

CrI.R.C.(MD)No.1298 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.02.2025

Pronounced on : 28.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.1298 of 2024

and

CrI.M.P.(MD)No.13189 of 2024

S.Shanmuganathan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.
(Crime No.100 of 2020)

... Respondent

Prayer : This Criminal Revision Case filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the impugned order in Cr.M.P.No.2843 of 2024 in C.C.No.1613 of 2023 dated 25.09.2024 pending on the file of the learned Judicial Magistrate-IV, Madurai and set aside the same.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (CrI. Side)



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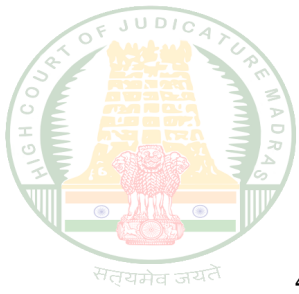
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ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.2843 of 2024 in C.C.No.1613 of 2023 dated 25.09.2024 on the file of the Court of Judicial Magistrate No.4, Madurai, dismissing the petition for discharge filed under Section 239 of the Code of Criminal Procedure.

2. The petitioner is the first accused in the case in C.C.No.1613 of 2023 on the file of the Judicial Magistrate No.4, Madurai, for the offences under Sections 379 r/w 34 IPC.

3. On the basis of the complaint lodged by one Rasathi, FIR came to be registered in Crime No.100 of 2020 on 11.02.2020 against one Inbaraj for the offence under Section 379 IPC on the file of the respondent police and after completing the investigation, charge sheet came to be filed and the case was taken on file in C.C.No.1613 of 2023 for the alleged offences under Sections 379 r/w 34 IPC against two persons including the petitioner herein and is pending on the file of the Court of Judicial Magistrate No.4, Madurai.



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4. The case of the prosecution is that the accused had stolen the petty shop box owned by the defacto complainant Rasathi at Pasumalai Pethaniya Nagar.

5. The case of the petitioner is that the petitioner is a physically challenged person and is a practising lawyer, that the defacto complainant in the FIR has stated that the second accused had break open the lock of the shop only at the instigation of the petitioner but the petitioner's name does not find place in the FIR, that in the charge sheet by raising serious allegations without any material, the petitioner has been implicated and that the allegations in the FIR and the allegations in the charge sheet are mutually contradictory and there was no foundation or any visible basis for the charges levelled against the petitioner.

6. The petitioner, in his discharge petition, has raised grounds that since the alleged stolen property (shop) has not been recovered, the main offence under Section 379 IPC cannot said to be made out, that there was an inordinate delay of 24 days in lodging the complaint, which makes the prosecution case as inherently improvable, that except the mere suspicion,

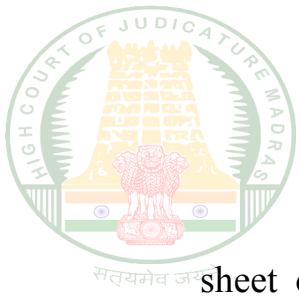


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there is nothing against the petitioner to incriminate him as accused, that there was no eye witness, no confession and no recovery, that there is absolutely no *prima facie* material to affirm the allegations of the prosecution, that though FIR was registered on 10.02.2020, charge sheet was filed on 03.08.2023 after the lapse of three years, that the learned Magistrate, without issuing notice to the accused under Section 473 Cr.P.C., has taken cognizance and as such, the same is bit by Section 468 Cr.P.C. and that therefore, the petitioner is entitled to be discharged from the above case.

7. The respondent police has filed a counter statement raising objections to discharge the accused and further stated that they have collected all the incriminating materials during the course of investigation and they have examined as many as 4 witnesses and after proper investigation, final report was filed, that final report under Section 173(2) Cr.P.C., statement of witnesses and the documents clearly proved that the prosecution is having *prima facie* case against the petitioner, that the petitioner is guilty or not can only be decided at the trial, that though FIR was registered on 11.02.2020, the respondent police has filed the charge



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sheet on 24.12.2022 within the period of limitation, that the scope of discharge under Section 239 Cr.P.C. is very much limited and that therefore the petition is liable to be dismissed.

8. The learned Judicial Magistrate, after enquiry, has passed the impugned order dated 25.09.2024 dismissing the discharge petition. Challenging the order of dismissal, the present revision came to be filed.

9. Before entering into further discussion, 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 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



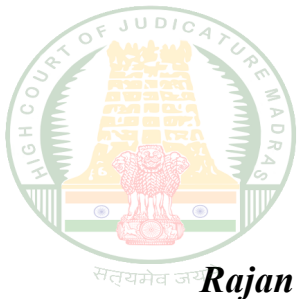
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considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out 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 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”

10. The prosecution, in their counter filed before the trial Court, has relied on a decision of the Hon'ble Supreme Court in ***State of Tamilnadu by Inspector of Police, Vigilance and Anti Corruption Vs. N.Suresh***



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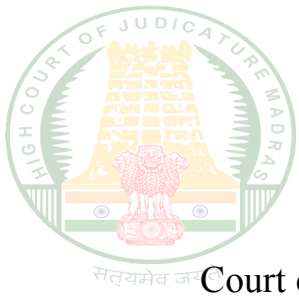
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Rajan and others reported in **2014-(1)-LW(Crl) 781**,

“Application for discharge-Court cannot act as mouthpiece of the prosecution or act as post office and sift evidence to find out whether or not the allegation made are groundless - court has to proceed with an assumption materials by prosecution are true - consideration is whether ground for presuming offence has been committed and not whether a ground for convicting accused has been made out - court is required at this stage to see there is a prima facie case for proceeding against accused”

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. Bearing the above legal position on mind, let us consider the case on hand.

13. Admittedly, as rightly contended by the learned counsel appearing for the petitioner, FIR was lodged against the second accused and not against the petitioner. But as rightly pointed out by the learned Government Advocate (Criminal Side), in the FIR, the defacto complainant has stated that when the second accused was enquired about his conducting of alcohol and ganja business in the petty shop owned by the defacto complainant, he replied that he had break open the shop at the instigation of the advocate Shanmuganathan and that since both are physically challenged persons, nobody can do anything against them.

14. Though the involvement of the petitioner was referred in the complaint, he was not specifically shown as an accused in column 7 of the FIR but after investigation, the respondent police by alleging that they came to know about the involvement of the petitioner and that he was the main accused, charge sheet came to be filed against both the accused.



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15. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that during investigation, the prosecution has examined 4 witnesses and collected necessary materials so as to implicate the petitioner herein.

16. As rightly contended by the learned counsel appearing for the petitioner, the prosecution, in addition to the defacto complainant, has also taken a statement from the defacto complainant's sister Saroja, who had reiterated the version given by her sister-defacto complainant in the statement under Section 161(3) Cr.P.C. and the other two witnesses are the observation mahazar witnesses and they have not stated anything about the occurrence.

17. Admittedly, it is not the case of the defacto complainant that she had witnessed the stealing of the petty shop by the petitioner. It is not the case of the prosecution that they have taken any confession from the petitioner or from the co-accused implicating the involvement of the petitioner in the alleged occurrence.



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18. The learned Judicial Magistrate, in the impugned order, has stated that the investigating officer has issued a notice under Section 41A Cr.P.C. to the second accused and in pursuance of the same, the second accused appeared and gave a statement, wherein, he has specifically implicated the involvement of the petitioner. As rightly contended by the learned counsel appearing for the petitioner, except the above statement recorded from the co-accused, the prosecution has not produced any iota of materials to implicate the petitioner.

19. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and others*** reported in ***2019 (2) MWN (Cr.) 85 (SC)***, relied on by the learned counsel appearing for the petitioner, wherein, the Hon'ble Apex Court has reiterated the settled position with regard to the veracity of the confession taken from the co-accused or the statement recorded from the accused and the relevant passages are extracted hereunder:-

“21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift



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the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

22. Undoubtedly, this Court has in Suresh Budharmal Kalani Alias Pappu Kalani (supra), taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally



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note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of Madhya Pradesh, AIR 1952 SC 159. We notice the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani Alias Pappu Kalani (supra), the Court has proceeded to take the view that only on the basis of statement of the co-accused, no case is made out, even for framing a charge.

.....

46. From the statement of the law contained in V.C.Shukla and others (supra), it becomes clear as to what constitutes confession and how if it does not constitute confession, it may still be an admission. Being an admission, it may be admissible under the Evidence Act provided that it meets the requirements of admission as defined in Section 17 of the Evidence Act. However, even if it is an admission, if it is made in the course of investigation under the Cr.P.C to a Police Officer, then, it will not be admissible under Section 162 of the Cr.PC as it clearly prohibits the use of statement made to a Police Officer under Section 161 of the Cr.PC except for the purpose which is mentioned therein. Statement given under



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Section 161, even if relevant, as it contains an admission, would not be admissible, though an admission falling short of a confession which may be made otherwise, may become substantive evidence.

*47. A confession made to a Police Officer is clearly inadmissible. The statement relied on by respondent is dated 11.04.1996 and the appellant was arrested on 11.04.1996. This is pursuant to the FIR registered on 10.04.1996. The statement dated 11.04.1996 is made to a Police Officer. This is clear from the statement as also letter dated 10.08.1996 (Annexure R/6) produced by the respondent. It is clearly during the course of the investigation. Even if it does contain admissions by virtue of Section 162 and as interpreted by this Court in *V.C.Shukla and others (supra)*, such admissions are clearly inadmissible.*

*48. If the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered in deciding whether the charge has to be framed against the appellant or not. It is here that the law laid down by this Court in *Suresh Budharmal Kalani Alias Pappu Kalani (supra)* becomes applicable.*



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49. We also notice the following statement in judgment rendered by Bench of seven learned Judges in *Haricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184 (quoted portion at Page 1184):

“As a result of the provisions contained in Section 30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.



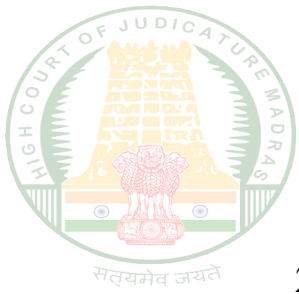
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Thus, the confession of a co- accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt. ””

20. In the case on hand, as already pointed out, admittedly, the prosecution has not taken any confession from the second accused nor recorded any statement under Section 161 Cr.P.C. Even assuming that they have taken any confession from the co-accused, in the absence of any recovery under Section 27 of the Indian Evidence Act, the same is of no use.



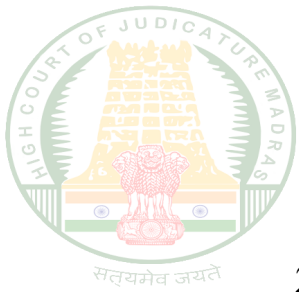
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21. In ***Suresh Budharmal Kalani Alias Pappu Kalani Vs. State of Maharashtra*** reported in ***1998 (7) SCC 337***, the Hon'ble Supreme Court has specifically observed that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against him. Moreover, the statement recorded from the co-accused, even if any, is legally inadmissible. Considering the above, as rightly contended by the learned counsel appearing for the petitioner, there is absolutely no material to frame charge against the petitioner.

22. Since the prosecution has alleged that the petty shop was destroyed, the learned Magistrate has rightly observed that non-recovery of the property by itself is not a ground to discharge the accused.

23. Regarding the plea of limitation, admittedly, FIR came to be registered on 11.02.2020 and final report dated 24.12.2022 came to be filed before the jurisdictional Court on 03.08.2023 and according to the learned counsel appearing for the petitioner, since charge sheet was filed after the lapse of three years, the case is barred under Section 468 Cr.P.C.



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24. At this juncture, it is necessary to refer the decision of this Court in ***Crl.O.P.(MD)No.17860 of 2024 dated 29.10.2024*** and the relevant passages are extracted hereunder:-

“23. Considering the above, for the purpose of computing the period of limitation for taking cognizance of an offense under Section 468 Cr.P.C., this Court has no hesitation to hold that the relevant date is when the first information was given to the police, not when the police submitted the final report to the court.

24. It is a fundamental principle of law that the act of sovereign authorities shall not prejudice anybody. Therefore, for the inaction or delay on the part of the police authority or the court, the complainant/informant should not be penalized, as it would be unjust to deny them justice due to circumstances beyond their control.

*25. The Parliament, in response to the judgments of the Constitution Bench of the Hon'ble Supreme Court in **Sarah Mathew's** case, as interpreted by the subsequent Division Bench of Hon'ble Supreme Court in **Amritlal's** case, while enacting the BNSS, incorporated an explanation to clarify the computation of the period of limitation. Section 514 BNSS, corresponding to Section 468 Cr.P.C., now includes an explanation that provides*



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clarity on this issue. Section 468 Cr.P.C. states:-

“468. Bar to taking cognizance after lapse of the period of limitation.-(1)Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2)The period of limitation shall be -

(a)six months, if the offence is punishable with fine only;

(b)one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c)three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3)For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

26. The explanation added to Section 514 BNSS reads:-

“Explanation.—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.”



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27. This explanation, along with Section 515 BNSS (corresponding to Section 469 Cr.P.C.), conclusively resolves the issue in dispute. The explanation to Section 514 BNSS unequivocally states that the relevant date for computing the period of limitation is the date of filing the complaint under Section 223 BNSS or recording the information under Section 173 BNSS.

28. In the present case, the occurrence took place on 03.04.2021, and the FIR was registered on the same day. Consequently, the date of institution of prosecution is 03.04.2021, being the date of FIR registration. In light of the settled legal position, it is clear that the case is not barred by limitation, as the charge sheet filing date is irrelevant for computing the limitation period. Therefore, the prosecution in this case is well within the prescribed limitation period.”

25. Considering the above, the plea with regard to the limitation is devoid on merits and the same is liable to be rejected.

26. Considering the materials available on record, this Court is of the view that the learned Magistrate, without considering the materials



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available on record in proper perspective, dismissed the discharge petition in a mechanical fashion and as such, the same is liable to be set aside. Consequently, this Court concludes that the petitioner is entitled to be discharged from the above case.

27. In the result, this Criminal Revision Case stands allowed and the impugned order dated 25.09.2024 is hereby set aside. The petitioner shall stand discharged in C.C.No.1613 of 2023 on the file of the Judicial Magistrate No.4, Madurai. Consequently, connected Miscellaneous Petition is closed. No costs.

28.03.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Judicial Magistrate No.IV,
Madurai.
- 2.The Inspector of Police,
Subramaniapuram Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

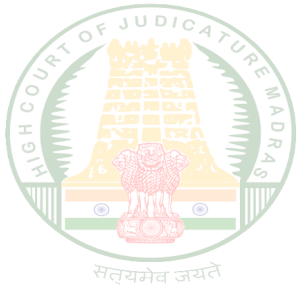
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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.1298 of 2024
and
Crl.M.P.(MD)No.13189 of 2024

Dated : 28.03.2025