



Crl.R.C.(MD)No.841 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.09.2024

Pronounced on : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.841 of 2024

and

Crl.M.P.(MD)No.9181 of 2024

Selvakumar

... Petitioner

Vs.

State through
The Inspector of Police,
Paramathi Velur Police Station,
Karur District.
(Crime No.115 of 2022)

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the order dated 11.07.2024 passed in Crl.M.P.No.2053 of 2023 in S.C.No.56 of 2023 on the file of the Principal District Judge, Karur and set aside the same.

For Petitioner : Mr.N.Anantha Padmanahan, Senior Counsel
for M/s.APN Law Associates

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.2053 of 2023 in S.C.No.56 of 2023 dated 11.07.2024 by the learned Principal District Judge, Karur, dismissing the application filed for discharge under Section 227 of the Code of Criminal Procedure.

2. The petitioner is the second accused facing a case in S.C.No.56 of 2023 for the offences under Sections 302, 120B, 109, 201 and 34 IPC.

3. On the basis of the complaint lodged by one Revathi (wife of the deceased), FIR came to be registered in Crime No.115 of 2022 for the offence under Section 302 IPC and after completing the investigation, final report came to be filed for the offences under Sections 302, 120B, 109, 201 and 34 IPC before the jurisdictional Court and after committal, the case was taken on file in S.C.No.56 of 2023 and is pending on the file of the Principal District Court, Karur.

4. When the case was pending for framing of charges, the petitioner/ second accused has filed the above application under Section 227 Cr.P.C.



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to discharge him from the above case. The respondent police has raised serious objections. The learned Principal District Judge, after enquiry, has passed the impugned order dated 11.07.2024 dismissing the application. Aggrieved by the dismissal of the discharge application, the second accused has preferred the present revision.

5. The case of the petitioner is that a road accident has been converted as a murder case, that the petitioner has been implicated in the above murder case only on the basis of the confession alleged to have been given by the accused 1 and 3, that the only eye witness Ponnusamy has given statement under Section 161(3) Cr.P.C. that a Mahindra Bolero Pickup van driven by the first accused had dashed against the two wheeler, in which, the deceased was travelling and caused his death, that though the said witness had stated that he had witnessed the occurrence, he had not accompanied the deceased to the hospital, that the duty Doctor, while making entry about the production of the dead body, has recorded as unknown dead body, that in the absence of any eye witness to the occurrence, the dead body was taken to the hospital by the Jeyapal, Driver of 108 Ambulance without any other person to accompany the dead body,



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that nobody could mention the address of the deceased, that records would suggest that nobody had witnessed the occurrence, that since the police had no clue till late night, FIR was registered only on 11.09.2022 and produced the same before the Magistrate at 06.30 a.m., that though the complaint was given by one Revathi, wife of the deceased, she has given a statement that herself and her husband were living separately for a long time and divorce petition was pending, that there is absolutely no direct evidence for the occurrence and that too for the involvement of the petitioner and that therefore, the petitioner was constrained to file the above application to discharge him from the above case.

6. As rightly contended by the learned Government Advocate (Criminal Side), in the FIR as well as in the charge sheet, it has been specifically stated that the deceased was having lands adjacent to the Annai Blue Metals Quarry, that the deceased has preferred many complaints against the said Quarry as they have been running the Quarry even after the expiry of the licence period and that there existed previous enmity between them.



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7. No doubt, as rightly pointed out by the learned Senior Counsel appearing for the petitioner, FIR came to be registered against Annai Blue Metals Selvakumar and TN-47-BY-2877 Mahindra Bolero Pickup van driver and the petitioner's name does not find place in the FIR. But according to the prosecution, during investigation, they came to know that the petitioner being the Welding Operator had stayed in the Quarry along with the first accused Sakthivel, Hitachi Operator and that since the deceased had created lots of issues for the third accused to run the Quarry, on 10.09.2022, the third accused called his workers the first accused and the petitioner and hatched a plan to kill the deceased and as per their plan, the first accused had driven the Mahindra Bolero Pickup Van along with the petitioner and dashed against the two wheeler ridden by the deceased and killed him as if they had only caused an accident.

8. As already pointed out, the main contention of the petitioner is that there is no occurrence witness to the incident but police has set up the witness Ponnusamy, as if, he had witnessed the occurrence. Whether the said witness had witnessed the occurrence or not cannot be gone into and decided at this point of time and it is matter for trial.



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9. The next contention of the petitioner is that nobody had accompanied the body of the deceased to the hospital and the duty Doctor, while making the entry, had stated as unknown body. According to the prosecution, the eye witness has given statement that after seeing the occurrence, he informed the same to the wife of the deceased through the deceased nephew Mohanraj and one Periyasamy and both of them came to the scene of occurrence and thereafter the dead body was sent to the Government Hospital through Ambulance.

10. As rightly contended by the learned Government Advocate (Criminal Side), just because the duty Doctor had made an entry that unknown body was brought to the hospital, it cannot be stated that no one had witnessed the occurrence.

11. According to the prosecution, they have examined L.W.11 in order to establish conspiracy. As rightly contended by the learned Government Advocate (Criminal Side), where there was any such conspiracy cannot be gone into now and it is also matter for trial. As rightly observed by the learned Principal District Judge, the probative



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value of the statement of witnesses recorded by the prosecution cannot be gone into at this point of time.

12. As already pointed out, the accused 1 and 3 have given voluntary confession statement, wherein, they have implicated the involvement of the petitioner herein in the occurrence. The validity and legality of the confession statement cannot be tested in the present discharge proceedings.

13. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***.

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil



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Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial”

14. It is settled law that at the stage of framing charges, the Court has to *prima facie* consider whether there is sufficient ground for



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proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

15. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

16. The learned Principal District Judge, after considering the materials available on record, has held that the prosecution has prima facie establishes that there are sufficient grounds to proceed against the petitioner/second accused and as such, the impugned order dismissing the discharge application cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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17. In the result, this Criminal Revision Petition is dismissed.

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Consequently, connected Miscellaneous Petition is closed.

29.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal District Judge,
Karur.
2. The Inspector of Police,
ParamathiVelur Police Station,
Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.841 of 2024
and
Crl.M.P.(MD)No.9181 of 2024

Dated : 29.10.2024