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Crl.R.C.No.44 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 11.03.2025

Orders Pronounced on : 25.03.2025

Corm:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.44 of 2025

and

Crl.M.P.No258 of 2025

--

M.A.M.R.Muthiah, S/o Dr.M.A.M.Ramasamy (late)

.. Petitioner

Vs.

K.Muthuvelliyan, S/o Mr.Kasinathan

.. Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. and Sections 438 and 442 of BNSS, against the order dated 16.12.2024 in Crl.M.P.No.717 of 2019 in C.C.No.6066 of 2016 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai-15.

For petitioner : Mr.A.K.Shriram, Senior Counsel

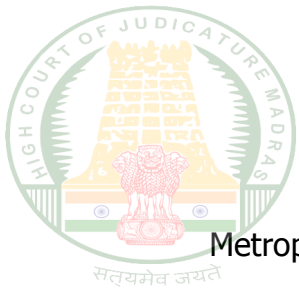
for Mr.Valibha R.Venkatesh

For respondent: Mr.A.Nagarajan

ORDER

This revision petition is filed challenging the order dated 16.12.2024 in Crl.M.P.No.717 of 2019 in C.C.No.6066 of 2016 on the file of the XXIII

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Metropolitan Magistrate, Saidapet, Chennai-15.

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2. The revision petitioner is A1 in C.C.No.6066 of 2016. The respondent herein filed a complaint under Section 200 and 190 of Cr.P.C. before the XXIII Metropolitan Magistrate against the revision petitioner/A1 and another, for the offences under Sections 109, 448, 427 and 506 (Part-2) IPC. The learned Magistrate took cognizance of the complaint in C.C.No.6066 of 2016. Pending the said C.C., the revision petitioner/A1 filed an application to drop further proceedings as against the revision petitioner. The Metropolitan Magistrate, after hearing both sides, dismissed the petition on the ground of maintainability, against which, the present revision petition is filed by A1.

3. The case of the respondent/complainant is as follows:

(i) The complainant is in-charge of the day-to-day maintenance and activities of Chettinad House, M.R.C.Nagar, Raja Annamalaipuram, Chennai-600 028. The land in R.S.No.4288/13 at MRC.Nagar, Chennai-600 028, is owned by Dr.M.A.M.Ramaswamy, Kumararni Dr.Meena Muthiah and Mr.M.A.M.M.Annamalai measuring at about 50 grounds, who are residing at Chettinad House, Raja Annamalaipuram, Chennai-600 028.

(ii) The said property was given on an oral lease to South India

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Corporation Private Limited till 31.03.2014 and after expiry of the lease period, the South India Corporation Private Limited voluntarily vacated and surrendered the possession. Thereafter, the entire property is in possession, ownership and enjoyment of Dr.M.A.M.Ramaswamy and the other co-owners by paying the necessary tax dues to the Government authorities.

(iii) The Chettinad Security Group, led by one Azhagu, the second accused and his associates/security guards, at the instigation of A1/Mr.M.A.M.R.Muthiah, with an intention to grab the above said property, trespassed unlawfully and caused damage to the property and threatened the security staff with dire consequences and indulged in criminal activities, picked up wordy quarrel on several occasions and caused simple injury.

(iv) To overcome their illegal activities, the said Azhagu (A2) made false Police complaint against the respondent herein/complainant to the Inspector of Police, E.5 Pattinapakkam Police Station, Chennai-600 028. After enquiry, the complaint was closed by the E.5 Pattinapakkam Police Station.

(v) The complainant frequently visits and inspects the property, depending upon the day-to-day affairs, activities and directions of Dr.M.A.M.Ramaswamy, who is a aged person/senior citizen and employer of the complainant.

(vi) On 21.02.2015 at about 7.30 p.m., A2 and his associates entered into the above said property by breaking open the locks of main entrance gate and



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threatened the security of the property who guarded the same as per the direction of Dr.M.A.M.Ramaswamy. A2 and his associates snatched the key and cell phone and tried to assault the said security guards. On hearing the news on the next day, Dr.M.A.M.Ramaswamy directed his servants to rush to the spot and enquired about the offences committed by A2 and his associates.

(vii) On verification, the complainant and Dr.M.A.M.Ramaswamy found that the main gate was damaged and caused loss worth about Rs.25,000/- by trespassing into the above said property by A2 and his associates at the instigation of A1 Mr.M.A.M.R.Muthiah, who is making all sorts of illegal activities to grab the property from Dr.M.A.M.Ramaswamy.

(viii) Aggrieved by the above illegal acts, the said Dr.M.A.M.Ramaswamy lodged a Police complainant to the Inspector of Police, E.5 Pattinapakkam Police Station on 22.02.2015. A1 and his associates threatened the security guards (employed) of Dr.M.A.M.Ramaswamy on 21.02.2015 at about 7.30 p.m. and at that time, they mentioned that no one should inform to the Police, otherwise, they will go to any extent including killing of them as per the instructions of A1 and further informed that they could do whatever they like and they were above the law of land.

(ix) After hearing the above incident, the security guards reluctantly informed to the complainant as well as Dr.M.A.M.Ramaswamy by fearing their



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life at the hands of A1 and A2. Thereafter, on due verification, the complainant and Dr.M.A.M.Ramaswamy came to know about the above incident and immediately lodge a complaint before the Inspector of Police, E.5 Pattinapakkam Police Station.

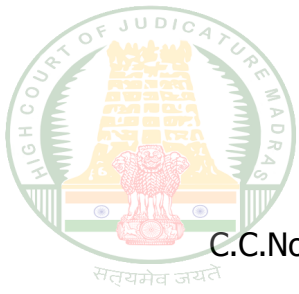
(x) However, the security guards employed by Dr.M.A.M.Ramaswamy are in constant and continuing fear of their life and safety of the property guarded by them due to the illegal activities of A1 and A2.

(xi) After receipt of the complaint dated 22.02.2015 from Dr.M.A.M.Ramaswamy by the Inspector of Police, E.5 Pattinapakkam Police Station, gave a petition receipt in C.S.R.No.125 of 2015, dated 23.02.2015. However, no action was taken against the accused persons by the Police.

(xii) All the above offences under Sections 109, 448, 427 and 506 (Part-2) of IPC, committed by the accused persons, are cognizable in nature and it is the duty of the Police to register a case against the accused persons. But, no action was taken on the said complaint dated 22.02.2015 by the Police. Hence, the respondent/complainant filed the complaint before the Court for taking the private complaint on file and take appropriate steps to punish the accused persons for the offences under Sections 109, 448, 427 and 506 (Part-2) IPC.

4. The revision petitioner herein is arrayed as A1. Pending the said

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C.C.No.6066 of 2016, the revision petitioner has filed a petition before the Metropolitan Magistrate to drop the proceedings against him, on the ground that no prima-facie case is made out as against the revision petitioner/A1 in respect of the said offences.

5. It is seen from the records that originally, the complaint was filed for the offences under Sections 109, 448, 427 and 506 (Part-2) IPC. The learned Metropolitan Magistrate has taken cognizance of the complaint only under Sections 427 and 448 IPC and after receiving the report from the Police under Section 202 Cr.P.C. Thereafter, after receipt of summons, the revision petitioner/A1 has filed a petition to drop the proceedings against him, and the said petition was dismissed, against which, A1 has filed the present revision petition.

6. The learned Senior Counsel appearing for the revision petitioner submitted that the learned Metropolitan Magistrate failed to consider the fact as to whether prima-facie case is made out or not, to prosecute against the accused persons for the offences under Sections 427 and 448 IPC. The Metropolitan Magistrate simply dismissed the petition on the ground that since the cognizance of the complaint for the offences are summary in nature and there is no specific

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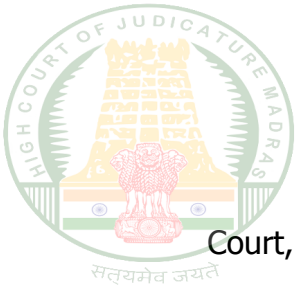
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provision for discharge of the revision petitioner/A1. Therefore, the petition was dismissed by the Metropolitan Magistrate by the impugned order on the ground of maintainability. Hence, the revision petitioner/A1 has approached this Court.

7. The learned Senior Counsel further contended that when the revision petitioner/A1 approached this Court in CrI.O.P.No.1328 of 2017 to quash the prosecution in C.C.No.6066 of 2016 and this Court dismissed the said CrI.O.P. on 29.01.2019, with liberty to the revision petitioner to agitate the points during trial, without expressing any view regarding the merits of the case. As against the said order of this Court, the present revision petitioner/A1 approached the Supreme Court in S.L.P.(CrI).Diary No.25695 of 2019, and the Supreme Court, while issuing notice, granted interim order on 06.09.2019 holding that, "In the meantime, there shall be stay of further proceedings in M.P.No.4433 of 2015 in C.C.No.6066/2016 pending before the Court of XXIII, Metropolitan Magistrate, Saidapet, Chennai for a period of eight weeks from today".

8. According to the learned Senior Counsel, thereafter, the revision petitioner herein/A1 again approached the Supreme Court in Petition for Special Leave to Appeal (CrI) No.8227 - 8230 of 2019, challenging the order of this Court, dated 29.01.2019 passed in CrI.O.P.No.1328 of 2017 on the file of this

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Court, and the said petition was disposed of by the Supreme Court on

05.01.2024 holding as follows:

"We are not inclined to interfere with the impugned judgment and hence, the special leave petitions are dismissed.

We, however, clarify that the impugned judgment and the dismissal of the present special leave petition will not bar or prohibit the petitioner-M.A.M.R.Muthiah from raising all pleas and contentions before the trial court including the contention with regard to the effect of the death of Dr.M.A.M.Ramaswamy, and whether the prosecution in a private complaint case, can continue.

It will be open to the petitioner--M.A.M.R.Muthiah to file an application for exemption from personal appearance. If any such application is filed, the same will be considered and examined in accordance with law.

Pending application(s), if any, shall stand disposed of."

9. The revision petitioner/A1 thereafter approached the Metropolitan Magistrate by filing petition for dropping the proceedings in CrI.M.P.No.717 of 2019 in C.C.No.6066 of 2016, and the said petition was dismissed by the

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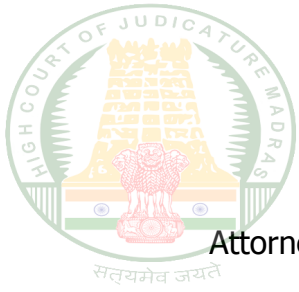
Magistrate on the ground of maintainability.

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10. The learned Senior Counsel appearing for the revision petitioner further contended that the respondent herein/complainant has filed the complaint as Power Agent based on the Power of Attorney. Subsequently, the principal died and therefore, the Power of Attorney becomes invalid upon the death of the principal. Therefore, the respondent/complainant does not have any authority to continue the impugned prosecution in this case.

11. The learned Senior Counsel appearing for the revision petitioner/A1 further stated that the complaint to the Police was preferred by the father of the revision petitioner, i.e. Dr.M.A.M.Ramaswamy and subsequently, the complaint has been preferred before the Magistrate by the respondent/complainant. There is no averment in the complaint and in the sworn statement, in his capacity, it is stated that the complaint was preferred by the respondent, but on the other hand, in the investigation report filed by the Police before the Metropolitan Magistrate, in the list of documents, it is mentioned as Power of Attorney. Taking into account that if the prosecution is initiated on the basis of the Power of Attorney, then the prosecution is liable to be quashed for the reason that, upon the death of the principal, namely Dr.M.A.M.Ramaswamy, the Power of

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Attorney ceases to exist. Even as per the statement of the respondent/complainant, the Power of Attorney was given to him by Dr.M.A.M.Ramaswamy only to manage the affairs of the house and clearly, there is no authorisation for the complainant to file the present complaint.

12. The learned Senior Counsel appearing for the revision petitioner/A1 further stated across the Bar that even according to the case of the prosecution, the petitioner was not present at the place of occurrence on 21.02.2015 and therefore, the revision petitioner/A1 cannot be charged for the offences stated in the complaint, when the fact remains that the revision petitioner/A1 has not committed any offence.

13. The learned Senior Counsel appearing for the petitioner further contended that no allegations have been made out as against the revision petitioner/A1 in respect of the offences under Sections 427 and 448 IPC. The respondent/complainant is not the eye-witness to the alleged occurrence on 21.02.2015. The complainant did not report with regard to any of the events , and even the said M.A.M.Ramaswamy was not an eye-witness to the alleged occurrence. His version to the Police is also based on what he had heard.

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14. The learned Senior Counsel appearing for the petitioner also stated that a prima-facie case has not been made out in the instant case, even as per the version of the complainant and the report, dated 21.07.2016 filed by the Police under Section 202 Cr.P.C. The revision petitioner/A1 was not even present in the scene of occurrence and the same is evident on a bare reading of the complaint and the statement of the respondent/complainant and the evidence of the witnesses recorded before the Court.

15. The learned Senior Counsel appearing for the revision petitioner also stated that the complainant has not produced any material evidence at the time of lodging the complaint to the Police or at the time of filing the complaint before the learned Magistrate.

16. To substantiate the above contentions, the learned Senior Counsel appearing for the revision petitioner/A1 contended that although the revision petitioner is alleged to have damaged the lock of the main entrance, which is worth about Rs.25,000/-, there is no shadow of evidence to prove the involvement of the revision petitioner/A1 and there is no proof to support such act.

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17. The learned Senior Counsel appearing for the petitioner further brought to the notice of this Court that even the Police report under Section 202 Cr.P.C. enquiry, does not make out any offence under Section 442 IPC or, Section 427 IPC or Section 448 IPC. Therefore, the cognizance of the case ordered by the Magistrate has not been adequately been considered in the Police report in its entirety. The police report, under Section 202 Cr.P.C. clearly shows that the offences of criminal intimidation and abetment, are not made out. Therefore, the cognizance order rules out the abetment or criminal intimidation allegations against the revision petitioner/A1. The very same Police report states that only the offence under Section 441 IPC is made out for criminal trespass against A2 alone. Therefore, in the absence of any criminality, no offence has been made out against the revision petitioner/A1.

18. The learned Senior Counsel appearing for the revision petitioner further stated that the Metropolitan Magistrate failed to consider the fact that the petition filed by the revision petitioner/A1 for dropping of the proceedings as against A1, is not maintainable. The learned Magistrate has glossed over the fact that Section 251 Cr.P.C. gives statutory right for an accused to file discharge petition before the Court and such a right emanates from the statute. Such a right can neither be granted nor taken away nor watered down as per the order

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of the Honourable Supreme Court or any Court. Moreover, the Honourable Supreme Court, in the instant case, has left open all the rights and contentions available under law for the revision petitioner. Therefore, the revision petitioner/A1 has filed the petition before the Court below for discharging him from the case, but the learned Magistrate failed to consider the same in proper perspective and simply dismissed the discharge petition on the ground that there is no specific provision of law to discharge the revision petitioner in any summons case, which warrants interference by this Court on that score.

19. In support of all his contentions, the learned Senior Counsel appearing for the petitioner/A1 relied on a decision of the Supreme Court reported in 2012 (5) SCC 424 (Bhushan Kumar Vs. State (NCT of Delhi)).

20. Per contra, learned counsel appearing for the respondent/complainant contended that the present revision petition is the second round of litigation and the revision petitioner/A1's father, i.e. Dr.M.A.M.Ramaswamy has already approached this Court in CrI.O.P.No.7693 of 2015 to direct the respondent/Police therein, to register a case on the complaint made by the said Dr.M.A.M.Ramaswamy. This CrI.O.P. was dismissed with liberty to Muthuvellayan to file a fresh petition. Even though the said Dr.M.A.M.Ramaswamy approached

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the Honourable Supreme Court by way of Special Leave Petition(s), the Honourable Supreme Court dismissed the petition for Special Leave to Appeal (Crl.) No.8227 and 8230 of 2019 on 05.01.2014, thereby, confirming the order dated 29.01.2019 passed by this Court in Crl.O.P.No.1328 of 2017.

21. Learned counsel for the respondent/complainant also stated that the complaint was taken cognizance of the same being summons case and Section 251 Cr.P.C. is clear that in a summons case, no charge need to be framed and only based on materials, the Court can decide the case and in the absence of any specific provisions, the revision petitioner/A1 is not entitled to file a petition before the Magistrate to discharge him from the case. Thus, it is crystal clear that the learned Magistrate had rightly dismissed the discharge petition and hence, the present Crl.R.C. lacks merit for consideration.

22. The learned counsel for the respondent/complainant also contended that the petitioner/A1 has to undergo the ordeal of trial to prove his innocence and not by way of the present revision petition challenging the dismissal of the discharge petition. The grounds raised in this revision petition are all the defences that could be raised only at the time of tendering evidence before the Court below.

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WEB COPY 23. Heard both sides and perused the materials available on record.

24. Admittedly, originally, Dr.M.A.M.Ramaswamy made a complaint before the Police and subsequently, the respondent herein made a complaint before the Metropolitan Magistrate for the above said offences under the IPC. Even though the learned Magistrate took cognizance of the offences under Sections 109, 448, 427 and 506 (Part-2) IPC, pending the case before the trial Court, the revision petitioner/A1 has approached this Court under Section 482 Cr.P.C. by filing CrI.O.P.No.1328 of 2017 to quash the entire proceedings against the revision petitioner herein, and this CrI.O.P. was dismissed by this Court on 29.01.2019, against which, the revision petitioner approached the Supreme Court by filing Petition for Special Leave to Appeal (CrI.).Nos.8227 - 8230 of 2019 and the Supreme Court, by order dated 05.01.2024 dismissed the petition.

25. The main contention of the learned Senior Counsel appearing for the revision petitioner is that the respondent/complainant filed the complaint only as a Power of Attorney and when once the principal (in this case, the said Dr.M.A.M.Ramaswamy) dies, the Power of Attorney is not valid and not enforceable, and therefore, the continuance of the complaint itself is not

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maintainable.

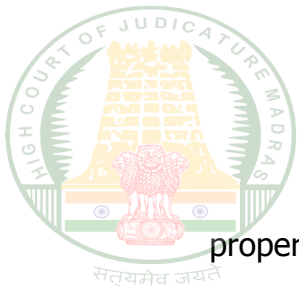
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26. It is also contended by the learned Senior Counsel appearing for the revision petitioner that even in the complaint preferred by the respondent herein, in the list of witnesses, the original complainant was shown as one of the witnesses and in the list of documents, the original complaint made by Dr.M.A.M.Ramaswamy on 22.02.2015 is shown and also in the report submitted by the Inspector of Police, the above original complaint is also shown. Only based on the complaint given by Dr.M.A.M.Ramaswamy, the proceedings continued and since he died, the respondent/complainant is not entitled to prosecute the complaint.

27. The learned Senior Counsel appearing for the revision petitioner/A1 further stated that even though either the respondent herein or Dr.M.A.M.Ramaswamy was not the eye-witness to the alleged occurrence and even in the original complaint, it is not stated that the revision petitioner/A1 was present in the scene of occurrence on that day.

28. Further, it is also stated by the learned Senior Counsel that after the death of Dr.M.A.M.Ramaswamy, the revision petitioner is the owner of the

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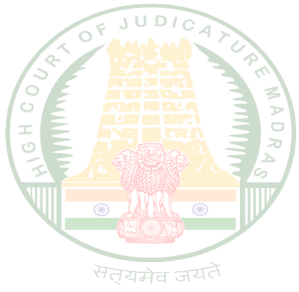
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property in question. In any angle, the complaint cannot be continued, and therefore, as per the liberty given by the Supreme Court, the revision petitioner has preferred the present petition for discharge, and however, the learned Magistrate has failed to consider the same and it was dismissed mainly on the ground of maintainability itself.

29. On a reading of the materials available on record, it is seen that the learned Magistrate has not stated anything about the merits of the petition for discharge or the complaint and the learned Magistrate has not stated in the impugned order, as to whether the prima-facie case is made out as against the revision petitioner/A1. The learned Magistrate has merely stated that there is no specific provision to discharge the revision petitioner in the summons case, and the learned Magistrate held that the petition for discharge is not maintainable.

30. The learned Senior Counsel appearing for the revision petitioner/A1 placed reliance on the order passed in CrI.O.P.No.1328/2017. The Honourable Madras High Court in its order dated 29th January 2019, held as follows, and the relevant paragraph of the order is extracted hereunder:

"22. ... Further, as per Section 251 Cr.P.C., after taking cognizance, the accused persons have only been asked to



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appear before the Magistrate to put forth their defence. As per Section 251 Cr.P.C., when in a summons case, the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused will be stated to him, and he will be asked whether he pleads guilty or has any defence to make.

When an accused in response to the summons appears before the Magistrate, it is open to him to plead before the Magistrate that the process against him ought not to have been issued and can also raise a plea of maintainability of the complaint. The Magistrate is competent to decide the said plea before he takes any other steps. The Magistrate may drop the proceedings, if he is satisfied on re-consideration of the complaint that there is no evidence, for which, the accused could be tried. It is his judicial discretion. The order issuing the process is an interim order and not a judgment. It could be varied and re-called. Therefore, it is premature to seek quashment of the complaint."



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31. Further, learned counsel for the revision petitioner placed reliance on the Judgment of the Hon'ble Supreme Court in a case between ***Bhushan Kumar and others and State (NCT of Delhi) reported in 2012 (5) SCC 424.*** The relevant portion of the judgment is extracted hereunder for ready reference:

"20. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

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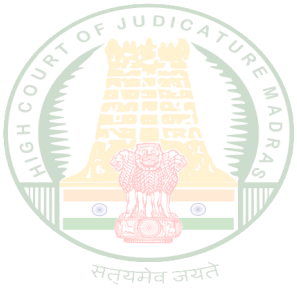


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32. Therefore, even though there is no specific provision of law to discharge an accused and there are no prima-facie materials, the learned Magistrate can drop the proceedings, as it is the discretion to be exercised by the trial Court on the facts of the case.

33. Though there is no provision to frame the charges, it does not mean that an accused cannot be discharged from the case. Even otherwise, technically, when there are no prima-facie materials, it is always open for the trial Court to drop the proceedings against an accused based upon the facts. The Magistrate has not decided the petition on the merits of the case, and in the case on hand, the learned Metropolitan Magistrate had simply dismissed the discharge petition on the technical ground as not maintainable.

34. However, the learned Magistrate has to decide the petition on the merits of the matter also, apart from maintainability and hence, the impugned order passed by the Magistrate is set aside and the matter is remitted back to the XXIII Metropolitan Magistrate, Saidapet, Chennai, for fresh consideration of the facts on the issue and the grounds raised by the revision petitioner/A1 for discharge.



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WEB COPY 35. When the case is taken cognizance of by filing of the complaint by the respondent herein, the said Dr.M.A.M.Ramaswamy was alive and subsequently, he died, and therefore, the trial Court/Magistrate is directed to take note of the same and decide the petition afresh on merits and in accordance with law.

36. With the above observations and directions, this revision petition filed by A1, stands disposed of. The miscellaneous petition is closed.

25.03.2025

CS

To

1. XXIII Metropolitan Magistrate, Saidapet, Chennai-15.
2. The Section Officer, Criminal Section (records), High Court, Madras.

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P.VELMURUGAN, J

CS

Pre-delivery Order in

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