is filed on the ground other than the ground raised in the quash petition be decided. The trial Court has to consider it on merits and dispose it accordingly.

6. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

7. The trial Court is entertain to discharge the discharge petition filed by the petitioner and dispose it of on merits, within a period of three months from the date of receipt of copy of this order.



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WEB COPY 8. The Registry is directed to return the original discharge application to the petitioner's counsel. It is for him to re-present it along with the order copy before the trial court.

22.10.2024

Vv

To

- 1.The Deputy Superintendent of Police,
Anti Land Grabbing Special Cell (D.C.B.),
Salem District.
- 2.The Special Court for Cases under SC/ST (POA) Act,
Salem.
3. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

Vv

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