



CrL.R.C.(MD)No.612 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrL.R.C.(MD)No.612 of 2025

and

CrL.M.P.(MD)No.6773 of 2025

Nalliyappan

... Petitioner

-VS-

State of Tamil Nadu,
through the Inspector of Police,
Natham Police Station,
Natham,
Dindigul District.
(Crime No.264/2022)

... Respondent

PRAYER : Criminal Review Case filed under 438 and 442 of BNSS, 2023, to call for the records in Cr.M.P.No.3720 of 2023 in S.C.No.83 of 2023 on the file of the learned Additional District and Sessions Judge, Dindigul and to set aside the order made in Cr.M.P.No.3720 of 2023 dated 15.04.2025 and discharge the revision petitioner/accused in this case.

For Petitioner : Mr.T.K.Gopalan
For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (CrL.)



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ORDER

This Criminal Revision Case is directed, against the order dated 15.04.2025, passed by the learned Additional District and Sessions Judge, Dindigul, in S.C. No. 83 of 2023.

2.The revision-petitioner is arrayed as Accused No.7 in the said Sessions Case.

Prosecution Case :

3.The de-facto complainant, Kannan, lodged a complaint stating that his son, the deceased Udaya Kumar (24 years), was murdered by Accused Nos. 1 to 6 and certain other persons whose identities were then unknown. The incident is said to be retaliatory. Earlier, on 06-08-2022 at about 11.15 a.m., the deceased Udaya Kumar had allegedly murdered one Thangaraja, leading to registration of Crime No. 263 of 2022 for offences under Sections 341 , 294-B and 302 IPC against him. Upon hearing of Thangaraja's death, his relatives/the accused pursued Uday Kumar as he fled along the Lingavadi-Madathukulam Road. They caught him near the Lingavadi Cooperative Society, tied his hands, and assaulted him with iron rods, sticks, and coconut battens on the head, neck, and chest. When the de-facto complainant and his relatives reached the spot, Uday Kumar had already suffered multiple injuries. He was taken in a "108" ambulance to



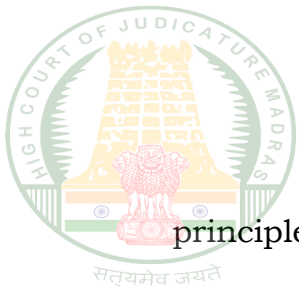
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the Government Hospital, Dindigul, where he was declared dead.

Consequently, Crime No.264 of 2022 was registered for offences under Sections 147, 148, 149, 294-B, 342 and 302 IPC against Accused Nos.1 to 7, in which the 7th accused was one Solai. After investigation, the respondent police filed a final report under the same sections in S.C.No.83 of 2023 on the file of the learned Additional District and Sessions Judge, Dindigul, deleting the name of Chinnraj who was arrayed as A5 and by including the Revision petitioner herein as the 7th accused. Hence, the petitioner filed a discharge petition under Section 227 Cr.P.C. in CrL.M.P. No. 3720 of 2025, seeking to be discharged from the Sessions Case. By order dated 15.04.2025, the learned Trial Judge dismissed the petition. Aggrieved, the present Criminal Revision Case has been filed.

Submissions on Behalf of the Petitioner :

4.The learned counsel for the petitioner contended that, the FIR does not mention the petitioner's name, nor do the statements recorded under Section 161 Cr.P.C. It is argued that the name of one Chinnraj (A5), which was omitted from the FIR, was later "substituted" with the petitioner's name by the prosecution as an after-thought. According to the Section 161 statement of the de-facto complainant recorded on 06.08.2022, it was Chinnaraj who allegedly poured petrol on the deceased and instigated others to set him ablaze and the petitioner's name finds no place therein. The investigating agency, it is urged, has acted in violation of basic



principles of criminal jurisprudence, and the learned Trial Court failed to appreciate this aspect while declining discharge. He further insisted that, Nalliappan, the present petitioner's name was not mentioned in the complaint.

4.1.Relying upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. Prafulla Kumar Samal & another***¹, he insisted that the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained. The court will be fully justified in framing a charge and proceeding with the trial. By and large, if the learned Trial Judge is satisfied that the evidence produced before him gives rise to some suspicion, then discharge can be ordered.

4.2.He further pointed out that though in the written complaint, the overt act of pouring kerosene over the deceased has been attributed to Chinraj and having stated the same in 161(3) statement that Chinraj instigated to pour petrol now, they completely changed that Nalliappan instigated the accused to pour petrol and set fire. The Investigating Officer has invented the story while filing counter before the learned Trial Court in

¹ 1979 (3) SCC 4



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the discharge petition. Categorically contending that the lame excuse given by the Investigating Officer in his counter will have telling effect that to what extent he went to manipulate and substitute, he pressed for allowing the Criminal Revision Case.

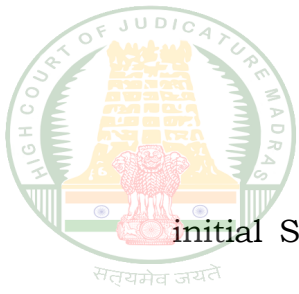
Submissions on Behalf of the State:

5.The learned Government Advocate (Criminal Side), Mr.M.Sakthi Kumar, submitted that the investigation cannot rest solely on the de-facto complainant's Section 161 statement. Statements of L.Ws 2, 3 and 4, recorded under Section 164 Cr.P.C., as well as the petitioner's extra-judicial confession recorded on 25.08.2022, clearly implicate the petitioner (Nalliappan). The FIR was registered on the de-facto complainant's complaint and during investigation the petitioner's role emerged, and he was accordingly added as Accused No.7 in the final report. The de-facto complainant has since clarified in a subsequent Section 161 statement that, in haste, he mistakenly named "Chinnaraj" instead of "Nalliappan". Hence, it is contended that the impugned order warrants no interference.

6.Heard both sides and careful perused the materials available on record.

Points for Consideration :

(i)Whether non-mention of the petitioner's name in the FIR and the



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initial Section 161 statement, by itself, is sufficient ground to discharge him at the Section 227 stage.

(ii) Whether the materials collected during investigation, particularly the Section 164 statements of L.Ws 2-4 and the alleged confession, constitute “prima facie” evidence warranting trial.

Discussion :

7.The complaint expressly states that, apart from the named accused, “a few other identifiable persons whose names were not known” also participated in the assault. The petitioner’s name was added only after investigation, based on statements of material witnesses and the alleged confession. At the stage of framing charges, the Court is not required to undertake a meticulous evaluation of evidence; it must only be satisfied that a *prima facie* case exists.

8.The Honorable Supreme Court in the case of ***State of Bihar v. Ramesh Singh² and Amit Kapoor v. Ramesh Chander³*** has upheld this proposition. The relevant portion of the ***Ramesh Singh's*** case, which is applicable to this case is extracted as follows:-

“4.Under section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage

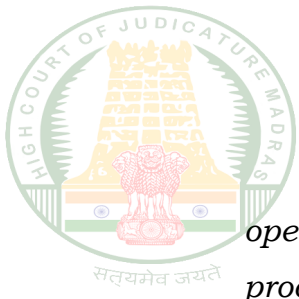
² AIR 1977 SC 2018

³ Criminal Appeal No.1407 of 2012



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the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. 'The Judge has to pass thereafter an order either under section 227 or section 228 of the Code. If "the Judge consider that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which - ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code. At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not



open to the Court to say that there is no sufficient ground for proceeding against the accused.....”

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9.The relevant portion of **Amit Kapoor's** case is extracted as follows:-

“10.....Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be



exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.”

10.The learned Trial Court examined the available materials and found that the petitioner’s involvement can be decided conclusively only after the prosecution evidence is recorded. This Court finds no perversity or patent illegality in that reasoning. The petitioner has not shown that the materials relied upon are wholly inadmissible or incapable of supporting a conviction. It is needless to state that the power of Criminal Revision cannot be exercised to appreciate the case factually, which would obviously end in abuse of power by this Court. In the instant case, it would not be compatible to go into the alleged innocence of the revision petitioner as claimed, by applying the final test of guilt at this stage. Consequently, no ground exists to invoke the revisional jurisdiction of this Court to upset the impugned order.



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Conclusion :

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11.The impugned order dated 15.04.2025, dismissing CrI.M.P.No. 3720 of 2025 is affirmed. The Criminal Revision Case fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition, if any, stand closed.

19.06.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes
Mrn

To

- 1.The Additional District and Sessions Judge, Dindigul.
- 2.The Inspector of Police,
Natham Police Station,
Natham,
Dindigul District.



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L.VICTORIA GOWRI, J.

Mrn

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