

IN THE COURT OF THE I ADDL.CMM: BENGALURU

Dated this 23rd day of January 2023

**Present: Shri Anand T Chavan, B.Com., LL.B(Spl.).
I Addl. C.M.M BENGALURU.**

C.C.No.926/2011

Complainant : State by CCB (OCW) police
Aduodi Police Station,
Bengaluru,

Vs

Accused : A6. Saravana Prasad

**ORDER ON APPLICATION FILED BY
ACCUSED No.6 UNDER SECTION 239 OF Cr.P.C.**

The accused above named has filed above application under Sec.239 of Cr.P.C. seeking to discharge him in this case.

2. It is averred in the application that this court impleaded accused No.6 as Proposed accused and issued notice as to why he should not be made an accused. After such notice accused No.6 appeared before this court and he filed his reply to application u/s 319 Cr.P.C. After hearing both sides this court impleaded the above proposed

accused as accused No.6 as per order dated 29-6-2019, by relying upon a CD stating that it contains threats given to complainant by Ravi Poojari. It is further averred that an application is filed for obtaining certified copy of CD, which was marked in examination-in-chief of P.W.8 as M.O.1, which is seized under mahazar Ex.P12. The said copy of CD was obtained from special order of this court. This court directed to furnish empty CD by accused No.6 and accordingly same was furnished to obtain certified copy of M.O.1 CD. Thereafter, this court directed computer section to furnish certified copy of M.O.1 CD. Thereafter the entire file was sent to copying section where M.O.1 CD was played with the help of a computer in computer section. However, after the said CD was inserted into computer for making certified copy of M.O.1, it was found that M.O.1 CD was empty with no audio recording. Thereafter the copying section issued certified copy of above CD with printout of DVR RW drive with an

endorsement that M.O.1 CD is blank as shown in the computer and said certificate issued by copying section is produced with this application. This court was made to believe that M.O.1 CD contains recording of threats given to complainant by accused No.1 Ravi Poojari that he would shoot to complainant, if he doesn't settle the dispute with accused No.6. Hence on the basis of examination-in-chief of P.W.8, this court impleaded present accused No.6 in this case. Complainant misled the court with malafide intention and his entire case is relied upon contents of M.O.1 CD, which consists no recording of threats by accused No.1 at the instigation of accused No.6. Hence allegations made in examination-in-chief of P.W.1 could not stand as M.O.1 CD is empty and accused No.6 entitled to be discharge as no prima facie case is made out against him. Further complainant has accused this accused No.6 with offences u/s 384, 511, 506 R/w Sec.120(B) of IPC, which is an offence u/s 193 of IPC for

giving fabricating false evidence to procure conviction. Hence absolutely there is no prima-facie case is made out against accused No.6 under Sec.384 as M.O.1 CD contains no recordings and charge leveled against accused no.6 is groundless. Hence accused No.6 is entitled for discharge in present case and these amongst other grounds it is prayed to allow the application.

3. The learned Sr.APP has filed objections to present application, wherein it is averred that application is not maintainable and same is liable to be rejected. The entire case of prosecution is reiterated in objection statement by learned Sr.APP. Further it is averred that several cases of similar kinds are pending against accused persons of this case. It is further averred that the I.O. has collected phone records related to this case and produced, which would help in proving the alleged offences against accused. It is further averred that during trial, evidence of witnesses are

recorded and relevant documents are produced, which would help in proving the alleged offences committed by accused persons. Further there are sufficient materials in charge sheet to prove the case against accused persons and in order to form prima facie case court need not insist to have sufficient grounds for conviction and court needs to consider whether as to there are sufficient materials to proceed against her. These amongst other grounds it is prayed to reject the application.

4. The following points arise for consideration :-

1. Whether accused No.6 has made out grounds for his discharge u/s 239 of Cr.P.C. as prayed for in the application ?

2. What order?

5. Heard arguments of learned counsel for accused No.6 and learned Sr.APP. The followings are findings to above points:

Point No. 1 : In the negative.

Point No.2 : As per final order.

REASONS

6. **Point No.1:-** Adugodi police have registered present case against persons for offences punishable u/s 384, 511, 506 R/w Sec.120(B) of IPC and it shows that subsequently the investigation of the case is taken over by CCB(OCW), Bengaluru. It is alleged that accused No.1 and 2 being indulged in money extortion activities from Abroad, they with an intention to extort money from several businessman, obtained the phone numbers of several businessman including C.W.1 informant from Accused no.3 to 5. Thereafter, said accused planned to extort huge amount from C.W.1 by threatening him with dire consequences. Thereafter accused No.3 obtained the phone number of C.W.1 from accused no.4 and 5 and he forwarded the same to accused No.1 and 2. Thereafter accused No.1 and 2 called up to mobile phone of C.W.1 on 6-8-2010, 10-8-2010 and 11-8-2010 through VOIP phone

and threatened him to give an amount of Rupees 5 crores in order to fight for Hindus of India against Dawood Ibrahim. It further shows that after filing of charge sheet accused No.3 to 5 are secured and case against accused No.1 and 2 is split up as they are not secured. It further shows that after filing of charge sheet charge is framed against accused No.3 to 5 and prosecution has got examined as many as 8 witnesses as P.Ws.1 to 8. Out of said witnesses the prosecution has got examined C.W.1 informant of the case by name Somashekar S/o Jayaraj as P.W.8. This witness has specifically reiterated averments of his first information stating that accused No.1 called his mobile phone on aforesaid dates by introducing himself as an underworld don and he insisted him to compromise the case with present accused No.6 Sharavan Prasad or else he would shoot his family members. He has further stated that he has produced a CD containing conversation between himself and Ravi Poojari and Kali Yogesh i.e.,

accused No.1 and 2 before police as per Ex.P12 mahazar and he has identified said CD as per M.O.1. He has further specifically stated that accused No.6 in order to get his dispute dissolved with him has instigated such threat calls to him and his family members. He has further stated that he has not given any statement before police stating that, accused No.6 has no role in it and asserted that police have created such statement in order to give up the name of accused No.6 from charge sheet. Relying upon the aforesaid examination of P.W.8, prosecution has filed application u/s 319 Cr.P.C. seeking to implead him as accused in this case. The accused No.6 has appeared before court and contested said application on notice and subsequently this court has allowed the application on 29-6-2019 holding that there is prima facie case against accused no.6. Hence accused no.6 is impleaded in present case.

7. After his impleading in present case accused No.6 has come up with present application at this stage on specific ground that the certified copy of CD supplied to in his blank and on playing M.O.1 CD by computer section the said CD is also blank. On this ground accused No.6 has prayed for his discharge in present case.

8. However, on going through the first information lodged by P.W.8 it clearly shows that he has specifically averred that accused No.6 has instigated accused No.1 and 2 to call him and to threaten him to settle his financial and commercial disputes and accused No.1 and 2 have specifically threatened him with dire consequences by insisting him to settle the dispute with present accused No.6 or else he would kill his family members. P.W.8 has specifically reiterated aforesaid contents in his chief-examination and he has specifically stated that his so called further statement produced by I.O. is created by

them to drop the name of accused No.6 from charge sheet. This court in order on application u/s 319 Cr.P.C. dated 29-6-2019 has specifically considered such averments of complaint and it has observed that the averments of complaint make out prima facie case against accused No.6 as he is key person in instigating accused No.1 and 2 to threaten him to settle the disputes. Further this court has specifically considered the evidence of P.W.8 and held that said evidence is not only against accused No.1, but it is also against present accused No.6. This court has further observed that P.W.8 has denied to have given further statement before I.O. denying the role of present accused No.6 in above offence. Hence by considering that I.O. has not properly proved the alleged conversation between P.W.8 and accused No.1, has proceeded to drop accused No.6 from charge sheet. Hence after considering the above materials this court has opined that there is strong prima facie case against accused no.6 to proceed against him and

accordingly said accused is impleaded in this case as per order on said application dated 29-6-2019.

9. Now the accused No.6 has come up with present application only on the ground that the aforesaid CD produced by I.O is blank. However, if said M.O.1 CD is blank, it may be due to some technical defects. Just for the reason that aforesaid M.O.1 CD is blank, it cannot be a ground to discharge accused No.6 without giving an opportunity to I.O. and P.W.8 to furnish the relevant copies of CD. Further on considering the materials before court, evidence of P.W.8 and order on application u/s 319 Cr.P.C. it shows that mere production of CD is not sole ground to implead accused No.6 in present case and the evidence of P.W.8 and other surrounding circumstances with first information lodged by P.W.8 are necessary to consider that accused No.6 is involved in alleged offences. Further nothing is put forth by accused No.6 till today to show that

he has challenged the order dated 29-06-2019 u/s 319 Cr.P.C. Hence the aforesaid aspects and reasons stated in foregoing paras clearly disclose that there are sufficient materials to proceed against accused No.6 and to frame charge against him. Hence absolutely no grounds are made out by accused No.6 for his discharge in present case as prayed for in the application.

10. Further Court at this stage has to consider only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against accused and the Court is not expected to go deep into the matter and hold that materials would not warrant a conviction. Further it is necessary to consider Sections 239 of the Criminal Procedure Code, which reads thus:-

Section 239 Cr. P.C.:*"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.*

Hence as per Section 239 Cr.P.C. if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The power under said section may be exercised by magistrate, when materials placed before the Court do not make out or are not sufficient to make out a prima-facie case against the accused.

11. Further at the stage of deciding the application for discharge, the court need not go into the merits of the case and need not hold a mini trial. In this regard, it is necessary to consider judgment of the Hon'ble Supreme Court of India in the case of State by Inspector of Police, **Chennai Vs. S.Selvi and another, reported in 2018 Cri.L.J.1422**. In the said judgment, their Lordships have held as under:

If on the basis of material on record, the Court would form prima facie opinion that the accused might have committed offence, it can frame charge, though for

conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Section 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that material brought on record by the prosecution are true and evaluable such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

The law laid down in the above said judgment is squarely applicable to the facts and circumstances of the case and in view of the material placed before the Court by the prosecution. For these reasons absolutely there are no grounds to discharge accused No.6 in present case as prayed for in their application. **Hence Point no.1 is answered in the Negative.**

12. **Point No.2:** For the reasons stated and findings given on point No.1, following is : -

ORDER

**Application No.6 filed by accused under
Section 239 of Cr.P.C. is hereby rejected.**

(Dictated to the stenographer, typed by her directly on computer, revised and then corrected by me and then pronounced in open court on this the 23rd day of January 2023).

**(Anand T Chavan)
I Addl. CMM., Bengaluru.**

23-1-2023

State by Sr.APP,
Accused No.6 C/B
For orders

Order pronounced in Open Court (vide separate order)

ORDER

Application No.6 filed by accused
under Section 239 of Cr.P.C. is hereby
rejected.

(Anand T Chavan)
I Addl. CMM., Bengaluru.