IN THE COURT OF SESSION, ERNAKULAM DIVISION

Present:

Present:-Sri. Mohandas P.K., Addl. Sessions Judge-VIII

Wednesday, 15th day of November 2023/ 24th Karthika, 1945

Crl. R.P. No.01/2022

(Against the order dated 11.12.2020 in in CMP No.7815/2009 in C.C. No. 50/2008
on the files of the Chief Judicial Magistrate Court, Ernakulam.)

Revision Petitioner/Petitioner-3rd Accused:

S.Raghunathan,S/o.P.Sundararajan,aged 52 years,
House No.14,3rd Street, East Abiramapuram,Mylapore,
Chennai.

By Advs: Philip T Varghese,Thomas T Varghese,
Achu Subha Abraham, Nitya.R.,Ebee Antony,
Amala Purushothaman, Amrutha Ramesh,
Adhil. P., Gayathri Vijayan,Derick Mathai Saji.

Respondent/Respondent/Complainant:

State of Kerala, represented by Inspector of Police CBI/SPE
Trivandrum Unit.

This petition filed u/s.397(1) to allow this Crl.R.P. setting aside the Order dated 11.12.2020 in Crl.M.P.No.7815/2009 in C.C.50/2008 of the Chief Judicial Magistrate Court , Ernakulam.

This petition coming on for hearing on 04.10.2023 and stood over for consideration till this date and the court on 15.11.2023 delivered the following:-

ORDER

This is a revision petition filed against order dated 11/12/2020 in Crl.M.P. No.7815/2009 in CC 50/2008 of the Chief Judicial Magistrate, Ernakulam.

2. The petitioner is the 3rd accused in CC 50/2008 on the file of the Chief Judicial Magistrate Court, Ernakulam. The case was taken on file on the basis of the final report submitted by the Inspector of Police CBI/SPE, Thiruvananthapuram unit in Crime No. RC18(A)/2005 CBI/Kerala alleging offence punishable u/s.420, 467, 468 and 471 r/w s.120B of IPC.

3. The prosecution allegation is that the petitioner entered in to criminal conspiracy with the other accused in the year 2004 with an intention to cheat the defacto complainant and the Union Bank of India, Muthankuzhi Branch for unlawful gain. In pursuance of the conspiracy, the 3rd accused requested one Mr.M.P. James, who is the financial consultant of one Abdul Rahman Mansoor, who is a Non Resident Indian to deposit at the Union Bank of India knowing that the bank is not having FCNR deposit facility. Believing the representation of the petitioner, Mr.James deposited the amount and he received commission from the petitioner. No receipt was issued to the depositor from the bank. On enquiry, the manager informed him that there is no such deposit. Later, the petitioner procured a scanner from Chennai and fabricated fake FCNR deposit receipt, as if the same was issued by the Union Bank of India and handed over to the party. A sum of Rs.11 lakhs was dishonestly taken

from NRE SB account No.50236 through SB account No.11478 of the 1st accused and the same was given to the petitioner. In pursuance of the conspiracy, the petitioner obtained fake cashier cheque as if it was original cheque of Liberty National Bank bearing No. 014999 dated 20/01/2005. The other accused and the petitioner committed conspiracy to cheat the depositor and fabricated false document and used the same as original and thus committed the offences as stated above.

4. On appearance of the accused, copies of relevant records were served on them. The revision petition filed Crl.M.P No.7815/2009 for discharge. As per the impugned order the learned Chief Judicial Magistrate dismissed the application.

5. Aggrieved by the order of the Learned Magistrate, 3rd accused filed this revision petition contending that the court below ought to have found that in the light of the settled position of law and based on the materials on record there is no valid and justifiable reason for not allowing the discharge petition. The court below committed error in dismissing the petition without properly considering the matter on merit by relying on the statements of some of the witnesses. The court below ought to have found that there is no document or other material to support the allegations made against the revision petitioner. There is no evidence to show that the petitioner had a transaction of Rs.1 lakh. The petitioner was implicated in the case without any reason. There is no material to show that he procured the printer and fabricated false

documents as alleged. The court below ought to have discharge the accused.

6. The petition was filed before the Sessions Judge on 01/01/2022. After admission, the same was made over to this court for hearing and disposal. When the matter came up for consideration, both sides were heard. The following points arise for consideration;

1. Whether the revision petitioner is entitled to any discharge?
2. Whether there are any reasons to interfere with the order of the trial court?
3. What is the order to be passed or relief to be granted?

7. **Point No.1 and 2:** This revision petition is filed against the order dismissing the application u/s.239 Cr.P.C. for discharge. It is settled law that the accused is not entitled to be discharged when the materials available on record if stands unrebutted warrants a conviction. At the stage of framing charge, the court is not expected to sift and weigh the evidence in detail to find whether they are true. What the court is to look into is whether there are prima facie materials to proceed and to frame charge against the accused. A detailed evaluation of the evidence is not warranted at the stage. The matters to be considered by the court while dealing with an application for discharge was considered by the Hon’ble Supreme Court in State represented by the Inspector of Police, Chennai v. S. Selvi and another (2017 KHC 6899).

8. In Sparjan Kumar v. CBI (2010) 9 SCC 368), the Hon'ble Supreme Court laid down the following principles while considering the scope of S.227 and 228 of CrPC.

> "17. Exercise of jurisdiction under S.227 & S.228 of CrPC:
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> On consideration of the authorities about the scope of S.227 and S.228 of the Code, the following principles emerge:--
>
> (i) The Judge while considering the question of framing the charges under S.227 of the CrPC 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. The test to determine prima facie case would depend upon the facts of each case.
>
> ii) *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.
>
> iii) The Court 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 evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a

trial.

iv) *If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge*, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

9. vi) At the stage of S.227 and S.228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.” (emphasis supplied by me.

10. This decision was referred to by the Apex Court in *Selvi's case*. It is settled law that while considering the application u/s.239 CrPC also the same principles are to be followed. The Apex Court has held that if the materials placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceed with the crime.

11. The court has to approach the case keeping in mind the above principles. The court has to consider whether the materials on record creates a grave suspicion against the accused or not.

12. In this case the specific allegation against the petitioner is that it was he who induced Mr.James, who is the financial consultant of Abdul Rahman Mansoor, who is a NRI to deposit the amount with Union Bank of India. The prosecution proposes to examine 38 witnesses and have produced 141 documents to support this case. In the statement of Mr.M.P. James (CW3) u/s.161 CrPC, he has narrated the role of petitioner in the commission of the offence. CW35, one Mr.Nandagopal has also given statement to the investigating officer regarding the role of the petitioner. The statements of CW3 and CW35 is supported by the evidence of CW31, who is the person who helped the accused to forge the fake documents. At present there are statements of witnesses. The contention of the learned counsel for the revision petitioner is that the

prosecution has not produced documents to prove the involvement of the petitioner in the alleged incident and there is nothing on record to suggest that the printer was procured by the petitioner from Chennai. As stated above, at this stage the court need not consider the evidence in detail.

13. The statement of witnesses referred above, if stands unrebutted will lead to the conclusion that the accused had an intention to cheat the depositor and he had fabricated false documents and used the same as genuine. As found by the learned Magistrate, there are sufficient ground for framing charge. The court below has consider the materials on record in detail and found that there is no reason to discharge the accused.

14. On going through the entire materials on record and the order of the learned Magistrate I find no illegality, impropriety or any other reason to interfere with the finding of the learned Magistrate. There is no merit in the revision petition. The order of the trial court is to be confirmed and the revision petition is only to be dismissed. The points are found against the petitioner.

15. **Point No.3:** In the light of the finding on Point Nos.1 and 2, the revision petition is only to be dismissed.

In the result, the revision petition is dismissed confirming the order dated 11/12/2020 of the Chief Judicial Magistrate in Crl.M.P.

No.7815/2009 in CC No.50/2008.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 15th day of November, 2023.

Sd/-

P.K.Mohandas,
Addl. District and Sessions Judge-VIII.

Appendix:- Nil

Id/-

Addl. District and Sessions Judge-VIII.

mmc
com.by:-

ORDER
In
Crl.R.P.No.01/2022

Dated.15/11/2023