

**IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, ATTUR
(SALEM DISTRICT)**

PRESENT: Thiru.K.Ananthan, M.Sc., M.Phil, L.L.M.,
Assistant Sessions Judge, Attur.

Monday, this the 17th day of April 2022

C.M.P.No.216/2022
in
SESSIONS CASE NO.278/2018

(P.R.C. No.7/2018 on the file of the Judicial Magistrate No.I,Attur)
(Cr.No.196/2017 of Attur Police Station)

S.Palanisami, S/o. Sadaiyan,aged about 25 years,
No.2/230, Indra Nagar, Puliyankurichi Post.
Gangavalli Taluk, Salem District ... Petitioner/6th Accused

/versus/

The Inspector of Police,
Veeraganur Police Station ... Respondent/Complainant

This petition came before me on 31.03.2023 for final hearing in the presence of Thiru S.Sivakumar, Learned Additional Public Prosecutor for the State and Thiru R.Periyasamy, Learned Advocate for the Petitioner/Accused No.6 and considering that on hearing both sides, upon perusing the entire case records and having stood over for consideration till this day, this court delivered the following

ORDER

1. This petition is filed by the Petitioner/6th Accused under Section 239 of Cr.P.C. to discharge the Petitioner from the Sessions Case No.278/2018 in Crime No.196/2016 on the file of the Inspector of Police, Veeraganur

Police Station, Salem District.

2. The abridgment of the petition is that as per the F.I.R, The Petitioner is a victim, he was not involved in to case, ergo his name is not mentioned either in the said complaint given by the De-facto complainant nor in F.I.R,even though the F.I.R was registered after lapse of two days from the date of said alleged crime. Despite the said De-facto complainant was in conscious and cleverly mentioned the names of other Accused, especially A1 to A4, their role in crime and weapons used by them in complaint, F.I.R, total participation of said A1 to A4 in said crime and Accident Report prepared by the Doctor. In spite of that the names of Petitioner and 5th Accused were sequentiality inserted only based on statement recorded by police and the same is nothing but after thought. Thereto the petition has to meet the fate of dismissal.
3. Succinct of the Counter filed by the Complainant is that during the investigation the L.W 1 to 9 have stated about the role of Petitioner and he used the filthy language and also attacked the De-facto complainant, therefore the involvement of Petitioner into the crime shall be definite through the trail, not at the threshold of the proceeding. Thence, the petition is deserved to be dismissed.
4. Heard both sides. Gingerly rummaged into the material available on records.
5. Before reaching the finality , it is imperative on the part of this court to express that in the discharge application, it is the legal remedy that is granted to the person, who has been maliciously charged. If the

allegations which have been made against him are false, the Code of Criminal Procedure provides the provision for filing a discharge application. If the evidence will be given before the Court will not be sufficient to satisfy the offence and in the absence of any *prima facie* against the said person, then he is legally entitled to be discharged.

6. In the case of ***Vijayan -vs- State of Kerala and anr., 2010 SCC 398,*** and in the case of ***Union of India -vs- Prafulla Kumar samal and Anr., AIR 1979 SC Page 366,*** wherein the Hon'ble Supreme Court has formulated the important guiding principles pertaining to the discharge application. Firstly, where the materials placed before this Court disclose grave suspicion against the Accused, which has not been properly explained by him, then the Court will be fully justified in framing a charge and proceeding with the trial. But, ***the Court cannot act as a Post Office or a mouth piece of prosecution, but it has to consider the broad probabilities of the case.*** There cannot be a roving enquiry into the pro and cons of the matter and weigh the evidence as if a trial was being conducted. Secondly, at the time of framing the charges, the probative value of the material on the record cannot be gone into but before framing of charge, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission by the Accused was possible. In addition to that, at the time of evaluating the materials available on record, the Court has to view the ingredients constituting the alleged offence by the Accused, but Court cannot be expected to presume that the Prosecution story is gospel truth. If the two

views are possible and one of them gives raise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empower to discharge the Accused irrespective of the result of the trial. In this connection, the Learned Counsel for the Petitioner also rightly placed reliance upon the Judgment of *Krishna Reddy -vs- State (2014) 14 SCC 401* .

7. This court also conceived that in respect of cases which are triable by Sessions Court, the discharge petition should be filed under Section 227 of Cr.P.C. , wherein if the Court considers that there is **no sufficient ground** for proceeding the case against the Accused. If the warrant case triable by Magistrate, if the Magistrate considers that the charges are **groundless**, then the Accused can be discharged. But the case on hands, the Petitioner has wrongly filed this petition under Section 239 of Cr.P.C instead of 227 of Cr.P.C. even though the offence under Section 307 of IPC is involved into the said crime. In spite of that it is well known that mere wrong mentioning provision is not a ground for dismissal.
8. From the material available on record, it is explicit that under the First Information Report, the above said Accused 1 to 4 names are clearly mentioned, but the Petitioner and the said Varadammal names were not mentioned anywhere in the F.I.R and the statement given by the De-facto Complainant to the Police.
9. It is most significant to note that as per the case of the Prosecution, alleged offence was taken place on 18.12.2017 at about 10.30 A.M., then immediately the De-facto Complainant was admitted into the hospital,

from the Accident Report, it is explicit that the De-facto Complainant had informed to the Doctor that he was attacked by two unknown persons on 18.12.2017 at about 3.30 A.M., not even mentioned the alleged four persons were involved into the said crime. But later on, when the Police had preferred the Statement under Section 161 of Cr.P.C. in the computerized typed format, the names of the 5th and 6th Accused are cleverly inserted even though the De-facto Complainant has not stated anything about the role and the name of 5th and 6th Accused on his Complaint given on 20.12.2017 at about 13.00 Hours.

10. When the De-facto Complainant was not in vegetative status or in unconscious stage and he was clearly undergone into the medical treatment without any serious injury he was no way precluded from mentioning the name of the 5th and 6th Accused on his complaint or the information given to the duty Doctor for involving into the said alleged offences. In the Alteration Report filed by the Investigation Officer on 20.12.2017, the offences under Section 147 and 148 of IPC were wrongly included, even though in the said Alteration Report only the 4 Accused namely Thangaraj, Masimalai, Angamuthu and Silambarasi have participated in the offence of Section 294(b), 323, 324, 355 and 506(ii) of IPC, it shows the non application mind of the Investigation Officer to comply the mandatory requirement of five or more persons ought to have been involved in the said crime for invoking Section 147 and 148 of IPC in the form of describing the offence under Section 141 of IPC (*An assembly of five or more persons* is designated an unlawful

assembly, if the common object of persons to commit the said offence.

11. The charge sheet filed by the Investigation Officer would clearly indicate that based on the complaint given by the De-facto Complainant, the F.I.R was registered and the Accused 1 to 4 were arrayed into the same, wherein the role of four Accused 1 to 4 and the weapon used by them and their name and particulars are categorically mentioned. The same information also recorded by the Police from the De-facto Complainant from the hospital. When the alteration charge had been prepared by the Police, the Section 147 and 148 of IPC are wrongly inserted albeit, the four persons are alone involved into the said crime. Later on , to rectify the defects made in the alteration charge sheet, the Accused 5 & 6 are falsely inserted by way of examining the Police from the witnesses under Section 161 of Cr.P.C as parrot like versions pertaining to the names and act of the Accused 5 and 6 (அப்போது அங்கிருந்த அங்கமுத்து மனைவி வரதம்மாளும், தன்ராஜ் நண்பர் புளியங்குறிச்சியைச் சேர்ந்த சடையன் மகன் பழனிசாமியும்), which is total unbelievable to give the said version in verbatim manner by all the list of witnesses before the Police.
12. When the name of the Petitioner is not mentioned in the F.I.R., Complaint, Remand Report, Alteration charge and the Accident Report, belatedly the Accused 5 & 6 names were inserted to rectify the defects made by the Prosecution.
13. It is also required to be noted that the Petitioner had preferred the **Crl.O.P.No.1067 of 2019** before the Hon'ble High Court of Judicature at

Madras to quash the proceedings as against him. At the time of closing the said petition, the Hon'ble High Court has directed this Court to consider the defence of **Accused 5 & 6, who had been arrayed as Accused, as an after thought by the Prosecution**, while framing the charge. Therefore, it is cloudlessly clear that in order to invoke the provision of Sections 147 and 148 of IPC the names of the 5th and 6th Accused are ingeniously inserted by the Prosecution as an after thought.

14. This Court also legally considers that when the De-facto Complainant did not mention any act of the Accused into the assault or attack on his complaint or intimation to the Doctor and the F.I.R. which was registered basing on the statement made by the De-facto Complainant then the discharge against the Petitioner is legally proper. Even though, this Court is required to evaluate the materials and decide there is a ground for presuming that the Accused had committed the said offence, no materials have been placed to evaluate sufficiency of evidence to convict the Accused. There are no sufficient grounds for proceeding the case against the Accused 4 & 6, the Accused have to be discharged.

15. In the Judgment of ***State of Orissa -vs- Debendranath Padhi***, AIR 2005 SC Page 369 the Full Bench of Hon'ble Supreme Court is held that the Code for discharging the Accused is nothing but for the purpose of saving the Accused from unnecessary harassment, by saying prolonged trial. The same principle was laid down in ***Keven Krishna -vs- Suraj Bhan***, 1980 SCC supplement page 499.

16. After ransacked into the materials available on record, the details of allegations made against the 5th and 6th Accused in order to form an opinion as to whether any *prima facie* case is made out or not as well as strong suspicious in this regard to sub serve the requirement of law, this Court feels that there is no sufficient evidence available on record to involve the 5th and 6th Accused into the above said commission of offence. If really, the De-facto Complainant was not in unconscious stage and he stated the role of Accused 1 to 4 and their manner of attack and the weapon used by them and the injury caused from the said occurrence in detailed manner, he ought to have been mentioned the role and the name of the 5th and 6th Accused into the commission of offence. Even though after the lapse of two days when the De-facto Complainant was in good condition, he has not stated anything about the role of the Petitioner and 5th Accused. Based on the material was collected by the Investigation Agency it would not directly point out the complicity of the Accused 5 & 6 for the alleged offence as mentioned in the F.I.R.
17. Even though the subsequent Accused may be impleaded under Section 319 of Cr.P.C in future , at least the minimum role of 5th and 6th Accused should have been mentioned in the complaint given by the De-facto Complainant when he was in fullest conscious in nature. Based on the said charge sheet, no case has been made out against the Accused 5 & 6 i.e., if unrebutted it would not warrant a conviction, then they should be discharged from this case.
18. This court also imbibed the the legal maxim '***Let a hundred guilty***

be acquitted, but one innocent should not be convicted is the guiding principle behind rules of the procedure and evidence guiding and inspiring of course. When any law relating to procedure and evidence requires some short of interpretation, the interpretation is made usually in favour of the Accused which is uploading the presumption of innocence. The reason for is that an innocent man should not be convicted for a crime if he did not commit any offence, otherwise he could did not have faith and respect for the Justice delivery system. Looking at any angle , the petition is necessarily to be allowed to render justice to innocence, including the 5th Accused.

Eventually, the petition allowed, the Accused 5 and 6 are legally and honorably discharged from the case.

Dictated by me to the Steno-typist, computerized by her directly to my dictation, corrected and pronounced by me in the open court, this, the 17th day of April 2023.

Sd/-K.Ananthan,
Assistant Sessions Judge,
Attur.

