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Crl.R.C(MD)No.1376 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.12.2024

Pronounced on : 29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1376 of 2024

and

Crl.M.P(MD)Nos.13888 and 13889 of 2024

Sivaraman

... Petitioner

Vs.

State of Tamil Nadu rep. by
The Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur District.

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records pertaining to the order, dated 07.11.2024 passed in Crl.M.P.No.299 of 2024 in C.C.No.122 of 2021 on the file of the learned Judicial Magistrate No.2, Kumbakonam (FAC) and set aside the same.

For Petitioner : Mr.K.M.Karunakaran

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor



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ORDER

This Criminal Revision Case is directed against the order, dated 07.11.2024 passed in Crl.M.P.No.299 of 2024 in C.C.No.122 of 2021 on the file of the learned Judicial Magistrate No.2, Kumbakonam (FAC).

2.The brief facts of the case:

The revision petitioner is the sole accused in C.C.No.122 of 2021 on the file of the Judicial Magistrate Court No.2, Kumbakonam. It is alleged that the petitioner has committed the offences U/s.294(b), 324, 506(2) of IPC. When the case is pending for further proceeding, the petitioner has filed the petition under section 239 of Cr.P.C. to discharge him from the aforesaid alleged charges. The said petition was taken on file as Crl.M.P.No. 299 of 2024 in C.C.No.122 of 2021 by the learned Judicial Magistrate No.2, Kumbakonam. The respondent police filed the counter objecting the discharge petition. After hearing both sides and after perusing the material records, the learned Judicial Magistrate found that there was a *prima facie* case against the petitioner and dismissed the petition for discharge by his order, dated 07.11.2024.

3. Aggrieved by the order of dismissal, the revision petitioner has come forward with this present Criminal Revision Case.



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4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner has not committed any offences as alleged by the prosecution, the alleged occurrence took place on 19.03.2020, but the complaint was lodged on 22.03.2020 and also there are no averments in the complaint. The trial Court has not considered the final report, documents and the complainant has not cited any material witness to corroborate the prosecution version. There is no *prima facie* evidence in the prosecution case. Moreover, the petitioner lodged complaint against the defacto complainant and counter case was registered in Crime No.57 of 2020. The trial court has not considered all these aspects and failed to hold that the alleged charge is groundless. Therefore, this criminal revision case may be allowed.

6. The learned Additional Public Prosecutor appearing for the respondent has objected the criminal revision. The prosecution laid charge sheet against the petitioner by citing 4 eyewitnesses including the defacto complainant. The statement of the medical officer also showed that a known person attacked the injured and the statement of the medical officer is also



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attached with the final report. The counter case filed by the petitioner was referred as "mistake of fact". At the stage of consideration of discharge under Section 239 of Cr.P.C., only a *prima facie* case is to be looked into and the Judicial Magistrate Court has correctly held that there is a *prima facie* case made out against the petitioner and passed the impugned order. There cannot be said to be any material error or illegality in the impugned order. Hence, this Criminal Revision Case may be dismissed.

7. On hearing both sides, it is clear that the revision petitioner is the sole accused for the alleged offences U/s.294(b), 324, 506(2) of IPC and the case was taken on cognizance by the Judicial Magistrate Court No.2, Kumbakonam as C.C.No.122 of 2021 upon the final report filed by the respondent police. At this stage, the revision petitioner filed the petition U/s.239 of Cr.P.C., to discharge him from the charge. Section 239 of Cr.P.C. reads as follows:

Section 239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and



record his reasons for so doing.

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Section 239 of the Cr.P.C. lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the Cr.P.C. means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.

8. The Hon'ble Supreme Court in several cases of this nature held that "The ambit and scope of exercise of power under Sections 239 and 240 of Cr.P.C., are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused by recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of



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weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless."

9. The order of the learned Judicial Magistrate and the material records of the discharge petition are perused. The petitioner alleged that the occurrence took place on 19.03.2020 and the complaint was lodged on 22.03.2020. The learned Judicial Magistrate observed that because of the curfew announced due to covid-19 movements were restricted and also it was alleged case and counter case were given and hence, the contention of the petition regarding the delay in F.I.R. is not sustained, in which, there is no irregularity. The prosecution submitted that along with the final report, the statements of eye witnesses and also the doctor, who treated the injured were filed. The petitioner has not objected the above version and also there is no dispute that those statements were furnished to the petitioner. Therefore, there is a prima face material available in the prosecution as correctly observed by the learned Judicial Magistrate. The another contention of the counter case is concerned, the learned Additional Public Prosecutor submitted that the counter case laid by the petitioner was referred as "mistake of fact" and on perusal of the impugned order, after the counter case was referred, the petitioner filed the private complaint U/s.200 of Cr.P.C. and the said private complaint was dismissed for default.



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This fact was also not disputed by the petitioner and he has not produced any material as he took steps to revoke the dismissal order passed in his counter case. Moreover, the Three Judges Bench of the Principal Seat of this Court issued guidelines in respect of case and counter as per order, dated 08.08.2024 passed in Crl.O.P.Nos.4587 & batch of 2023. As per the order, while the case and counter case are filed, one of the two would be false and therefore, the counter case is closed as "mistake of fact". Hence, this Court is of the view that the trial Court has correctly considered all the material records and held that there is a *prima facie* grounds available to frame charge against the petitioner. There is nothing wrong in it.

10. In the result, this Criminal Revision Case is dismissed.
Consequently, the connected Miscellaneous Petitions are closed.

29.01.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

1.The Judicial Magistrate No.2, Kumbakonam (FAC).

2.The Inspector of Police,
Kumbakonam Taluk Police Station,
Thanjavur District.

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



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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