



Crl.R.C.(MD)No.1230 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.1230 of 2024

and

Cr.M.P(MD)No.12746 of 2024

Shanmuganathan

... Petitioner/Petitioner/
Accused No.1

Vs.

1.State of Tamil Nadu,
Rep.by the Inspector of Police,
B3 Theppakulam Police Station (L&O),
Maudrai District.
(Crime No.2123 of 2016)

... Respondent/1st Respondent/
Complainant

2.Idhayaraja

... Respondent/2nd Respondent/
Defacto Complainant

PRAYER : Criminal Revision Case filed under Section 438 r/w 442 of BNSS, to call for the records relating to the order passed by the learned 1st Additional District and Sessions Judge, Madurai in Cr.M.P.No. 380 of 2021 in S.C.No.334 of 2019 dated 15.03.2024 set aside the same.

For Petitioner : Mr.Subash Babu
Senior Counsel
for M/s.Subash Law Office



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For R1

: Mr.S.Ravi
Additional Public Prosecutor

For R2

: Mr.M.Jegadeesh Pandian

ORDER

Challenging the order passed by the learned I Additional District and Sessions Judge, Madurai in Crl.M.P.No.380 of 2021 in S.C.No.334 of 2019, this criminal revision case is filed.

2. The petitioner herein is the 1st accused in S.C.No.334 of 2019. The 2nd respondent is the defacto complainant. The petitioner herein filed an application under Section 227 of Code of Criminal Procedure, 1973 seeking to discharge him from the criminal case before the I Additional District and Sessions Judge, Madurai. The petitioner is charged for the offences under Sections 341, 294(b), 324, 307, 506(ii) of IPC @ 120(B), 341, 294(b), 324, 307, 506(ii) of IPC @ 120(B), 341, 294(b), 324, 307, 506(ii) and 302 of IPC.

3. The case of the prosecution:

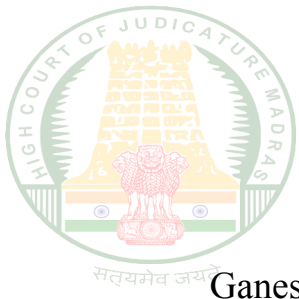
The 2nd respondent and his friend Karthick having completed B.L.,



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degree course and waiting for enrollment, were undergoing training as Junior under one Advocate.Dhamotharan. They were habitual in visiting police station along with their friend Ganesamoorthy to deal with minor cases. While doing so, on 27.12.2016 at about 11.00 p.m., when the defacto complainant along with his friend Karthick was standing near the house of Ganesamoorthy, the petitioner who came in his bike along with the 2nd accused one Arumugam, on seeing the petitioner, they were chatting with each other. While so, the 2nd accused instructed the petitioner to move his bike, where the said Karthick abused the 2nd accused, namely Arumugam. As a result of which, there occurred a tussle between them. Instantly, the petitioner interfered and pacified. The petitioner had thwarted any untoward incident and they had left the place. Thereafter, on the very same day, at about 11:45 p.m., while Arumugam, his friend Karthick and Ganesamurthy were sitting near the iron workshop, the 2nd and 3rd accused, namely Karunamani came there and quarrelled with the defacto complainant and his friends. Immediately, the 3rd accused took an iron rod from the adjacent workshop and assaulted the defacto complainant and his friends, namely Karthick and Ganesamoorthy on their head. As a result of which,



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Ganesamoorthy died after three days and and Karthick and the defacto complainant sustained injuries. Thereafter, the 2nd and 3rd accused, having made serious life threat, ran away from the place. F.I.R came to be registered in Crime No.2123 of 2016. Final report was filed by the 1st respondent police on 30.08.2017 in S.C.No.334 of 2016. At this stage, the petitioner has filed a discharge petition seeking to discharge him from the offenses against which he was charged. However, the learned I Additional District & Sessions Judge, Madurai had dismissed the same and passed the impugned order. Challenging the same, this criminal revision case has been filed.

4. The learned Senior Counsel appearing for the petitioner/1st accused submitted that the petitioner is a differently abled person without two legs and is a practicing Advocate who is practicing before the District Court, Madurai. Categorically contending that on the fateful date of 27.12.2016 at 11:00 p.m., when the first incident of a scuffle which happened between the defacto complainant, Karthick, Arumugam, it was the petitioner who indulged in thwarting any untoward incident and made them to disperse and thereafter, on the same day at about 11.45 p.m.,



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when the incident had happened causing grievous hurt to defacto complainant, Karthick and Ganesamoorthy, the petitioner was not at all present in the spot and he was not connected with the sad incident by all means. However, the 1st respondent police had implicated for having conspired with other accused to commit the murder of defacto complainant, Karthick and Ganesamoorthy. Such an exercise is impermissible and a discharge petition can very well be maintainable even in a murder case and since the question of criminal conspiracy cannot be made out properly by the 1st respondent police, it is necessary that the petitioner be discharged from the offenses against which he is charged. For which, he relied upon the judgment of the Hon'ble Supreme Court in the case of *Sanjay Kumar Rai Vs. State of Uttar Pradesh & another*¹. He submitted that it is well settled that the Trial Court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. Even the Court

1(2022) 15 SCC 720



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has discretion to order further investigation, if necessary.

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5. In the instant case, the learned counsel further relying the statement of one Chandramohan under Section 161 of Code of Criminal Procedure, 1973 recorded by the police and pointed out that the said Chandramohan has given a statement to the effect that it was the petitioner who had thwarted any untoward incident between the defacto complainant and his friends and the accused at 11.00 p.m., and further relying upon the statement of Alvin Prasanna, who had given given statement that it is only on the direction of the petitioner herein the said incident had happened cannot be relied for the reason that he had clearly stated that the incident happened at 11:00 p.m. Actually the incident had happened only at 11.45 p.m. Further, he relying upon the judgment of the Hon'ble Supreme Court in the case of ***Kanchan Kumar Vs. The State of Bihar***², submitted that, though it is not necessary for the Trial Judge at the time of dealing with discharge application to make a roving inquiry, if the situation and the facts and circumstances of the case warrants, it is necessary and the Court is bound to conduct a similar inquiry to come to

² (2022) 9 SCC 577



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a conclusion that a prima facie case is made out for the petitioner to stand for trial. However, even without conducting any such inquiry, the Trial Court had proceeded to dismiss the petitioner's discharge petition and pressed for allowing the criminal revision case.

6. Per contra, the learned Additional Public Prosecutor categorically relying upon the statement of Alvin Prasanna recorded under Section 161(3) of Code of Criminal Procedure, 1973 submitted that a careful reading of the said statement itself would reveal the conspiracy conspired by the petitioner herein, which had caused the death of Ganesamoorthy and also resulted in the defacto complainant and another one, namely Karthick being hurt in a grievous manner. As far as the necessity of the learned Trial Court to conduct an inquiry, the learned Additional Public Prosecutor submitted that when a prima facie case is being made out from the materials available on record, there is no need for any inquiry and the statement of Alvin Prasanna would suffice to establish a prima facie case as against the petitioner and hence, there is no infirmity in the impugned order and pressed for dismissal of the criminal revision case.



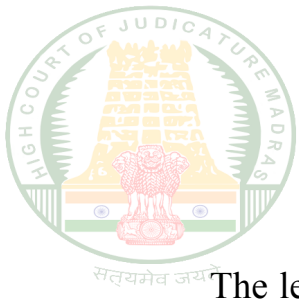
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7. The learned counsel for the 2nd respondent submitted that the statement of Alvin Prasanna is seconded and confirmed by the statement of Maniram, the statement of L.W.1 who is the defacto complainant and the statement of L.W.2 who is the injured eye witness namely Karthick would reveal the possibility of the offence which happened at 11.00 p.m and thereafter at 11.45 p.m., and if the incident which happened at 11.00 p.m., had not happened, the possibility of incident at 11.45 p.m. would not have happened. So in the presence of two incidents which would establish the case of a conspiracy as against the petitioner, there is no need to interfere with the impugned order.

8. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor and the learned counsel for the 2nd respondent and carefully perused the materials available on record.

9. A careful reading of the impugned order would reveal that the learned Trial Court had meticulously sifted the evidence available before the learned Trial Court at the time of dealing with the discharge petition.

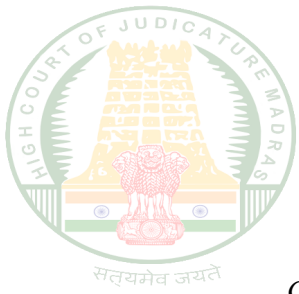


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The learned Trial Court had considered that the prosecution has cited 28 witnesses in the charge sheet, including L.W.1 Idhayaraja, who is the defacto complainant cum injured witness, L.W.2 Karthick and another injured witnesses and more particularly L.W.12, namely Alvin Prasanna and L.W.13, namely Maniram and had dealt with elaborately as to how offence under Section 120 (B) could be made out as against the petitioner herein. The same is extracted hereunder:

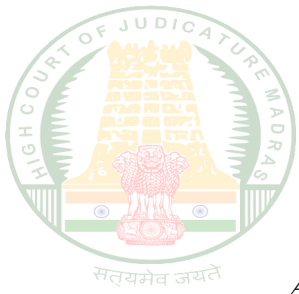
10) As per the prosecution case, the 2nd respondent/defacto complainant Thiru. Ithayaraja belongs to Madurai. One Karthick and Ganesamoorthy are friends of said Thiru.Ithayaraja. The said Ithayaraja and Karthick have completed their law education and are working as Assistants of Advocates. The deceased Ganesamoorthy helped them. The petitoiner/A1 Thiru.Shanmuganathan is practicing as an Advocate in District Court, Madurai. He is physically challenged person. A2-Arumugam @ CD Arumugam and A3-Karunamani are his Assistants. There is competition in the Advocate profession between the defacto-complainant, his friends and the accused persons. While so, on 27.12.2016 at 11.00 p.m., when the defacto-complainant Ithayaraja, his friend Kathick and the deceased Ganesamoorthy were talking in front of their house, the petitioner/A1-Thiru.Shanmuganathanand A2-Arumugam @ CD Arumugam



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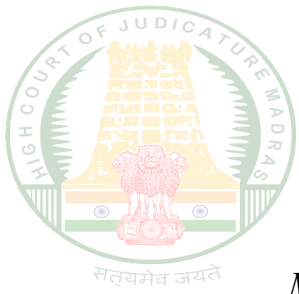
came there and a scuffle took place between them and the petitioner/A1-Thiru.Shanmuganathan and A2-Arumugam @ CD Arumugam beat the defactocomplainant vagaiyara and pushed them down. Further, aggrieved by the above incident, the petitioner/A1-Thiru.Shanmuganathan, A2Arumugam @ CD Arumugam conspired with A3-Karunamani to commit murder and since the petitioner/A1-Thiru.Shanmuganathan happened to be a physically challenged person, he abeted A2-Arumugam @ CD Arumugam and A3Karunamani to murder the defactocomplainant Ithayaraja and his friends. In furtherance of the above inducement of Petitioner/A1-Thiru.Shanmuganathan, when the defacto-complainant and his friends were sitting and chatting in the steps of a Workshop near Pillaiyar Temple, Chinnakanmai on 27.12.2016 at 11.45 p.m., A2Arumugam @ CD Arumugam and A3Karunamani went there and scolded them in abusive words. On seeing them, the defactocomplainant and his friends attempted to escape. At that time, A2Arumugam @ CD Arumugam asked A3Karunamani not to leave them and asked him to murder them and caught hold of Idhayaraja, Ganeshamoorthy, Karthick and at that time, A3-Karunamani took the iron rod from the workshop and beat on the head of all the said three persons. However, the defactocomplainant Thiru.Idhayaraja and Karthick escaped with small injuries. But Ganeshamoorthy fell down and hewas assaulted by A2-



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Arumugam @ CD Arumugam and A3Karunamani with the above said iron rod repeatedly and they chased the defacto-complainant and his friend Karthick stating that they would not leave them without murdering. Hence, the petitioner/A1-Thiru.Shanmuganathan has been charge sheeted for the offences punishable U/s.120 (B), 341, 294 (b), 307, 302 IPC & 506 (ii) IPC r/w 109 IPC whereas, A2Arumugam @ CD Arumugam and A3Karunamani have been charge sheeted for the offences punishable U/s.120 (B), 341, 294 (b), 307, 302 IPC & 506 (ii) IPC.

11) To establish the prosecution case, 28 witnesses have been cited in the charge sheet. L.W.1Thiru. Idhayaraja is the defactocomplainant – cum –injured witness. L.W.2-Karthick is another injured witness. L.W.3-Sathiyenthiran and L.W.4Anthonyraj are cited as Observation Mahazar witnesses. L.W.5Alagar, L.W.6Muniasamy, L.W.7Prabu and L.W.8-Manikandan are cited as eye witnesses. L.W.9 Dinesh and L.W.10 Raju are cited as witnesses who have taken the injured Karthick to hospital. L.W.11-Chandramohan is stated to have eye witnessed the previous incident. L.W.12-Alwin Prasanna and L.W.13Maniram are cited as witnesses who have heard and seen the accused persons 1 to 3 conspiring to commit murder. L.W.14-Sekar and L.W.15Balasubramani are cited as witnesses to the confession statement of accused persons and Seizure Mahazar. L.W.16Tmt.Sakthivel,L.W.17-



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Malaisamy, L.W.18Veeramuthu and L.W.19Nallamaruthu are relatives of deceased Ganeshamoorthy. L.W.25 and L.W.26 are Doctors and L.W.27 is Scientific Officer. L.W.20 to L.W.24 and L.W.28 are police officials.

12) The main contentions of the petitioner is that the name of the petitioner / A1 is not found in FIR. The petitioner/A1 was not at all present in the alleged place of occurrence. There is no materials/evidence to implicate the petitioner as an accused. L.W.1 and L.W.2 namely, Idhayaraja and Karthick, who are injured in this case, are stated to have come to know later on about the conspiracy between Petitioner/A1 and the other accused persons and therefore, they are hearsay witnesses only. The alleged eye witnesses have not spoken about the petitioner or his involvement in the crime. Infact, the petitioner had pacified the earlier scuffle between A2Arumugam @ CD Arumugam and L.W.1 and L.W.2. A2Arumugam @ C.D.Arumugam and A3Karunamani did not take any weapon with them to commit murder but are stated to have taken the iron rod from the nearby Workshop. Based on the statement of L.W.12Alwin Prasanna and L.W.13-Maniram, petitioner/A1 has been arrayed as A1. But there is contradictions in their statements. The alleged time of criminal conspiracy from the statements of above said L.W.12 and L.W.13 makes the prosecution case doubtful.

13) This court has taken into consideration the above



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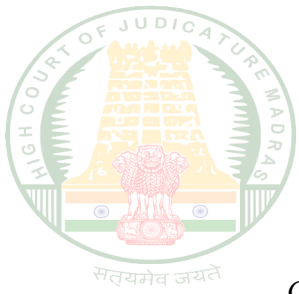
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submissions

made on both sides along with materials on record. Though this petition has been filed by the petitioner/A1 u/s.239 Cr.P.C. instead of Sec.227 Cr.P.C, the quoting of wrong provision is not a ground for dismissal of this petition.

14) At the outset, it is not correct to say that the name of petitioner/A1 is not mentioned in the FIR. Infact, he is arrayed as A1 in the FIR. So far as the nonpresence of the petitioner/A1 in the place of occurrence is concerned, it is not the case of the prosecution that the petitioner was physically present in the place of occurrence. Hence, the witnesses who are cited as eyewitnesses in this case cannot be expected to speak about the alleged involvement of the petitioner/A1 in the commission of crime. Admittedly, L.W.1 and L.W.2 are stated to have come to know at a later point of time about the criminal conspiracy between A1 to A3.

15) As per the prosecution case, L.W.12 and L.W.13 have overheard the criminal conspriacy hatched by A1 to A3 to commit murder and these witnesses have stated so in their statements u/s.161(3) Cr.P.C. The contentions of the petitioner that the statements of these two witnesses are not believable, contra to each other and they are planted witnesses, cannot be decided at this stage by this Court. Moreover, in the presence of L.W.12 and L.W.13, it is not correct on the part of the petitioner to say that the prosecution



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case as against the petitioner/AI with regard to conspiracy is based on circumstances.”

10. After considering the entire materials, the learned Trial Court had concluded that the Court cannot decide the merits and demerits of the case in a discharge application and that the veracity of the statement of the prosecution witnesses cannot be tested at that stage and proceeded to dismiss the discharge petition. As rightly pointed out by the learned Additional Public Prosecutor, I am of the considered opinion that the nature of evaluation to be made by the Court at the stage of framing of charge is to test the existence of *prima facie* case. Obviously, the statements of L.W.12 and L.W.13 will hit the position of the petitioner necessitating the 1st respondent police to implicate him for the offences against which he is charged. The Hon'ble Supreme Court in the case of ***State of Gujarat vs. Dilipsinh Kishorsinh Rao***³ while testing an order passed by Revisional Court has held that the Revisional Court cannot sit as an appellate Court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. Accordingly, I do not find any demerits in the impugned

3 2023 Livelaw (SC) 874



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order.
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11. Therefore, this Criminal Revision Case stands dismissed.

Consequently, connected Miscellaneous Petition is closed.

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

- 1.The 1st Additional District and Sessions Judge,
Madurai.
- 2.The Inspector of Police,
B3 Theppakulam Police Station (L&O),
Maudrai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI ,J.

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Order made in
Crl.R.C.(MD)No.1230 of 2024

Dated: 29.07.2025