

Crl.R.C.(MD)No.23 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2025

Pronounced on : 21.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.23 of 2025
and
Crl.M.P.(MD)Nos.148 and 150 of 2025

Sritharan

... Petitioner

Vs.

State of Tamil Nadu rep. through
The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar.
(Crime No.409 of 2016)

... Respondent

Prayer : This Criminal Revision Case filed under Sections 438 r/w 442 B.N.S.S., to call for the records and to set aside the order passed by the learned Assistant Sessions Judge, Virudhunagar in Crl.M.P.No.277 of 2019 in S.C.No.77 of 2018 dated 04.11.2024.

For Petitioner : Mr.R.Rajamohan

For Respondent : Mrs.M.Aasha
Government Advocate (Crl. Side)



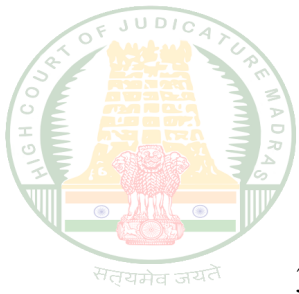
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ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.277 of 2019 in S.C.No.77 of 2018 dated 04.11.2024 on the file of the Assistant Sessions Court, Virudhunagar, dismissing the petition for discharge filed under Section 227 of the Code of Criminal Procedure.

2. On the basis of the complaint lodged by one Elango, FIR came to be registered in Crime No.409 of 2016 on 15.09.2016 against Mickelraj, Sridharan/petitioner herein and four other persons for the alleged offences under Sections 147, 148, 307 and 109 IPC on the file of the respondent police and after completing the investigation, the respondent police has laid the final report against six persons including the petitioner (accused 4 and 5 being juveniles, charge sheet against them was laid before the Juvenile Justice Board) for the alleged offences under Sections 147, 148, 307 and 149 IPC and the case was taken on file in P.R.C.No.8 of 2018 on the file of the Court of the Judicial Magistrate No.II, Virudhunagar and after committal, the case was taken on file in S.C.No.77 of 2018 and the same was made over and is pending on the file of the Assistant Sessions Court, Virudhunagar.



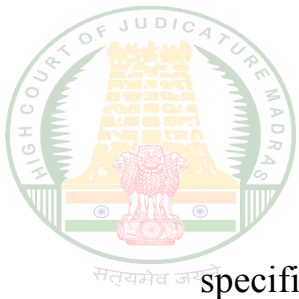
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3. When the sessions case was pending for framing of charges, the sixth accused filed the petition under Section 227 Cr.P.C. seeking discharge from the above case. The respondent police has filed a counter raising objections. The learned Assistant Sessions Judge, after enquiry, has passed the impugned order dated 04.11.2024 dismissing the discharge petition. Challenging the order of dismissal, the present revision came to be filed.

4. The case of the prosecution is that there existed previous enmity between the petitioner/sixth accused and the defacto complainant, that the petitioner, due to that enmity, directed the other accused to kill the defacto complainant and in pursuance of the same, the accused 1 to 5 formed unlawful assembly with deadly weapons on 15.09.2016 and attacked the defacto complainant indiscriminately and that thereby they have committed the offences punishable under Sections 147, 148, 307 and 149 IPC.

5. The case of the petitioner is that the respondent police seized two knives as well as other articles from the accused 1 to 5, that there is no

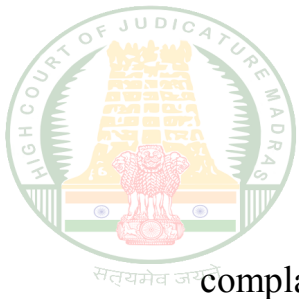


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specific overt act alleged as against the petitioner, that the petitioner has not at all involved with the alleged crime but falsely implicated, that the petitioner is not a part of unlawful assembly and as such, the offences under Sections 147, 307 r/w 149 IPC cannot be made out against the petitioner, that there are absolutely no sufficient grounds to proceed against the petitioner, that the investigating officer has not conducted any investigation with regard to the alleged previous enmity between the petitioner and the defacto complainant, that they have not recovered the anonymous petition sent by the defacto complainant nor collected any other particulars with regard to the same, that the investigating officer has obtained confession statement from the first accused Mickel @ Mickelraj and he has nowhere stated about the involvement of the petitioner in the entire crime, that the witnesses have also not stated anything specifically about the petitioner in their statement recorded under Section 161(3) Cr.P.C. and that in the absence of any materials to proceed against the petitioner, he is entitled to be discharged from the above case.

6. The respondent police has filed a counter statement before the trial Court raising objections and further stated that the defacto



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complainant in his complaint has specifically stated that there existed previous enmity between him and the petitioner and having that enmity in mind, the petitioner only set up the other accused to commit murderous attack, that the witnesses have specifically stated about the involvement of the petitioner in the occurrence, that the prosecution, after examining 18 witnesses, has rightly laid the charge sheet against six persons including the petitioner and that since there are sufficient materials to proceed against the petitioner and for framing of charges, discharge petition is liable to be dismissed.

7. It is pertinent to note that the petitioner's name finds place in the FIR, as the defacto complainant has specifically stated about the previous enmity existing between himself and the petitioner and the petitioner alone had instigated the other accused to commit the murderous attack.

8. No doubt, as rightly pointed out by the learned counsel appearing for the petitioner, in the confession statement alleged to have been obtained from the first accused Mickel @ Mickelraj, he has not stated anything about the involvement of the petitioner in the occurrence but that



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by itself is not a ground to discharge the petitioner from the above case.

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9. As rightly contended by the learned Government Advocate (Criminal Side), the defacto complainant, in his 161 statement, has reiterated the same version and the occurrence witnesses Ganesan, Satheeskumar and Raj have also given statements under Section 161(3) Cr.P.C. reiterating the version of the defacto complainant involving the petitioner in the occurrence.

10. In the complaint as well as in 161(3) statement, as rightly pointed out by the learned Government Advocate (Criminal Side), the defacto complainant has stated□ஏற்கனவே எனக்கும் விருதுநகர் F.F ரோட்டை சேர்ந்த P.K.P.பெரியசாமி மகன் ஸ்ரீதரன் என்பவருக்கும் மேற்படி ஸ்ரீதரன் என்பவர் விருதுநகர் வியாபாரிகள் மீது மொட்டை பெட்டிசன் போட்டது சம்பந்தமாக நான் ஸ்ரீதரன் என்பவரை கண்டித்தேன் ஸ்ரீதரன் இதை மனதில் வைத்து என் மீது பகைமை கொண்டு முத்துராமன்பட்டி சங்கரநாராயணபுரம் தெருவைச் சேர்ந்த சவரிமுத்து மகன் மிக்கேல்ராஜ் மற்றும் 4 பேர்களை ஏவிவிட்டு மிக்கேல்ராஜ் அருவாளுடனும் மற்றவர்கள் கத்தியுடனும் திடீரென என்னிடம் வந்து□



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11. It is pertinent to note that as per the prosecution case, the petitioner has been shown as main accused, as the incident was allegedly occurred at his instigation.

12. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that there are specific allegations levelled against the petitioner, but whether the same are true or not cannot be gone into the present discharge petition and the same can only be decided at the trial.

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



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Bijayya (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 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 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.

15. 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. It is necessary to refer the judgment of the Hon'ble Supreme Court in *State through Deputy Superintendent of Police Vs. R.Soundirarasu and others* reported in *2022 LiveLaw (SC) 741*, wherein, the case of *State of Karnataka Lokayukta, Police Station Bengaluru Vs. M.R.Hiremath* reported in *(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



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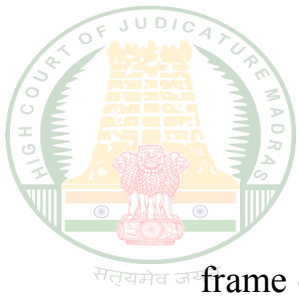
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the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary 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.

16. As already pointed out, the accused including the petitioner are facing the case of murder attempt.

17. As already pointed out, the defacto complainant, who was injured in the incident, has lodged the complaint implicating the petitioner and other persons, who attacked him and the occurrence witnesses have also reiterated the version of the defacto complainant in their statements recorded under Section 161(3) Cr.P.C.

18. Considering the records available, as rightly observed by the learned Assistant Sessions Judge, there existed *prima facie* materials to



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frame charges against the petitioner and that therefore the impugned order dismissing the discharge petition cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

19. In the result, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

21.03.2025

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

To

1. The Assistant Sessions Judge,
Virudhunagar.
2. The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in

Crl.R.C.(MD)No.23 of 2025

and

Crl.M.P.(MD)Nos.148 and 150 of 2025

Dated : 21.03.2025