



Crl.R.C.(MD)No.921 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2024

Pronounced on : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.921 of 2024
and
Crl.M.P.(MD)No.10167 of 2024

1.I.Rajendran

2.R.Devaprahasini

... Petitioners

Vs.

State rep. by its through
The Inspector of Police,
Madurai Town All Women Police Station,
Madurai.
(Crime No.01 of 2018)

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records relating to the order passed in Cr.M.P.No. 1340 of 2024 in C.C.No.38 of 2019 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and set aside the same by allowing the revision petition.



Crl.R.C.(MD)No.921 of 2024

WEB COPY

For Petitioners : Mr.P.T.Ramesh Raja

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

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.1340 of 2024 in C.C.No.38 of 2019 dated 08.08.2024 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai, dismissing the application filed for discharge under Section 239 of the Code of Criminal Procedure.

2. The petitioners are the accused 2 and 3 in C.C.No.38 of 2019 for the alleged offences under Sections 406 and 498(A) IPC.

3. It is evident from the records that on the basis of the complaint lodged by one Deepika Rani, FIR came to be registered in Crime No.1 of 2018 against three persons including the petitioners for the alleged offences under Sections 498(A) and 406 IPC and that after completing the investigation, final report came to be filed before the jurisdictional Court



Crl.R.C.(MD)No.921 of 2024

and the case was taken on file in C.C.No.38 of 2019 and is pending on the file of the Additional Mahila Court-Magisterial Level, Madurai.

4. When the calendar case was pending for framing of charges, the petitioners, who are the accused 2 and 3, have filed the above application in Crl.M.P.No.1340 of 2024 under Section 239 Cr.P.C. seeking orders to discharge them from the above case. The respondent police has filed a counter statement raising serious objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 08.08.2024 dismissing the discharge application. Aggrieved by the order of dismissal, the present revision came to be filed.

5. It is not in dispute that the marriage between the defacto complainant and the first accused Praveenraj was solemnized on 29.05.2015.

6. The case of the prosecution is that at the time of marriage, the defacto complainant's parents had given 81 sovereign of gold jewels and household articles valued at Rs.3 lakhs and 9 sovereign of jewels to the



Crl.R.C.(MD)No.921 of 2024

WEB COPY

first accused, that even at the time of marriage and reception, the petitioners for not giving teak wood berow, had abused the defacto complainant's parents in filthy language, that the first accused had threatened the defacto complainant that he would release the video taken at their first night, that all the accused had harassed the defacto complainant and subjected her to mental cruelty, that on 14.08.2016, baby showering ceremony was conducted and at that time, the second petitioner has collected 81 sovereign of gold jewels from the defacto complainant and failed to return the same to her and thereby committed criminal breach of trust and that they had also abused the defacto complainant demanding more dowry, failing which, they would not allow the defacto complainant to live with the first accused.

7. The case of the petitioners is that the defacto complainant has also filed a complaint under Section 12 of Protection of Women from Domestic Violence Act and the same is pending in D.V.C.No.27 of 2020, that the defacto complainant has examined herself as P.W.1, that the complaint of the defacto complainant was earlier referred to the District Social Welfare Officer/Dowry Prohibition Officer, that the defacto



Crl.R.C.(MD)No.921 of 2024

complainant and the petitioners had appeared before the District Social Welfare Officer for enquiry, that after enquiry, the District Social Welfare Officer has given a report stating that no dowry harassment was caused to the defacto complainant, that the report given by the District Social Welfare Officer was purposely suppressed by the respondent police, that they have not examined the said District Social Welfare Officer during investigation and therefore no case is made out for the offence under Section 498(A) IPC as against the petitioners, that the defacto complainant, while giving evidence as P.W.1 in D.V.C.No.27 of 2020, has admitted that Ex.R.3-copy of the photograph was taken at naming ceremony i.e., after the baby showering ceremony and in that photograph, she was found that she was wearing all her jewels, that the defacto complainant had taken her jewels away from the first accused on 02.12.2015 and for that the first petitioner has sent an e-mail message to the father of the defacto complainant and the same was admitted by the defacto complainant during her cross-examination in DVC case, that the petitioners have not received any jewels from the defacto complainant and all the jewels are in the custody of the defacto complainant and therefore no case is made out for the offence under Section 406 IPC and that since



Crl.R.C.(MD)No.921 of 2024

the first accused sent a legal notice to the defacto complainant stating that she had caused mental cruelty to him, after receiving the said notice, she has given the above false complaint.

8. The respondent police has filed a counter statement raising objections and further stated that during the course of investigation, all the incriminating materials were collected and as many as 7 witnesses were recorded and after proper investigation, final report came to be filed, that the assertions made against the accused are specific as to the date and place of occurrence and as to how the mother-in-law and father-in-law of the defacto complainant caused mental cruelty on different occasions and the same would go to show that there existed *prima facie* case against the accused, that the allegations that the defacto complainant has admitted the photograph taken at the naming ceremony of her child during her cross-examination and that the defacto complainant was wearing all her jewels, are mere presumption and assumption of the accused, that the defacto complainant has given appropriate answer for the same and she has not accepted what was so presumed by the accused, that the defacto complainant has stated that she does not know what was written in the



Crl.R.C.(MD)No.921 of 2024

e-mail sent by her father-in-law, that the Court cannot consider the evidence given in the DVC case at the stage of framing of charges, that the probative and evidentiary value of the materials cannot be evaluated at the time of framing of charges and that therefore the discharge application is liable to be dismissed.

9. The learned counsel appearing for the petitioners would submit that the District Social Welfare Officer has given a report stating that there was no dowry harassment caused to the defacto complainant and that the said report was not at all taken into account by the respondent police during investigation. He would further submit that the evidence given by the defacto complainant in the DVC case would go to show that the jewels are only with the defacto complainant and not with the petitioners. By placing the above arguments, the learned counsel appearing for the petitioners would request the Court to consider the report of the District Social Welfare Officer and the deposition of the defacto complainant recorded in D.V.C.No.27 of 2020 on the file of the Additional Mahila Court, Madurai.



Crl.R.C.(MD)No.921 of 2024

WEB COPY

10. The learned counsel appearing for the petitioners would rely on the judgment of the Hon'ble Supreme Court in ***Satish Mehra Vs. Delhi Administration and another*** reported in (1996) 9 SCC 766 and argued that the Court can very well consider the materials placed by the accused while considering the discharge application or at the time of framing of charges and the relevant passages are extracted hereunder:-

“Similar situation arise under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two State the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next State. It is a matter of exercise of judicial mind. There is nothing in the code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the "ground" may be any valid ground including insufficiency of evidence to prove charge.



Crl.R.C.(MD)No.921 of 2024

WEB COPY

The object of providing such an opportunity as is envisaged in Section 227 of the code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even material which the accused may produce at the stage contemplated in Section 227 of the Code.”

11. At this juncture, it is necessary to refer the Three Judge Bench decision of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi*** reported in ***AIR 2005 SC 359***, wherein, the Hon'ble Apex Court has held that ***Satish Mehra's*** case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided and the relevant passages are extracted hereunder:-

“ In this case too the question was not about the right of the accused to file material at the stage of framing



Crl.R.C.(MD)No.921 of 2024

charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of State of Madhya Pradesh v. MohanLal Soni [(2000) 6 SCC 338] sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

12. The Hon'ble Supreme Court, in **Debendra Nath Padhi's** case after surveying the law on the point, has specifically held that at the stage of framing of charge, the trial Court can consider only the material produced by the prosecution and there is no provision in the Code which



Crl.R.C.(MD)No.921 of 2024

would confer a right upon the accused to file any material or document at that stage which right was held available to the accused only at the stage of trial.

13. In the case of ***State of Gujarat Vs. Dilipsinh Kishorsinh Rao*** reported in **2023 LiveLaw (SC) 874**, the Hon'ble Supreme Court has reiterated the legal position and the same is extracted hereunder:-

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding



WEB COPY



Crl.R.C.(MD)No.921 of 2024

against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.”

14. Considering the above, legal position is well settled that while considering the discharge application, the accused does not have any right to produce any material or documents and that the Court should base its decision solely on the charge sheet materials provided by the prosecution, presuming the material to be true for the purpose of determining the existence of *prima facie* case.



Crl.R.C.(MD)No.921 of 2024

WEB COPY

15. Considering the above legal position, this Court has no hesitation to hold that the materials now produced by the petitioners i.e., the report of the District Social Welfare Officer and deposition of the defacto complainant in the DVC case, cannot be looked into. Even assuming for arguments sake that the same can be considered for the present discharge application, the report given by the District Social Welfare Officer is binding neither on the police nor on the Court. The police authorities are duty bound to investigate the case independently and to take a decision as to whether there are *prima facie* materials to proceed against the accused. As rightly observed by the learned trial Judge, the defacto complainant has not only alleged dowry harassment but also alleged other harassment meted out to her by her in-laws.

16. Regarding the evidence of the defacto complainant, that can be used only for contradicting the defacto complainant while giving evidence in the main trial of the present case and the evidence given in the other case cannot be used for deciding the discharge application at this point of time.



Crl.R.C.(MD)No.921 of 2024

WEB COPY

17. At this juncture, 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 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



Crl.R.C.(MD)No.921 of 2024

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”

18. 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.

19. 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



Crl.R.C.(MD)No.921 of 2024

WEB COPY

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.

20. As rightly contended by the learned Government Advocate (Criminal Side), there are specific allegations levelled against the petitioners in the complaint as well as in the statement recorded under Section 161(3) Cr.P.C. The petitioners have sought for discharge only on the basis of the materials produced by them i.e., report of the District Social Welfare Officer and deposition of the P.W.1 and except the above, they have not canvassed any other reason or ground for seeking discharge. As rightly contended by the learned Government Advocate (Criminal Side), the prosecution has produced sufficient materials to proceed against the petitioners. The learned trial Judge, by specifically observing that there existed *prima facie* materials to frame charges against the accused, dismissed the application.

21. Considering the above, 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



Crl.R.C.(MD)No.921 of 2024

dismissed.

WEB COPY

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

Consequently, connected Miscellaneous Petition is closed.

29.10.2024

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

To

1. The Judicial Magistrate,
Additional Mahila Court, Madurai.
- 2.The Inspector of Police,
Madurai Town All Women Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD)No.921 of 2024

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
Crl.R.C.(MD)No.921 of 2024
and
Crl.M.P.(MD)No.10167 of 2024

Dated : 29.10.2024