



Crl.R.C(MD)No.1353 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2025

Delivered on : 13.06.2025

CORAM

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

**Crl.R.C(MD)No.1353 of 2024
and
Crl.M.P(MD)No.13705 of 2024**

B.Mohamed Kalifullah

... Petitioner

Vs.

The State represented by
the Inspector of Police,
Town South Police Station,
Dindigul. Crime No.130 of 2018.

... Respondent

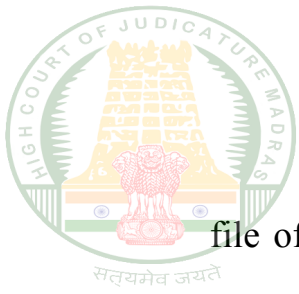
PRAYER: Criminal Revision Case filed under Section 438 r/w 442 of BNSS., to call for the records and set aside the order passed by the learned Judicial Magistrate No.III, Dindigul, on 30.09.2024 in Crl.M.P.No.679 of 2019 in C.C.No.244 of 2018.

For Petitioner : Mr.M.Sheik Abdullah

For Respondent : Mrs.M.Aasha,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.679 of 2019 in C.C.No.244 of 2018, dated 30.09.2024 on the



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file of the Court of Judicial Magistrate No.III, Dindigul, dismissing the petition filed for discharge under Section 239 of the Code of Criminal Procedure.

2.On the basis of the complaint of one Sarbudeen, FIR came to be registered in Crime No.130 of 2018 on 20.02.2018 against six persons including the petitioner herein for the alleged offences under Sections 448, 341, 294(b) and 506(ii) IPC. The respondent police, after completing the investigation, has laid the final report against the six persons including the petitioner for the alleged offences under Sections 448, 341, 294(b) and 506(ii) IPC and the same was taken on file in C.C.No.244 of 2018 and is pending on the file of the Court of the Judicial Magistrate No.III, Dindigul. When the calender case was pending for framing of charges, the petitioner invoking Section 239 of Cr.P.C., has filed the above petition seeking discharge from the above case.

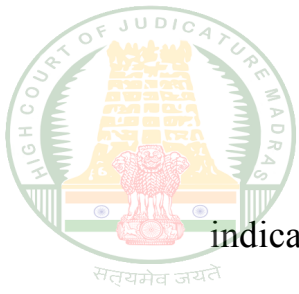
3.It is not in dispute that the defacto complainant is the brother-in-law of the petitioner/first accused and other accused are his relatives. The case of the prosecution is that due to civil dispute pending between them,



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on 19.11.2017 at about 19.00 hours all the accused had trespassed into the house of the defacto complainant, abused him as to how he was demanding share to his wife in the family property, scolded him in filthy language and caused criminal intimidation.

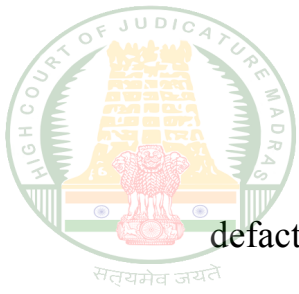
4.The case of the petitioner is that the defacto complainant has been lodging false and baseless complaints against the petitioner regarding the land dispute, in order to convert the civil dispute as criminal color; that the petitioner has already filed a civil suit in O.S. No.334 of 2015 on the file of the Additional District Munsif Court, Dindigul and is pending; that the petitioner has been preferring complaints not only before the respondent and also before the North Police Station, District Crime Branch and Anti Land Grabbing Special Cell, in order to get the unlawful means from the petitioner with the help of the police; that the petitioner is a practicing lawyer and is facing the above case on the basis of the false complaint of the defacto complainant; that though this Court directed the petitioner and the defacto complainant to settle their civil disputes before the Mediation Centre, the defacto complainant did not turn up; that the occurrence witnesses allegedly examined by the Investigating Officer did not



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indicate about the involvement of the accused 2 to 6; that some of the witnesses are working under the defacto complainant; that no witness has stated about the filthy language allegedly used by the accused; that since the petitioner has filed a contempt petition against the respondent police, they have utilized the complaint of the defacto complainant and without proper investigation has laid the false final report; that the charges levelled against the accused are groundless and no *prima facie* case has been shown and that therefore, the petitioner is entitled to be discharged from the above case.

5.The respondent Police has filed a counter statement raising objections, wherein it has been stated that the petitioner without giving due share in the property to the defacto complainant's wife, executed a settlement deed in favour of his son fraudulently and challenging the same, the defacto complainant's wife was forced to file the civil suit and is pending; that the petitioner and other accused having grudge over the demand of share in the family property, trespassed into the house of the defacto complainant on 19.11.2017 at about 07.00 pm., restrained the defacto complainant, abused him in filthy words and threatened with dire consequences; that the petitioner alone has lodged complaints against the



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defacto complainant and his family members in Crime No.307 of 2017 and Crime No.59 of 2019; that the petitioner's contention that the defacto complainant has been filing false complaints, is false and untenable; that since the petitioner is an advocate, he has been lodging the complaints threatening the defacto complainant and his family not to claim any share in the property; that the witnesses in their statements under Section 161(3) of Cr.P.C., would narrate about the occurrence and the involvement of the petitioner therein and whether the charges alleged against the petitioner are true or not, cannot be gone into at this stage and are matter for trial and that therefore, the petition is liable to be dismissed.

6.It is not in dispute that the petitioner's sister, who is the wife of the defacto complainant, claiming share in the family property has already filed a suit in O.S.No.334 of 2015 and the same is pending on the file of the Additional District Munsif Court, Dindigul. Before entering into further discussion, it is necessary to refer the judgment of Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***,

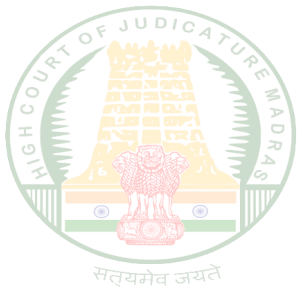


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“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v.CBI (2010) 9 SCC 368, State v. A.Arun 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, Niranjan Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjayya (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 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



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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.”

7. 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.

8. 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.

9. It is pertinent to note that the Courts while dealing with the application for discharge, are required only to see whether a prima facie



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

10.As rightly pointed out by the learned Government Advocate (Criminal Side), the defacto complainant's statement under Section 161(3) Cr.P.C. corroborates the complaint, and two other eyewitnesses



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have also supported the manner of occurrence and the petitioner's alleged role. The pendency of a civil case between the parties does not automatically invalidate the criminal complaint or justify discharging the accused.

11. As already pointed out, the civil suit is pending from 2015. According to the prosecution, the petitioner and other accused had trespassed into the house of the complainant in 2017, threatening him to to withdraw the cases including civil suit and coercing his wife to execute a release deed in favour of the petitioner.

12. As the Government Advocate (Criminal Side) rightly contended, sufficient material exists to frame charges against the petitioner, and there's no indication that the charges are groundless. While the petitioner's learned counsel relies on several decisions of this Court, those cases were decided under Section 482 Cr.P.C. In contrast, the present case involves a petition under Section 239 Cr.P.C., seeking discharge.



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13. In criminal jurisprudence, quashing and discharge are distinct legal action and the scope and nature of the enquiry required for quashing as well as discharging are entirely different. Section 482 Cr.P.C. grants the High Court inherent power to prevent misuse of the legal process or to secure the ends of justice, whereas, Section 227 Cr.P.C. allows a Court to discharge an accused if there are no sufficient grounds to proceed with the trial. To put it in short, Section 482 Cr.P.C. is about preventing abuse of process and securing the ends of justice, but Section 227 Cr.P.C. is about determining the sufficiency of evidence for a trial. In essence, quashing under Section 482 Cr.P.C. addresses the initiation of proceedings, while discharge under Section 227 Cr.P.C. addresses the sufficiency of evidence for proceeding with a trial.

14. Hence, the decisions cited cannot be made applicable to the case on hand. Considering the records available, as rightly observed by the learned Judicial Magistrate, there existed *prima facie* materials to frame charges against the petitioner and that therefore, the impugned order dismissing the discharge petition cannot be found fault with. Hence, this Court concludes that the Criminal Revision case is devoid of merits and the same is liable to be dismissed.



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Consequently, the connected Miscellaneous Petition is closed.

13.06.2025

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

1.The Judicial Magistrate No.III, Dindigul.

2.The Inspector of Police,
Town South Police Station,
Dindigul.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery Order made in
Crl.R.C(MD)No.1353 of 2024
and
Crl.M.P(MD)No.13705 of 2024

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