Madras High Court
Hema Mohnot vs State Through Chief Commissioner ... on 30 June, 2006
Equivalent citations: (2006) 205 CTR Mad 418, 2006 285 ITR 402 Mad
Author: S A Kumar
Bench: S A Kumar
ORDER S. Ashok Kumar, J.

1. This Criminal Revision Case as been filed against the order of the learned Additional Chief Metropolitan Magistrate, (Economic Offences Wing-I), Chennai-8 in M.P. No. 1389 of 2003 in E.O.C.C. No. 179 of 1985, dated 18.7.2003 dismissing the discharge petition filed by the petitioner under Section 245 Cr.P.C.,

2. The brief facts of the case are as follows:

(a) The respondent filed a complaint against the petitioner and others for offences under Sections 120B IPC r/w. Sections 420, 467, 468, 472, 181, 182, 177, 193, 196. 197, 198, 199, 200, 201, 380, 379, 419, 420 r/w. Section 511 I.P.C., and 277 of Income Tax Act. The petitioner is Accused No. 12 in the said complaint. P.Ws 1 to 69 were examined on behalf of the complainant and Exs.P.1 to P.26 were marked. When the examination of witnesses was over by 11.11.1987 and the prosecution closed at that stage, the accused were required to be present in Court on 18.12.1987 for questioning under Section 313(1) Cr.P.C., Thereafter the case had a checkered career, because one after another accused absconded or filed discharge petitions before the trial court and quash petition before this Court and thus till this date, the charges could not be framed against the accused. It is at this stage, the petitioner, A-12, who is none other than the wife of A.1 has filed the petition under Section 245 Cr.P.C. to discharge her from the case.

(b) In the discharge petition she has contended that the evidence of P.Ws. 1 to 69 has absolutely no material whatsoever to connect her with any of the offence, much less, for the offence that have been charged against her and none of the documents would connect her with the alleged crime and that there is no iota of material against her and there is no specific case that this petitioner created fictitious persons or documents and the offence alleged against her is only 120B IPC and the only overt act against her is that mere act of receiving the cheque mechanically for Rs. 3,690/= which was issued to Hindustan Electronics of which she is the Proprietrix and she has been arrayed as an accused only because she happened to be the wife of A.1.

(c) Though, no counter was filed by the Special Public Prosecutor he made an endorsement in the Discharge Petition itself raising his objection not to allow the petition stating that all the points raised has already been considered by the High Court in the Quash Petition and the High Court had directed that all the accused should be present in the Court for questioning under Section 313 Cr.P.C.,

(d) The prosecution case is that the winners in the horse races conducted by the Madras Race Club at Madras and at Ootacamund as well as in the inter venue races are paid the winning amounts after deducting income-tax proportionate amount from the winnings as laid down by the Income-tax Act,

1961. The winners are given a temporary receipt for deduction of income tax at source. The winners have to sign in token of acknowledgment in the temporary receipt. Thereafter, the race club would remit the entire deductions to the Central Government account. The race club also issues a tax deduction certificate, which is sent usually by registered post acknowledgment due. The particulars of tax deduction certificate are entered in a register maintained by the race club. IN the event of the original tax deduction certificate being lost, a fresh application has to be given to the race club, which would verify the receipt or otherwise of the original tax deduction certificate and, after completing investigation, it would issue a duplicate tax deduction certificate. An assessee who happens to be a winner in the races has to enclose the original or duplicate tax deduction certificate with the income tax return for payment of the tax or, if no tax is due, to get a refund order. A complaint was made that A.1 along with the other accused persons entered into a conspiracy between January, 1979, and June, 1984, to obtain duplicate tax deduction certificate on false pretences and also obtained some original certificates from the race club with the help of other accused, forged the signatures of the original winners and made false documents with the help of the other accused, that A.1 filed income-tax returns containing false declaration and statements before the income tax authorities, that the income tax authorities were induced to act on such false, forged and untrue documents and issue refund orders and that thereby the accused attempted to cheat the Government and income tax authorities. The further case of the complainant was that after obtaining the income tax deduction certificates, the accused persons obtained refund orders and encashed them by impersonating the original winners and opening false accounts in banks and took the money for their own use. The offences enumerated in the complaint were under Section 120B of the Indian Penal Code, 1860 read with Sections 420, 467, 468, 471, 181, 182, 177, 193, 196, 197, 198, 199, 200, 201, 380, 379, 419, 420 read with Section 511 of IPC.

3. The learned Additional Chief Metropolitan Magistrate, EOW-I, Chennai dismissed the discharge petition filed by the petitioner on the ground that the same grounds were raised before the High Court in Crl.M.P.No:4181 of 1988 before this Court and the same were rejected by this Court by order dated 14.7.1988 and that the offence alleged against the accused can be proved after cross examination of P.Ws 1 to 69 and other witnesses and according to the learned Additional Chief Metropolitan Magistrate, the said application has been filed only to protract the proceedings as contended by the learned Special Public Prosecutor.

4. Mr. V. Padmanabhan, learned Counsel appearing for the petitioner would contend that except one single instance of receipt of a cheque for Rs. 3,690/= in her Company's name, the petitioner has not committed any offence and there is no evidence to connect her with the crime. Per contra, Mr. K. Ramasamy, learned Special Public Prosecutor, appearing for the Income Tax Department would contend that all the contentions now raised has already been raised before this Court and after rejecting the said contentions, this Court only directed all the accused to appear before the trial court for questioning under Section 313 Cr.P.C., and this revision petition is not maintainable and the same is filed only to protract the proceedings. The learned Special Public Prosecutor would submit that this case has been protracted for nearly two decades by the willful and wanton absence or absconding of the accused, filing of quash petitions by the other accused one by one and thus for the last 20 years, the charges could not be framed against the accused. A perusal of the docket orders of the trial court would be useful in this context, which reads as follows:

Date	Docket Orders
11/11/1987	So for as examination of accused under Section 313(1) Cr.P.C. adjourned to 18.12.1987. A.1 to A.20 should be present on that date
18.12.1987	Petition filed under Section 317 for A.19. Adjourned to 20.1.1988. He is directed to be present on 20.1.1988 for 313 (a).
20.1.1988	Petition under Section 317 filed and allowed. Adjourned to 25.3.1988.
5/3/1988	Petition under Section 317 filed for A.19. Adjourned to 12.4.1988.
12/4/1988	NBW ordered to A.19. Adjourned to 29.4.1988
29.4.1988	Case split up against A18 to A20. A.1 filed petition under Section 245 Cr.P.C., for dismissal of complaint in M.P. No. 209 of 1988
24.5.1988	On 24.5.1988 petition filed by A.1 dismissed.
1988	Crl.M.P.NO.4181/88 filed by Smt.Hema Mohnot, A.12 for quashing and stay granted.
14.7.1988	The above criminal M.P. was dismissed
1988	Crl.M.P. No. 6457 of 1888 filed by A.11 Meenakumari Mohnot and stay granted. The above two order was passed in Crl.M.P. No. 4181/88 and Crl. M.P. No. 6457/88 reported in 198 ITR 410.
1988	Crl.M.P. No. 4884/88 was filed by A-1 and stay granted. The above criminal revision was dismissed on 2.9.1988 which is reported in 195 ITR 72.
5/5/1989	The Crl. M.P. No. 6457/88 was dismissed
1989	Crl. O.P. No. 9363/89 filed by N.Mani, A.6 Crl. O.P. No. 7683/91 filed by A.13 Crl. O.P. No. 8990/93 was filed by Harakchand Jain, A.19 and stay granted
12/1/1994	The above Crl.O.Ps have been dismissed by the High Court with a direction to dispose of the cases expeditiously.

No further progress was made in view of the Non Bailable warrants pending against A. 2 t

5. Thereafter the main case was split up for the absence of A.18 to A.20 by order dated 29.4.1988 and the number is EOCC 304/88. The case was again split up as A.2 to A.5 and A.8 to A.11 were absconding and NBWs were pending in EOCC No. 200/2002. A.19 whose case was split up and renumbered as EOCC. No. 304/98 along with A.18 and 20 moved this Court and filed Crl. O.P. No. 5124 of 2002 for quashing of the complaint. A.19, who absconded first as early as on 12.4.1988 had caused delay of 6 years and 5 months by his absence and moving petitions before this Court to recall NBWs. The petitioner, A.12 filed petition for discharge under Section 245 Cr.P.C. and the trial court has passed the impugned order dated 18.7.2003 dismissing the petition. Though the prosecution closed its preliminary evidence on 11.11.1987 and in spite of the order passed by the trial court, directing A.1 to A.20 to be present for questioning under Section 313(1) Cr.P.C., the case could not be progressed for the reasons listed in the above table supra.

6. The petitioner, A.12 is the wife of A.1. A.2 is the Hindu Undivided Family represtned by A.3, father of A.1 and A.4 and A.5 are brothers of A.1 and A.11 is mother of A.1. According to the learned Special Public Prosecutor A.1 has so far not furnished the present whereabouts of his father, mother and his brothers though the address of A.1 was only furnished for them.

7. The trial court has come to the conclusion that there is prima facie case existing for framing charge against this petitioner and other accused. The records relating to Hindustan Electronics, the proprietary concern of this petitioner and other records were seized and statements of A.1 to A.4, A.5 and A.12 were recorded under Section 132(4) of the Income Tax Act. Some pronotes standing in the name of M/s. Ashoka Traders, Hindustan Electronics were found along with other documents and certain challans. According to the investigation a cheque had been issued for Rs. 3690 dated 10.12.1983 of Hindustan Electronics, the proprietary concerned of this petitioner and this has been deposited and encashed by the petitioner through her account. During the search the account books of M/s. Naguasubbiah & Company were found in the residential premises of A.5, A.11 and A.12. The false accounts written by the 7th accused in furtherance of the conspiracy stated to be Hassan & Company were found in the residential premises of A.1, A.3, A.4 ,A.5, A.11 and A.12. Therefore, the learned Addl. Chief Metropolitan Magistrate has come to the conclusion that there is a prima facie case existing for framing charges against the petitioner and other accused.

8. What is prima facie case existing for framing charges against an accused for the offence committed by him has been discussed several times by the Hon'ble Supreme Court.

9. In State of Maharashtra v. Som Nath Thapa , Their Lordships have held thus:

30. In Antulay's case Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence.

In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.

In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn. 32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it

differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

10. In Kanti Bhadra Shah v. State of W.B. , the Hon'ble Supreme Court held thus:

8. We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for trial of warrant cases instituted on a police report. Section 239 reads thus: "239. When accused shall be discharged.-(1) 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.

9. The said section shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. The next section (Section 240) reads thus:

240. Framing of charge.

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried." 10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

11. This court in Lalkhan v. Inspector of Police, Q Branch, Villupuram Town reported in 1983 L.W.(Cri) 271 held that The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding he matter under Section 227 or Section 228 Crl.P.C.,

12. In Superintendent and Remembrancer of Legal Affairs v. Anil Kumar Bhunja , their Lordships of the Apex Court held as follows:

18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

13. From the judgments of the Hon'ble Supreme Court, cited above, it is clear that the question whether a charge should be framed or not when the court is considering under Section 245(1) Cr.P.C., the Court has to take into account whether any case has been made out against the accused which if unrebutted would warrant his conviction. The Hon'ble Supreme Court has gone to the extent of saying that the trial court has to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating police officer. Even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

14. In this case there is a strong circumstance to presume that a prima face case exists against the petitioner (i) as she is the wife of A.1; (ii) several documents were seized from the residential house occupied by her along with her husband; (iii) a cheque for Rs. 3,690 issued in the name of her company has been encashed by her, the said cheque was issued by a fictitious person; (iv) the allegation is that she conspired along with her husband and other accused, of which some of them are employees of the Race Club to dupe the Income Tax Department for the purpose of making unlawful gain by producing bogus TDS certificates or original TDS certificates in the name of fictitious persons by opening bank accounts in the name of fictitious persons in different banks and therefore, it cannot be easily held that there is no prima facie case as against the petitioner at this stage. As rightly held by the learned Special Public Prosecutor, revisions of this nature are filed only to protract the proceedings.

15. Crl. M.P. Nos. 3409, 3412, 3679, 3695, 3711 and 3879 of 1985 filed by various accused persons have been dismissed by this Court and the same is reported in 198 ITR 310. The revision petitioner herein also filed Crl.M.P.Nos:4181 of 1988. Her mother-in-law, A.11 also filed Crl. M.P. No. 6457 of 1988. Both the Crl.M.Ps were also dismissed by this Court, which is also reported in 198 ITR 410. Similarly, the petition filed by A.1 was also dismissed by this Court, as reported in 195 ITR 72. The main Crl.Original Petitions in Crl. O.P. Nos. 9363 of 1989, 7683 of 1991 and 8990 of 1993, filed by A. 6, A. 13 and A.19 respectively were also dismissed by this Court with a direction to the trial court to dispose the case expeditiously. Though this direction was issued in the said order as on 12.1.1994, the stalemate continues and one after another petitions are filed to protract the proceedings. It is now by A. 12. The contentions raised by A. 12 now has already been raised by her in Crl.M.P. No.

4181 of 1988 and the same has been dismissed by this Court. Again and again such kind of petitions are filed by the accused at different forums on the same grounds and the purpose could be only to protract the proceedings. This case is a classical example as to how the criminal case could be protracted for several decades.

16. In the judgment in Om Wati v. State The Hon'ble Supreme Court held as follows:

12. ...We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled-for and unjustified litigation under the cloak of technicalities of law.

17. As far as this case is concerned, the petitioner's earlier petition was dismissed by this Court as mentioned earlier and this Court has become functus officio and is disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error as observed by the Hon'ble Supreme Court in Hari Singh Mann V. Harbhajan Singh Bajwa reported in AIR 2001 SC 43.

18. In the result, I do not find any merit in this revision and it deserves to be dismissed. Accordingly, the Criminal Revision Case is dismissed.