



Crl.R.C.(MD)No.850 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.10.2024

Delivered on : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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Nagarjun

... Petitioner

Vs.

State rep. By the Sub-Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
Crime No.16 of 2021)

... Respondent

PRAYER : Criminal Revision Petition filed under Section 438 r/w 442 BNSS, to set aside the order passed by the learned Judicial Magistrate, Uthamapalayam in Cr.M.P.No.2552 of 2024 in C.C.No.509 of 2023 dated 12.06.2024 pending disposal of the main Criminal Revision.

For Petitioner : Mr.B.Thangamani,

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



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ORDER

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The Criminal Revision is directed against the order passed Cr.M.P.No.2552 of 2024 in C.C.No.509 of 2023, dated 12.06.2024, on the file of the Court of the Judicial Magistrate, Uthamapalayam, dismissing the petition for discharge filed under Section 239 of Cr.P.C.

2. The petitioner is the fourth accused in C.C.No.509 of 2023 for the offence under Sections 109, 498(A), 417, 406, 506(i) of IPC and Section 4 of Dowry Prohibition Act. On the basis of the complaint given by one Harshilla, FIR came to be registered in Crime No.16 of 2021 on the file of the respondent/All Women Police Station, Uthamapalayam, for the alleged offence under Sections 406, 420, 498(A), 506(i) IPC and Section 4 of Dowry Prohibition Act against four persons including the petitioner. After completing the investigation, final report came to be filed and the case was taken on file in C.C.No.509 of 2023 for the alleged offence under Sections 109, 498(A), 417, 406, 506(i) of IPC and Section 4 of Dowry Prohibition Act against four accused including the petitioner herein and is pending on the file of the Judicial Magistrate Court, Uthamapalayam.



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3. It is not in dispute that the marriage between the defacto complainant and the first accused was solemnized on 20.01.2019 and due their wedlock, they were blessed with a female child. The second accused is the father, the third accused is the mother and the fourth accused/petitioner herein is the brother of the first accused.

4. The case of the prosecution is that the accused, by representing that the first accused was working as Assistant Wild Life Enforcement Officer, married the defacto complainant, but subsequently, they came to know that the first accused was without job and that the accused had cheated the defacto complainant's family; that the complainant's parents had given 65 sovereigns of jewels and house hold articles worth about Rs.10 lakhs as demanded by the accused; that the first accused, by representing that he is going to install a private helipad, had pledged the jewels of the complainant; that the accused, by representing that Police SI job is ready for the petitioner/A4, have taken 10 sovereigns of jewels from the complainant by threatening her; that the accused had further demanded 50 sovereigns of jewels and Rs.10 lakhs cash; that the first



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accused at the instigation of his parents had abused and assaulted the defacto complainant very often and that they had threatened that they would kill her by setting fire as if she had died due to blasting of gas cylinder.

5.After furnishing the copies under Section 207 Cr.P.C., when the case was pending for framing of charges, the fourth accused has filed the present application, seeking discharge from the above case.

6. The case of the petitioner is that FIR was registered on the basis of the complaint, which was forwarded by the Office of the Superintendent of Police to the respondent; that the defacto complainant has given a complaint to the Office of the Superintendent of Police on 20.11.2020, but subsequently, she has given another complaint before the Sub-Inspector of Police, All Women Police Station, Uthamapalayam on 29.11.2020 and another complaint to the very same Police on 03.12.2020; that the defacto complainant has given three complaints on various dates, but the prosecution has not mentioned on which complaint, investigation had been taken; that some of the contents in the first



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complaint differed with other two complaints; that the original complaint, which has been given to the Superintendent of Police, Theni has been suppressed; that the defacto complainant's allegations against the petitioner/fourth accused were shown in different manner in the three complaints; that very lodging of three complaints for the very same alleged offence is against law; that the prosecution has not referred any place of occurrence, date and time of occurrence with regard to the petitioner/fourth accused; that though the complainant in the complaint, dated 20.11.2020 has stated that the jewels given by her parents had been received by the first accused, but in the complaint, dated 03.12.2020, she has stated that 10 sovereigns of Thali chain was received by the accused 1 and 4, but whereas according to the accused, thali chain was given by the first accused to the defacto complainant, but the same was suppressed by the defacto complainant and her parents; that the petitioner has been working as a police from 2011 onwards, without any remarks; that when the petitioner after attending written examination and entrance test and was awaiting for viva, they have falsely implicated the petitioner in the above case; that the defacto complainant and her parents were fully aware that the first accused was working in a private concern and as

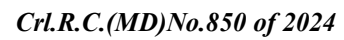


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such, the offence under Section 417 IPC will not attracted; that the final report filed by the prosecution is full of false case and full of contradictions and that therefore, the petitioner/fourth accused has to be discharged from the above case.

7. It is evident from the impugned order that the respondent police has filed a counter raising objections stating that after thorough investigation, charge sheet came to be filed against the accused including the petitioner herein; that the Court has to consider the police report and documents filed under Section 173 of Cr.P.C., to see whether the charges levelled against the accused are groundless and that while framing of charges, the Court should only apply *prima facie* standard and that therefore, the discharge petition is legally not maintainable and the same is liable to be dismissed.

8. No doubt, as rightly contended by the learned counsel for the petitioner, the learned Magistrate, by only relying on the judgment of the Hon'ble Apex Court in the case of ***State through Deputy Superintendent of Police Vs. R.Soundirarasu and others*** reported in ***Live Law (SC) 741***



9. No doubt, the impugned order is a cryptic order and without proper discussion. The learned Magistrate, by simply referring the judgment of the Hon'ble Supreme Court, dismissed the petition. The main reason or ground canvassed by the petitioner for discharge is that the defacto complainant has given three complaints and the contents of the complaint are differing with each other; that the defacto complainant has raised allegations against the petitioner/fourth accused in a different manner in her three complaints; that there are lot of contradictions between the contents of the complaint and the statement recorded under Section 161(3) Cr.P.C., that the original complaint given by the defacto complainant has been suppressed and that the prosecution has nowhere whispered about the place, date and time of the occurrence involving the petitioner herein.



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10. It is evident from the records that the defacto complainant has originally preferred a complaint before the Office of the Superintendent of Police on 20.11.2020 and the same was forwarded by the Office of the Superintendent of Police to the respondent police and on that basis, the Head Constable -1704, Tmt.G.Muthu Lakshmi, had registered the FIR in Crime NO.16 of 2021 on the file of the All Women Police Station, Uthamapalayam. According to the petitioner, the defacto complainant has subsequently given two more complaints before the SI of Police, All Women Police Station on 29.11.2020 and 03.12.2020.

11.It is the specific case of the prosecution that the accused, by representing that Police SI job is ready for the petitioner, had threatened the defacto complainant and received 10 sovereigns of jewels. It is their further case, the accused had further demanded more dowry and harassed her continuously. The learned counsel for the petitioner would mainly contend that there are several contradictions between the complaint and the statement recorded under Section 161(3) Cr.P.C.



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12. Even assuming for arguments sake that there are certain contradictions, that by itself is not a ground to discharge the petitioner from the above case. It is pertinent to note that the contradictions, if any have to be elicited during the trial and if there are material contradictions, the defence can very well take advantage of the same and the same cannot be gone into in the present stage and are matter for trial.

13.As rightly contended by the learned Government Advocate (Criminal Side), there are specific allegations levelled against the petitioner, whether the same are true or not cannot be considered and decided in the present proceedings and the same can only be decided during the trial. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in the ***State of Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 45*** .

“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. CNI (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, Niranjan



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Sngn Karan Singh Punjabi vs. Jitendra Bhimraj Bijjayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affiars, West Bangal v. Anil 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.”



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14. It is settled law that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for 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. It is pertinent to note that the Courts while dealing with the application for discharge, are required only to see whether a prima facie is made out against the accused and detailed enquiry is not required at this stage. The learned Magistrate has relied on the judgment of the Hon'ble Supreme Court in the *State through Deputy Superintendent of*



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Police Vs. R.Soundirarasu and others, above referred, wherein the case of ***State of Karnataka Lokayukta, Police Station Bengaluru v. M.R.Hiremath (2019) 7 SCC 515*** and the decision in State of ***Tamil Nadu Vs.N.Suresh Rajan reported in (2014) 11 SCC 709***, were referred, wherein it has been specifically held that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence and that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.

17. Considering the records available, as rightly observed by the learned Magistrate, there existed prima facie materials to frame charges against the petitioner/A4 and that therefore, it cannot be stated that there is nothing to proceed further. Hence, the order dismissing the discharge petition by the learned Magistrate cannot be found fault with.



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Consequently, this Court concludes that the Criminal Revision case is devoid of merits and the same is liable to be dismissed.

18. In the result, the Criminal Revision Case is dismissed and the order dated 12.06.2024 passed in Cr.M.P.No.2552 of 2024 in C.C.No.509 of 2023, on the file of the Judicial Magistrate Court, Uthamapalayam stands confirmed.

13.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Judicial Magistrate,
Uthamapalayam.
- 2.The Sub-Inspector of Police,
All Women Police Station,
Uthamapalayam, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CrI.R.C.(MD)No.850 of 2024

Dated: 13.11.2024