

CMP.No. 2338/2023

in CC.No.75/2016

Petitioners – 1.Kumaresan

2. Ganesan

3. Kasthuri

Vs.

Respondent – State of Tamilnadu Rep. By Inspector of police, Pollachi Town East P.S., in Cr.No.488/2012

Order Dated 15.10.2024

1. The Petitioners herein had filed this application u/s.245(1) Crpc seeking to discharge them from the present criminal case. They stated that the charges sheet does not reveal any prima facie material against them and they are to be discharged.
2. The respondent police and Ld. APP filed the counter contesting the petition by having stated that the petitioners had involved in the offences and there is material against them and the petition to be dismissed.
3. Both side enquiry heard. Records perused.
4. This is a case or complaint filed based on police report so that the present discharge application ought to have been filed u/s.239 Crpc. But it is filed u/s.245 Crpc which is only maintainable towards a private complaint.
5. Though the discharge application if might have been filed u/s.239 Crpc whether it is maintainable or not is the moot point to be decided now.
6. On a careful perusal of records it seems that the Ld. Predecessor had framed the charges against all the petitioners herein on 23.08.2016 u/s.120(B), 468, 471, 420 IPC.
7. It is trite law the a discharge application can be entertained only before the stage of framing charges against the accused by this court. Once the charges are framed, the trial has to be commenced and proceeded.
8. Evidently, in the instant case, the charges were framed against the petitioners herein on 23.08.2016. Hence the present application cannot be entertained at this juncture.
9. This court gains robust from the precedent verdicted by *the Hon'ble Supreme Court in Ratilal Bhanji Mithani Vs. The State of Maharashtra & ors – 1979 AIR 94*, in which it was observed as discharge of an accused cannot be done once charges are framed and it would be illegal if an accused is discharged after charges are framed against him.
10. Hence it is concluded that the instant application is not maintainable at this juncture and in result, this petition is **Dismissed**.

Dictated by me, typed by typist, taken print out, verified and corrected by me and pronounced by me in the open court, this 15th day of October 2024.

(Sd/M.A.Suvedharnayan)
Judicial Magistrate No.I,
Pollachi.