



Crl.R.C.(MD)No.842 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 24.04.2025

Pronounced on : 04.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.842 of 2024

K.M.Akbar Ali

...Petitioner/
Party-in-person/
Accused No.14

Vs.

1.The State rep. by its
Inspector of Police,
Ilayangudi Police Station,
Ilayangudi-630702,
Sivagangai District.

2.The Sub Inspector of Police,
Ilayangudi Police Station,
Ilayangudi-630702,
Sivagangai District.

... Respondents/
Complainants

3.Rejinababu

... Respondent/
Defacto
Complainant



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Prayer : This Criminal Revision Case filed under Section 438 r/w 442 B.N.S.S., to admit this revision on file to call for the entire records from the lower court and set aside the order passed by the learned Judicial Magistrate, Ilayangudi, Sivagangai District in Crl.M.P.No.616 of 2024 in C.C.No.72 of 2021 dated 17.05.2024.

For Petitioner : Mr.K.M.Akbar Ali
(Party-in-Person)

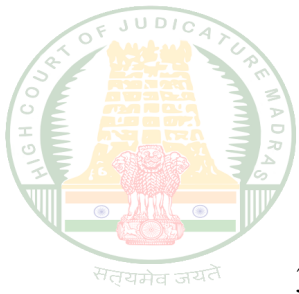
For R1 & R2 : Mrs.M.Aasha
Government Advocate (Crl. Side)

For R3 : M/s.S.Meena

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.616 of 2024 in C.C.No.72 of 2021 dated 17.05.2024 on the file of the Court of the District Munif cum Judicial Magistrate, Ilayangudi, in dismissing the petition for discharge filed under Section 239 of the Code of Criminal Procedure.

2. The petitioner, who is the 14th accused, is facing the case in C.C.No.72 of 2021 on the file of the District Munsif cum Judicial Magistrate, Ilayangudi.



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3. On the basis of the complaint lodged by the third respondent Rejinabanu, FIR came to be registered in Crime No.352 of 2021 on 11.08.2021 against 13 persons for the alleged offences under Sections 147, 294(b), 427, 448 and 506(1) IPC. The second respondent police, after completing the investigation, filed a final report against 14 persons including the petitioner herein for the alleged offences under Sections 147, 294(b), 427, 448, 506(1), 457, 468 and 380 IPC and the case was taken on file in C.C.No.72 of 2021 and the same is pending on the file of the District Munsif cum Judicial Magistrate, Ilayangudi, Sivagangai District.

4. The case of the prosecution is that the third respondent along with the accused 1 to 4 had business transactions with a person at Madurai, that since the person at Madurai had absconded, the accused 1 to 4, by alleging that the third respondent was responsible, had raised issues with her, that on 04.08.2021 at about 11.30 a.m., the accused 1 to 4 had assembled unlawfully and trespassed into the house of the third respondent and abused her and her husband in filthy language, that the first accused and the petitioner had kicked the door and caused damages to the tune of Rs.500/-, that the accused 1 to 4 had obtained signature from the third



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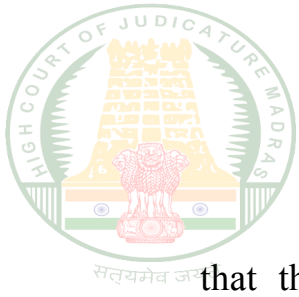
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respondent forcibly in the bogus document created by them and also caused criminal intimidation and that they have stolen the articles available in the third respondent's house to the tune of Rs.1,10,000/-.

5. No doubt, the petitioner's name does not find place in the FIR but after investigation, the second respondent, considering the further statement of the third respondent and other materials available, has added the petitioner as 14th accused.

6. When the calender case was pending for framing of charges, the first accused and the petitioner invoking Section 239 Cr.P.C. filed a petition in Crl.M.P.No.616 of 2024 seeking discharge from the above case. The prosecution as well as the third respondent have filed counter statement raising objections. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 17.05.2024 dismissing the discharge petition. Aggrieved by the dismissal of the discharge petition, the 14th accused has preferred the present revision.

7. The case of the petitioner, canvassed in the discharge petition, is



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that the original complaint was not written and signed by the third respondent, that the complaint was written and signed by police personnel themselves, that the complainant signature in the FIR was forged, that though the alleged incident was occurred on 04.08.2021, complaint came to be lodged before the first respondent police on 11.08.2021 though the police station was situated at a distance of 2 kms from the house of the third respondent, that FIR reached the Court at about 02.50 p.m. on 12.08.2021 with a delay of almost 24 hours, that the police authorities have not invoked Section 41-A Cr.P.C. nor 50-A Cr.P.C. at the time of remanding the accused, that the police authorities have not prepared the arrest memo at the time of arrest and copy of the arrest memo was not provided to the arrestee, that the learned Magistrate, without perusing the fake documents filed by the police, remanded the accused 1 and 2 in judicial custody, that the entire events came to be videographed and is very much available in Compact Disk but that was not produced, that the police authorities have forged the signatures of Village Administrative Officer and his Assistant in seizure mahazar, that the signature of the investigating officer itself was forged in the alteration report, that the father's name of the petitioner was wrongly mentioned in the final report and the residential

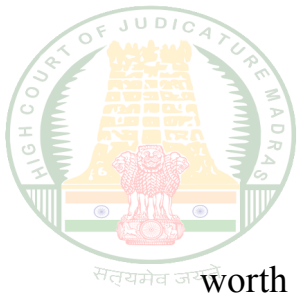


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address of the third respondent was also given wrongly, that though the petitioner has perused the Court records with the permission of the Court, the accused addition report does not find place in the Court records and missing of the same was not informed to the High Court, that 13 innocents were falsely implicated in the above case and thereafter the petitioner was forcibly taken and produced before the learned Magistrate and the learned Magistrate, without applying his judicial mind, remanded him to judicial custody, that the third respondent and her husband had cheated 603 innocents to the tune of Rs.11 crores and criminal trial is now going on in C.C.No.410 of 2023 on the file of the Court of the Judicial Magistrate No.II, Sivagangai, that the police has created a story without examining a single independent witnesses with regard to the occurrence, that though the case was taken cognizance in the year 2021 itself, charges are yet to be framed and that since the charges levelled against the petitioner are groundless, he is entitled to be discharged from the above case.

8. The third respondent filed a counter statement stating that on 04.08.2021 at about 11.30 a.m., all the accused had trespassed into the third respondent's house by breaking open the door and stolen the articles



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worth about Rs.1,10,000/-, that the first accused and the petitioner had kicked the main door and damaged it causing loss to the tune of Rs.500/-, that they have also abused the third respondent, her husband and her mother-in-law in filthy language and caused criminal intimidation, that the allegations of the petitioner that the third respondent had cheated 603 innocents to the tune of Rs.11 crores is absolutely false and untenable, that there are sufficient materials available to proceed against the petitioner and that the above petition came to be filed only to drag on the proceedings and as such, the same is liable to be dismissed.

9. The respondents 1 and 2 have filed their counter statement stating that the above petition came to be filed only to drag on the proceedings, that the witnesses, in their statement under Section 161(3) Cr.P.C., have stated about the role played by the petitioner in the occurrence, that the pleas and the aspects raised by the petitioner in the discharge petition cannot be gone into in the present proceedings and are to be considered only at the trial, that the delay in lodging the complaint and the delay in sending the complaint to the Court can only be gone into at the trial and that therefore, the discharge petition is liable to be dismissed.



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10. At this juncture, 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 Bijjaya (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



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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.

12. 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



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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.

13. 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 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



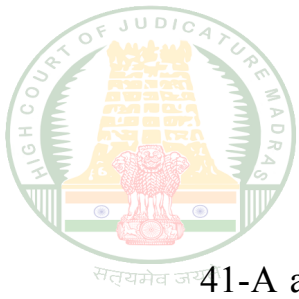
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offence has been committed and not whether a ground for convicting the accused has been made out.

14. As rightly contended by the learned counsel appearing for the third respondent, the first accused in his confession statement has implicated the involvement of the petitioner in the occurrence. Moreover, the third respondent and other witnesses in their statement under Section 161(3) Cr.P.C. have specifically stated about the part played by the petitioner in the occurrence. The third respondent would say specifically that the petitioner's name was omitted by mistake in the original complaint but the petitioner along with the first accused broke open the door and along with other accused trespassed into her house and committed the other offences.

15. As rightly contended by the learned Government Advocate (Criminal Side) as well as the learned counsel appearing for the third respondent, the petitioner has not canvassed any grounds for discharge but on the other hand, he has narrated various aspects such as delay in lodging FIR, delay in despatching the FIR to the Court, non-compliance of Section



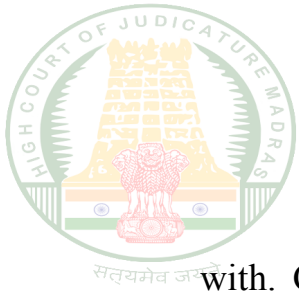
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41-A and 50-A Cr.P.C. and the same cannot be gone into in the present proceedings and the same can only be decided at the trial. Whether the delay in lodging the complaint is fatal to the prosecution or not can only be determined at the conclusion of the trial.

16. As already pointed out, the petitioner has alleged that the complainant signature in the original complaint and in the FIR, witnesses signatures in the seizure mahazar and more importantly, signature of the investigating officer in alteration report were forged and it is not known as to how the petitioner came to know that signatures were forged and he has not elaborated anything further. All the pleas canvassed as grounds for discharge, by no stretch of imagination, can be considered as grounds for discharge as contemplated under Section 239 Cr.P.C.

17. Considering the charge sheet, statement of the witnesses and other materials produced along with the charge sheet, it is evident that there are materials sufficient enough to proceed against the petitioner and to frame charges against him. Hence, the impugned order passed by the learned Magistrate dismissing the discharge petition cannot be found fault



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with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

18. In the result, this Criminal Revision Case stands dismissed.

04.08.2025

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

To

- 1.The Judicial Magistrate,
Ilayangudi,
Sivagangai District.
- 2.The Inspector of Police,
Ilayangudi Police Station,
Ilayangudi-630702,
Sivagangai District.
- 3.The Sub Inspector of Police,
Ilayangudi Police Station,
Ilayangudi-630702,
Sivagangai District.
- 4.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.842 of 2024

Dated : 04.08.2025