



WEB COPY

Crl.O.P.No.335 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.335 of 2024
and Crl.M.P.No.240 of 2024

1.B.Logha Shanmugha Perumal
2.Sumathy

... Petitioners

Vs.

State represented by
The S.H.O, D-1, Lawspet PS
Lawspet Kailshnagar Puducherry 08.

...Respondent

Prayer: Criminal Original Petition is filed under Section 439 of the Code of Criminal Procedure to call for records and set aside the order passed by the Special Sessions Judge-FTC, Puducherry in the Special Court of POCSO under POCSO Act 2012 dated 22.11.2023 in un-number Crl.M.P.No. in Crl.M.P.No.81 of 2023 in Spl.SC.No.27 of 2023 filed under Section 91 Cr.P.C.

For Petitioners : Mr.B.Dakshina Murthy
For RR1 : Mr.K.S.Mohandoss
Public Prosecutor (Pondicherry)

ORDER

This petition has been filed challenging the order passed by the Court below dated 22.11.2023, refusing to entertain the petition filed under Section 91 of Cr.P.C., since the said petition was filed as a defence



document, pending the discharge petition.

2. When the matter came up for hearing on 10.01.2024, this Court passed the following order:

"Mr.A.Damodaran, learned Additional Public Prosecutor, takes notice for respondent.

2. The issue that has been raised in this petition is that there is malicious prosecution against the petitioners and that the same can be clearly established if the letter dated 11.04.2023 issued by the Under Secretary to the Government is brought before the Court. For that purpose, the petitioners had filed a petition u/s.91 Cr.P.C. and this petition was dismissed by the Court below on the ground that the petitioners will have to first establish their defence by cross-examining the witnesses and after laying the defence, it will be left open to the petitioners to bring in the material in support of his defence.

3. Learned counsel for petitioners submitted that if this document is brought before the Court, the petitioners can be discharged from the criminal case and it is not necessary for the petitioners to undergo the trial.

4. In the instant case, charges have been framed and the petitioners have been questioned and already PW-1 is in



the box. Hence, there is no question of discharging the petitioners after the trial has commenced. When the order was passed in the writ petition, this Court had also made it clear that the letter that is relied upon by the petitioners may be a prima facie finding in favour of the petitioners and that it requires to be appreciated by the trial Court while coming to the final conclusion.

5. Learned counsel for petitioners wanted to rely upon some judgments.

6. Learned Additional Public Prosecutor seeks for some time to take instructions.

Post this case on 18.01.2024."

3. In the considered view of this Court, there is no question of discharging a person after the trial has commenced. The trial commences once the charges are framed against the accused person. The scheme of the Code of Criminal Procedure does not contemplate discharge of an accused person after the trial commences. The petitioners are relying upon certain materials, which according to the petitioners will establish the innocence of the petitioners. The defence of the accused person can be established in the course of cross examination of the prosecution witnesses. Thereafter, if that defence has to be substantiated by the petitioners through certain documents, it will always be left open to the petitioners to file a petition under Section



91 of Cr.P.C and seek for those documents. The stage at which such an application can be filed under Section 91 of Cr.P.C will depend upon facts and circumstances of each case. There are cases where such documents may be required in order to discredit a witness. In such cases, it will always be open to file an application and seek for the relevant document, which can be put to the witness in the course of cross examination. There are also cases where some official documents may be required while cross examining the police officials / investigation officer. In those cases, it will always be open to the accused person to seek for production of those documents while cross examining the official witnesses. Therefore, it is not necessary that in each case, the accused person must wait till the completion of the examination of the prosecution witnesses, in order to file an application under Section 91 Cr.P.C.

4. In the instant case, the petitioners are relying upon the letter dated 11.04.2023, which according to the petitioner, has given a clean chit to the petitioner. Those documents can be brought in during the relevant stage of the trial. Ultimately, even insofar those materials are concerned, it will be subject to appreciation of evidence by the Trial Court. Therefore, this court does not find any ground to interfere with the order passed by the Court



below. It will be left open to the petitioners to make the application at the appropriate stage of the trial, by assigning sufficient reasons as to why such documents are required at the time of examination / cross examination of the witness. The Trial Court shall deal with the application at that point of time and pass orders. This finding will sufficiently take care of the grievance expressed by the petitioner.

5. In the light of the above discussion, this Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in Spl.S.C.No.27/2023, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

18.01.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

N. ANAND VENKATESH, J.

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To

WEB COPY

1. The S.H.O, D-1, Lawspet PS
Lawspet Kailshnagar Puducherry 08.
- 2.The Special Sessions Judge-FTC,
Puducherry.
- 2.The Public Prosecutor,
High Court, Madras.

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