



Crl.R.C.(MD)No.872 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2024

Pronounced on : 19.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.872 of 2024

and

Crl.M.P.(MD)Nos.9631 and 9632 of 2024

Nagamani

... Petitioner

Vs.

State rep. by,
Inspector of Police,
S.S. Colony Police Station,
Madurai.
(Crime No.485 of 2016)

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 and 442 B.N.S.S., to call for the records of the impugned judgment passed by the V Additional District and Sessions Court, Madurai in Crl.M.P.No.1287 of 2024 in S.C.No.28 of 2023 dated 12.08.2024 and set aside the same by allowing the revision petition.

For Petitioner : Mr.R.Manoharan

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



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ORDER

The Criminal Revision Petition is directed against the order passed in Cr.M.P.No.1287 of 2024 in S.C.No.28 of 2023 dated 12.08.2024 on the file of the V Additional District and Sessions Court, Madurai, dismissing the application filed for discharge under Section 227 of the Code of Criminal Procedure.

2. The petitioner, who is the second accused, is facing a case in S.C.No.28 of 2023 for the alleged offences under Sections 294(b), 448, 307, 506(2), 337 r/w 109 r/w 34 IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

3. On the basis of the complaint lodged by one Manikandan, FIR came to be registered in Crime No.485 of 2016 on the file of the respondent police and after completing the investigation, the respondent police has laid the final report before the jurisdictional Court and after committal, the case was taken on file in S.C.No.28 of 2023 and the same was made over to the V Additional District and Sessions Court, Madurai. When the case was pending for framing of charges, the petitioner/second



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accused has filed the above application under Section 227 Cr.P.C. to discharge her from the above case.

4. The case of the prosecution is that on 23.04.2016, all the accused including the petitioner herein came to the Gowri Krishna Hotel situated at bypass road Madurai and calling the defacto complainant outside, abused in filthy language and pelted stones at the hotel and that thereafter at the instigation of the accused 2 and 3, the first accused had driven the car into the hotel and caused damages to the hotel to the tune of Rs.18,95,171/-.

5. The case of the petitioner is that the petitioner is absolutely innocent and the entire case was pinned against the petitioner based on the presumption and assumption, that there is no *prima facie* case as against the petitioner for the alleged offence under TNPPDL Act and other alleged offences, that the petitioner will disprove the prosecution case through unimpeachable documentary evidence at the time of trial, that the respondent police has fabricated the case with magical words but not by evidence, that the prosecution has not mentioned any particular obscene word alleged to have been used by the accused in the charge sheet, that the



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case of the prosecution is very vague and the materials available on record cannot attract the offence under Section 294(b) IPC, that there are no traces for attributing annoyance to others by the petitioner as there were no particular words uttered as alleged, that there are absolutely no materials available on record to make out a *prima facie* case as against the petitioner and other accused and that therefore the petitioner was constrained to file the above application seeking discharge from the above case. The respondent police has raised their objections. The learned Sessions Judge, after enquiry, has passed the impugned order dated 12.08.2024 dismissing the application. Aggrieved by the dismissal of the discharge application, the present revision came to be filed.

6. It is not in dispute that the petitioner is the wife and the third accused is the mother of the first accused. It is also not in dispute that the third accused has earlier filed a similar application under Section 227 Cr.P.C. in Cr.M.P.No.159 of 2024 to discharge her from the above case and the said application came to be dismissed by the Sessions Court on 12.02.2024.



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7. It is pertinent to note that this Court in Crl.O.P.(MD)No.15128 of 2023 has passed an order dated 29.08.2023 directing the trial Court to complete the trial and dispose of the case within a period of six months from the date of receipt of the copy of the said order.

8. As rightly contended by the learned Government Advocate (Criminal Side), there are materials available to show that the petitioner and the third accused were very much available at the occurrence place and they were also involved in the commission of offence along with the first accused.

9. Though the petitioner has not impleaded the defacto complainant, Mr.Pandidurai, learned counsel representing for the defacto complainant would submit that the defacto complainant and another witness have given statements under Section 161(3) Cr.P.C. specifically stating that the petitioner was very much available at the occurrence place and he has produced the photographs to show that all the three accused were present in front of the hotel on 23.04.2016 and also to show the way in which the occurrence of dashing the car into the hotel.



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10. It is pertinent to note that in the application filed under Section 227 Cr.P.C., the petitioner has mainly averred with regard to the offence under Section 294(b) IPC that the materials available on record would not attract the said offence. The learned Sessions Judge has considered the charge sheet and other materials filed along with the charge sheet and by observing that there are materials to frame charges against the petitioner and that there is absolutely no scope for discharging the petitioner at this point of time, dismissed the application.

11. Before entering into further discussion, 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 Bijjaya (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”

12. 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



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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.

13. 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.

14. 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. Bearing the above legal position in mind, let us consider the case on hand.

15. As already pointed out, in the present case, there are materials



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available to proceed against the petitioner and that there existed *prima facie* materials to frame the charges against the petitioner.

16. Considering the above, the impugned order dismissing the discharge application cannot be found fault with. Moreover, as already pointed out, the third accused has filed the discharge application at the first instance and after dismissal of the same, now the accused have set up the petitioner/second accused to file the above application and that the above would go to show that the accused have been attempting to drag on the proceedings. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

17. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

19.10.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

csn

To

1. The V Additional District and Sessions Judge,
Madurai.
2. The Inspector of Police,
S.S. Colony Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in

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and

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Dated : 19.10.2024