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CrI.R.C.(MD) No.148 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.03.2025

Delivered on : 03.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.148 of 2024
and
CrI.M.P(MD)No.1593 of 2024

P.Suresh

... Petitioner

Vs.

State rep.by the Inspector of Police,
Kaliyakkavili Police Station,
Kanyakumari.
Crime No.73 of 2022.

... Respondent

Prayer : This Criminal Revision has been filed under Section 397 & 401 of Cr.P.C, to call for the records pertaining to the impugned order, dated 16.11.2023 made in C.M.P.No.8300 of 2023 in C.C.No.344 of 2022 on the file of the Judicial Magistrate Court No.I, Kuzhithurai and set aside the same.

For Petitioner : Mr.M.R.Sreenivasan

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

ORDER

The Criminal Revision is directed against the order passed in C.M.P.No.8300 of 2023 in C.C.No.344 of 2022, dated 16.11.2023 on the file



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of the Judicial Magistrate Court No.I, Kuzhithurai, dismissing the petition for discharge filed under Section 239 of Cr.P.C.

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2.The case of the prosecution is that on 11.03.2022 at about 11.00 am, when the Sub-Inspector of Police and the Head Constable attached to Kaliyakkavilai Police Station were on patrol duty in Nagercoil to Trivandrum National High Way near Ottramaram road, they had stopped the two Taurus lorries bearing Reg.Nos.TN-75-AS-2185 and TN-75-AH-4309 with over load; that they have taken the lorries to weighbridge and came to know that both were having over load; that they have taken the lorries to the Kaliyakkavilai Police Station and while registering the case, the accused Suresh trespassed into the station premises, abused the police officials and prevented them from discharging their duty and that he threatened the Head Constable that he would not allow anybody to work in the said station and would lodge a false complaint before the Vigilance Department. On the basis of the complaint given by the Sub-Inspector Swamy, FIR came to be registered in Crime No.73 of 2022 on 11.03.2022 against the accused Suresh for the alleged offence under Sections 448, 353 and 506(i) IPC. The respondent police, after completing the investigation, filed a final report against the petitioner/ accused for the alleged offence under Sections 448, 353 and 506(i) IPC and the same was taken on file in C.C.No.344 of 2022



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and is pending on the file of the Court of the Judicial Magistrate No.I.,
Kuzhithurai.

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3.When the calender case was pending for framing of charges, the accused invoking Section 239 of Cr.P.C., filed the above petition seeking discharge from the above case.

4.The case of the petitioner canvassed in the discharge petition is that he is innocent and he did not commit any offence as alleged; that the petitioner is a retired Head Constable and he has been doing the building material supply such as M.Sand, blue metal, crusher dust at Kanyakumari District; that the petitioner has engaged the tipper lorry bearing Reg.No.TN-75-AS-2185 to transport blue metal from Chithiramcode to Kollencode on 17.03.2022 and while crossing Kaliyakkavilai check post, the defacto complainant stopped the above vehicle and demanded bribe; that since the lorry driver failed to pay the bribe, the defacto complainant got annoyed and seized the lorry and attempted for charge that the lorries were over loaded; that the petitioner after coming to know about the same, went to the spot and informed the complainant that the above said Taurus lorry is taking load as per the permit of RTO guidelines for multi ascile vehicles carriage capacity and to release the vehicle and he pointed out while they



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were standing near the check post some of the lorries in violation of Motor Vehicle Act built additional body and carrying over load materials and questioned the defacto complainant as to why he has not taken any action against those lorries; that the complainant replied that since those lorries' owners are paying monthly bribe, he did not take any action; that if the petitioner wanted to transport without any hindrance, he has to pay mamul for them and that since the petitioner refused to pay the bribe and informed that he would lodge complaint before the Vigilance and Anti-corruption, the defacto complainant got annoyed and foisted the false case and that the charges levelled against the petitioner are all baseless and no *prima facie* case is made out.

5.The respondent police has filed a counter disputing the petitioner's averments and further stated that the investigating officer conducted proper investigation, examined several witnesses and recorded their statements under Section 161(3) of Cr.P.C., and collected necessary documentary evidence and filed the charge sheet; that whether the charges are made out or not can only be decided at the conclusion of trial and that therefore, the petition is liable to be dismissed.



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6.The learned counsel for the petitioner would contend that on perusal of the charge sheet and materials filed along with charge sheet would go to show that no offence is made out against the petitioner and the same came to be filed to wreak vengeance upon the petitioner as the petitioner failed to yield for the illegal demand of the defacto complainant; that there are no specific overt act alleged against the petitioner to attract the offences; that the offence under Section 448 IPC will not attract as there is no trespass in a private place as the police station is a public place; that the offence under Section 353 of IPC will not attract, since the petitioner is noway interfered with the discharge of duty of the Sub-Inspector of Police, Kaliyakkavilai Police Station; that mere statement of making complaint to the Vigilance and Anti-corruption Department as against their illegality would not amount to prevent or deter any public servant from discharging their duty; that since the petitioner sent complaints to the police higher officials on 15.03.2022 narrating the illegal demand made by the defacto complainant and the illegal activities of the defacto complainant and the Head Constable, who assisted him for his illegal activities and requested the police higher official to take appropriate action, the defacto complainant in order to escape from the departmental proceedings has foisted the false case with ulterior motive; that the learned Magistrate failed to consider that the charges as against the



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petitioner are groundless and no ground for presuming that the petitioner has committed the offence as alleged in the charge sheet and that the learned Magistrate, without considering the above aspects, has dismissed the petition mechanically and therefore, the same is liable to be interfered.

7.The learned Government Advocate (Criminal Side) would submit that whether the ingredients for the offence alleged against the petitioner got satisfied or not cannot be gone into in the present stage; that the learned Magistrate is yet to frame the charges, that the prosecution has produced necessary materials sufficient enough to proceed further and that since the petitioner has not shown that the charges alleged are groundless, the impugned order dismissing the discharge petition cannot be found fault with.

8. It is pertinent to note that the power of the High Court in considering the quash petition under Section 482 of Cr.P.C., and considering the petition filed for discharge under Section 239 of Cr.P.C., or under Section 227 of Cr.P.C., are entirely different.

9.As rightly contended by the learned Government Advocate (Criminal Side) when the trial Court is yet to frame charges, whether the ingredients for the offences are made out as per the materials available on record cannot be



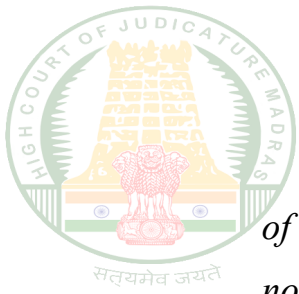
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gone into at present and are mater for trial after framing of the charges.

Hence, it is not necessary to consider as to whether the ingredients for the offences under Sections 448 and 353 Cr.P.C are made out or not.

10. The learned counsel for the petitioner has relied on the decision of Rajasthan High Court in the case of ***State Vs. Hari Ballabh and others*** reported in ***AIR 1963 Raj 19***; in support of his contention that since the police station is a public place, the question of invoking Section 482 Cr.P.C., does not arise. But the above decision is very much against the petitioner's case and the portion relied on by him are the observation in the impugned order passed by the trial Court and that came to be challenged before the High Court. It is necessary to refer the following passages hereunder for better appreciation:

“Applying these observations to the case before us we may well point out that although a member of the public may and does have a right of access to a Government Officer in connection with such official business as he may have therein, such a right is not enough to preclude the omcer incharge of that office from having actual physical possession of his office building or deprive him of a right to exclude all interference with it if necessary. If all that is so, we feel strongly disposed to think that there can be no valid justification for the view that a Government Officer cannot possibly be held to be in possession



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of his office premises. So far as we consider, his possession is not capable of being interfered with so long as he is incharge of it, and further his possession has all the qualities of a peaceful, lawful user which an outsider can only invade at his own peril, and particularly when forbidden to do so. It only remains for us to point out that if the act of a wrongdoer may happen to fall within the four walls of offences more than one as defined in the Indian Penal Code, then it can be no real answer to say that the offence is only the one which has been provided under a particular section and not the other. So far as we think, in such a case the wrongdoer may well be convicted of both offences, and if for some technical reason a conviction is not possible under one of the offences, then that by itself can hardly be a reason for not convicting or punishing the offender for the other offence. We may in this connection also point out that essentially an offence under Section 186, Penal Code, is aimed to reach an entirely different state of circumstances; it is designed to protect public servants in the discharge of their official duties; while section 441, Penal Code, is conceived and designed on a far more comprehensive pattern and is aimed to protect possession which may vest in anybody whatever, whether he is a public servant or not, provided of course such possession is invaded with the criminal intent provided in that section. Lastly, we may also point out that if the view propounded by the learned Judge, in the case which we are considering, were to be accented, then the employees or agents of all juristic bodies--and it admits of no doubt that the Government is such a body--will stand deprived of the benefit of the protection afforded to them under



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Section 441, Penal Code, against criminal trespassers in relation to the buildings which are placed in their charge, and we see no cogent reason for adopting such a narrow view having regard to the wide language of section 441, Penal Code.”

11.Considering the above, this Court is in entire agreement with the view expensed by the learned Judge of the Rajasthan High Court. Hence, the very contention of the learned counsel for the petitioner that the question of invoking Section 448 of I.P.C., in a public office does not arise, cannot legally be sustained.

12.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 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



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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”

11. 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.

13. Even the petitioner himself admitted that he warned the defacto complainant and asked him as to why he has not taken action against the other vehicles and action was taken against his vehicle only.



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14. As rightly contended by the learned Government Advocate (Criminal Side), the Taurus lorry owned by the petitioner came to be weighed in a weighbridge and only after finding that the vehicle was overloaded, they have taken the vehicle to the police station for registering the case. He would further submit that there is no material to show that the defacto complainant allowed the other vehicles with similar complaints to go free as alleged by the petitioner, he cannot be allowed to say that the police has not taken any action for violating the provisions of Motor Vehicles Act and the Rules framed thereunder. Even according to the petitioner, he informed the defacto complainant that he would lodge a complaint before the Vigilance and Anti-Corruption Department.

15. Considering the above, as rightly contended by the learned Government Advocate (Criminal Side) and the observation made by the learned Judicial Magistrate, there are materials sufficient enough to proceed against the petitioner/accused and the petitioner has not shown that the charges alleged against him are groundless. Since the learned Magistrate has observed that there existed *prima facie* case against the accused, the question of discharging the petitioner does not arise at all. Considering the charge sheet and other materials available on record, the impugned order dismissing



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the discharge petition by the learned Judicial Magistrate cannot be found fault with. Consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed.
Consequently, connected Miscellaneous Petition is closed.

03.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate Court No.I, Kuzhithurai.
- 2.The Inspector of Police,
Kaliyakkavili Police Station,
Kanyakumari
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
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and
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