

Ramanathan Vs. Station House Officer Peralam Crime Branch

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Court : Chennai

Decided On : Jul-28-1989

Reported in : (1990)1MLJ321

Appellant : Ramanathan

Respondent : Station House Officer Peralam Crime Branch

Judgement :

ORDER

T.S. Arunachatam, J.

1. The petitioner has been charge-sheeted for an offence under Section 411, I.P.C., by the respondent before the Judicial Magistrate, Mayiladuthurai. The case has been taken on file as C.C. No. 762 of 1984. After the supply of the records contemplated under Section 173, Cr.P.C., the petitioner filed an application before the trial Magistrate seeking discharge on the ground that the entire material placed before the Court did not disclose an offence under Section 411, I.P.C. The trial Magistrate heard both the parties and dismissed the application. The order of the learned Magistrate refusing to act, holding in favour of the petitioner under Section 239, Cr.P.C., is challenged in this revision.

2. Let us now look into the facts which led to this prosecution: It appears that in Cr.No. 272 of 1982 on the file of Peralam police station one Munusami, son of Ponnusami, was indicated as an accused for having committed theft of the

jewellery belonging to one Farida Bibi. In that crime it was the case of the prosecution that the accused Munusami had sold the jewellery, converting it into gold, through one Arumugham and obtained Rs.14,000. What happened to Munusami, the accused in that prosecution, is not clear from the records furnished to the petitioner. It is also not known if the petitioner was cited as a witness in the earlier prosecution against Munusami. The petitioner is now sought to be prosecuted on the ground that Arumugham had sold the gold ingot to the petitioner. Arumugham was not an accused in the earlier prosecution. From the records furnished to the petitioner it is seen that Farida Bibi lost a sixteen sovereign gold chain. The statement of Arumugham, who is stated to have aided the accused Munusami in the earlier crime to dispose of the property indicates that his son-in-law is a jail warden. His son-in-law brought to him the accused in the earlier crime and wanted his help to sell the three-row chain. Arumugham, for reasons best known to him, melted the gold chain and made it into a gold ingot. Though the chain is said to have weighed approximately 128g. the gold ingot is stated to weigh only 87g. According to Arumugham, he sold it in the jewellery shop of the petitioner and obtained Rs.14,000. This was some time in March, 1983. The statement of the thief Munusami shows that he had the jewellery disposed of through Arumugham and he was paid only Rs.7,000. It is not his case that he pointed out the petitioner to the investigating agency. As far as the thief is concerned, he does not appear to have any contact whatsoever with the petitioner. The two witnesses, whose statements form part of the record, and who were present when the accused in the earlier crime was arrested, do not also implicate the petitioner in any manner. They only seek to implicate Arumugham, who had helped Munusami in the disposal of the gold jewel. It is not made clear as to why the prosecution has chosen to file a final report against the, petition exonerating Arumugham, the person who aided the thief in disposing of the stolen property. I directed the learned Government Advocate to get the material regarding the prior prosecution and the reasons for not proceeding against Arumugham. In spite of the message sent by from the Government Advocate, it appears that the prosecuting agency has exhibited the callous in-difference in not having chosen to instruct him with relevant records.

3. Whatever that be, the question to be considered now would be the scope for interference at this stage. Under Section 239, Cr.P.C., the Magistrate trying a warrant case upon considering the police report and the documents sent with it under Section 173, Cr.P.C., and making such examination if any of the accused and after giving an opportunity to the prosecution and the accused of being heard, can discharge the accused if he considered the charge against the accused to be groundless. The impact of the section would be that if there is no ground for presuming that the accused has committed an offence, the charge must be considered as groundless. In other words, if the materials placed and accepted on their face value would not furnish a reasonable basis or foundation, to connect the accused with the crime it cannot be held that there is ground to frame a charge. The evidence, produced before the court, must prima facie indicate the commission of the offence and if such indication is not available the Court will be justified in not framing a charge against the accused. The word 'groundless' means that no reasonable person can come to the conclusion that there was any ground whatsoever to sustain the charge against the accused/The real test will be, if the entire material even if unrebutted, would or would not make out a case.

4. I have earlier extracted the prosecution case and the material it had placed before the Court. There is no connecting link between the thief and the petitioner. The person, who has actually helped the thief in disposing of the stolen property, is taken as a witness in this prosecution without any explanation for such a course being adopted. The ingredients of the offence under Section 411.I.P.C., are not even remotely attracted. The prosecution has not placed any material to show that the petitioner had obtained the gold ingot, at a value far below the market rate, which may possibly indicate mens rea to the petitioner. Looked at from any angle, it may not be possible to frame a charge against the petitioner and obviously it has to be held that the provisions of Section 239. Cr.P.C., will be attracted and the petitioner will be entitled to be discharged. There is no doubt that at this stage, the Court is not called upon to consider in meticulous detail the material and appreciate the evidence. It is also not the possibility of a conviction ultimately that has to be looked into at this stage. But, it cannot be overlooked that if there is no material whatsoever, allowing the prosecution to proceed with the trial will be an exercise in futility. This revision is allowed and the proceedings in C.C. No. 762 of

1984 on the file of the Judicial Magistrate, Mayiladuthurai are quashed.

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