

Crl.R.C.(MD).No.281 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2025

PRONOUNCED ON : 13.06.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.281 of 2024

M.Hanifa

... Petitioner/Accused No.2

Vs.

The Deputy Commissioner of Customs,
Customs preventive unit,
Madurai.

: Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the lower Court and set aside the order of the trial Court passed by the learned Additional Chief Judicial Magistrate, Madurai, in Crl.M.P.No.1325 of 2023 in C.C.No.569 of 2023, dated 29.02.2024 and discharge the revision petitioner/accused No.2 from the alleged offences punishable under Sections 135(1)(a), 135(1)(b) and 135(1)(ii) of the Customs Act, 1962.



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Crl.R.C.(MD).No.281 of 2024

For Petitioner : Mr.S.M.A.Zinnah

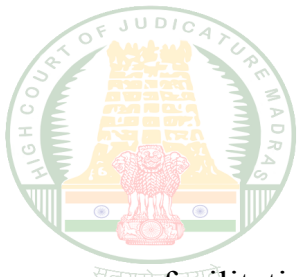
For Respondent : Mr.Arul Vadivel @ Sekar
Senior Counsel
Special Public Prosecutor for customs

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 1325 of 2023 in C.C.NO.569 of 2023, dated 29.02.2024, on the file of the Court of the Additional Chief Judicial Magistrate, Madurai dismissing the petition for discharge filed under Section 245(2) Cr.P.C.

2. The revision petitioner is the second accused in C.C.No.569 of 2023 facing the case for the offences under Sections 135(1)(a) and 135(1)(b) of the Customs Act, 1962.

3. The case of the prosecution is that on 04.03.2020, the Directorate of Revenue Intelligence, Coimbatore Regional Unit received a credible information from one S.Mahesh, Airport Manager of M/s Spice Jet Limited, Madurai which indicated that one of their staff members A.Marimuthu – first accused for



Crl.R.C.(MD).No.281 of 2024

WEB COPY

facilitating a syndicate involved in the smuggling of foreign origin gold bars into India, that the said accused Marimuthu had collected the smuggled gold from a passenger who arrived on Spice Jet Flight No.SG 24 from Dubai to Madurai on 04.03.2020 and concealed the same in the drawer of the HR table at the airline's back office, that on 05.03.2020, the officers of DRI proceeded to the back office of M/s Spice Jet accompanied by two independent witnesses and upon questioning, the said accused Marimuthu admitted that he had received the gold from a passenger at the aerobridge and had placed it in the HR drawer with an intention of retrieving it after duty hours, that the said accused has given a voluntary statement under Section 108 of the Customs Act on 05.03.2020 confessed to have facilitated smuggling operations on several occasion, that the said gold was seized on 05.03.2020 and the said accused Marimuthu was arrested and was released on bail, that a critical development emerged when the said Marimuthu in his further statement dated 10.09.2020 identified M.Hanifa, son of Shri Mohamed, Ramanathapuram District – petitioner herein as the person who physically handed over the smuggled gold to him at the aerobridge and the said identification was corroborated through CISF video footage and passenger profiling by the DRI, that the respondent has summoned the petitioner under Section 108 of the Customs Act and he gave a statement dated 18.09.2020



Crl.R.C.(MD).No.281 of 2024

WEB COPY

admitting that he worked as a carrier for wages and had transported the goods on behalf of Samsul @ Allaudin and he arrived on Spice Jet flight SG 24 on 04.03.2020 from Dubai and delivered 1800.260 grams of smuggled gold to the first accused – Marimuthu at the airport as per the instructions from Allaudin and that the investigation of the respondent clearly establishes the role of the petitioner as the key carrier who physically smuggled and delivered the contraband gold into India.

4. The respondent has then filed a complaint against the accused including the petitioner and the case was taken on file in C.C.No.569 of 2023, on the file of the Additional Chief Judicial Magistrate Court, Madurai. During pre-charge evidence, the prosecution has examined 5 witnesses as P.W.1 to P.W.5 and exhibited 15 documents as Exs.P.1 to P.15 and thereafter closed their side evidence. When the case was pending for framing of charges, the second accused invoking Section 245(2)(1) Cr.P.C., has filed the above petition seeking discharge from the above case.

5. The case of the petitioner canvassed in the discharge petition is that the prosecution mainly relied on the alleged confession made by the first accused



Crl.R.C.(MD).No.281 of 2024

WEB COPY

and the second accused and if the said confession is kept aside, no incriminating material is available to frame charge as against the second accused, that the confession of the co-accused cannot be the sole circumstance to frame the charges against the second accused and that since no prima facie material to frame the charges as alleged by the prosecution, continuing the case against the second accused is nothing but futile exercise, that there is absolutely no material available to convert into either oral or documentary evidence as substantive evidence for consideration and in the absence of which, there would be no use of corroborative evidence, that the confession against the petitioner even if accepted in its entirety, it would only create a suspicion and that every suspicion or mere suspicion is not sufficient to frame the charges and that since the prosecution case is entirely false and the petitioner is in no way connected with the above case, is entitled to be discharged from the above case.

6. The respondent has filed a counter affidavit raising objections stating that the first accused admitted in his statement that he collected the smuggling gold on the aerobridge from a passenger who had arrived by Spice Jet flight SG24 from Dubai to Madurai on 04.03.2020, that the evidence of confession of the co-accused can be considered after marshalling the substantive evidence



Crl.R.C.(MD).No.281 of 2024

altogether available before the trial Court, that the petitioner himself has voluntarily given statement before the customs officers under Section 108 of the Customs Act and the same is admissible in evidence and clearly admitted the guilt and he is having involvement in the above case, that the said statement was marked as Exs.P.10 and P.11 through P.W.3 and that therefore, the petition is liable to be dismissed.

7. Before entering into further discussion, it is necessary to refer the judgment of Hon'ble Supreme Court in the ***State of Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 45*** .

“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. CNI (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, Niranjan Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bangal 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

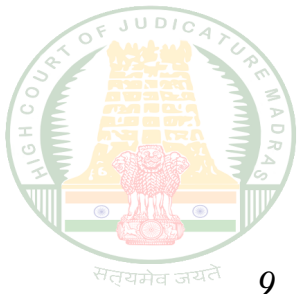


Crl.R.C.(MD).No.281 of 2024

WEB COPY

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.”

8. 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.



Crl.R.C.(MD).No.281 of 2024

WEB COPY

9. 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.

10. 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. The learned Magistrate has relied on the judgment of the Hon'ble Supreme Court in the ***State through Deputy Superintendent of Police Vs. R.Soundirarasu and others***, above referred, wherein the case of ***State of Karnataka Lokayukta, Police Station Bengaluru v. M.R.Hiremath (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 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



Crl.R.C.(MD).No.281 of 2024

WEB COPY

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.

11. In the present case, as already pointed out, the main reason advanced is that the confession of the first accused available in the case on hand cannot be used against the petitioner and that the suspicion is only mere suspicion and there is not even strong suspicion available. As already pointed out, the prosecution has examined 5 witnesses as P.W.1 to P.W.5 and exhibited 15 documents. According to the prosecution, the petitioner herein has given two confession statements which came to be exhibited as Exs.P.9 and P.10 through P.W.3. It is the specific case of the prosecution that the first accused as well as the petitioner were summoned under Section 108 of the Customs Act and after appearance, they have given statements admitting their involvement in the alleged gold smuggling.

12. The learned Special Public Prosecutor would submit that based on the description of the passenger provided by the accused Marimuthu and the



Crl.R.C.(MD).No.281 of 2024

passenger profiling conducted by the officers, three passengers who had arrived on Flight SG24 from Dubai on 04.03.2020 were shortlisted, that when the images of three passengers were shown to the first accused Marimuthu, he positively identified the petitioner herein as the individual from whom, he had received the contraband. As rightly pointed out by the learned Special Public Prosecutor, the petitioner in his statement under Section 108 of the Customs Act, has admitted that he worked as a career for wages and had transported the goods for Samsul @ Allaudin and that he brought the articles from Dubai to Madurai in Spice Jet Flight SG24 and handed over the same to the first accused.

13. It is settled law that a statement recorded under Section 108 of the Customs Act is a material piece evidence and can be used as a substantive evidence. As rightly contended by the learned Special Public Prosecutor, such statement cannot be equated with the confession taken by the police officer under the Code of Criminal Procedure. No doubt, the petitioner in the discharge petition as well as in the grounds of revision has mentioned about many decisions of the Hon'ble Supreme Court and as rightly observed by the learned Additional Chief Judicial Magistrate, in those cases, apart from the confession of the co-accused, no other material was available. In the present case, as rightly



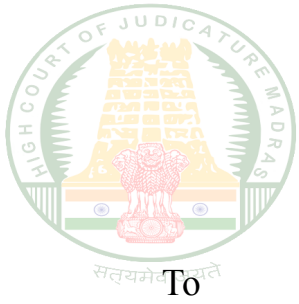
Crl.R.C.(MD).No.281 of 2024

pointed out by the learned Special Public Prosecutor and also by the learned Additional Chief Judicial Magistrate, a cursory perusal of the statements recorded under Section 108 of the Customs Act from the accused including the petitioner, the evidence of P.W.1 to P.W.5 and other billings and export documents produced, this Court has no hesitation to hold that the prosecution has produced materials sufficient enough to frame charges against the petitioner and as such, the impugned order dismissing the discharge petition cannot be found fault with. Consequently, this Court concludes that the Criminal Revision case is devoid of merits and the same is liable to be dismissed.

14. In the result, the Criminal Revision Case is dismissed.

13 .06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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Crl.R.C.(MD).No.281 of 2024

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1. The Additional Chief Judicial Magistrate Court, Madurai.
2. The Deputy Commissioner of Customs,
Customs preventive unit,
Madurai.
3. The Special Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD).No.281 of 2024

K.MURALI SHANKAR, J.

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Pre-Delivery order made in

Crl.R.C.(MD)No.281 of 2024

13.06.2025