
(2008) 03 MAD CK 0016
In the Madras High Court
Case No : Criminal R.C. No. 654 of 2007

Krishnammal

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 211, 216
Penal Code, 1860 (IPC) — Section 120, 201, 217, 218, 220

Citation : (2008) CriLJ 2845 : (2008) 2 LW(Cri) 1022

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : R. Anand, for the Appellant; L. Murugan, Government Advocate and K. Jeganathan, for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—The order dated 17-8-2007 passed in Criminal Miscellaneous Petition No. 269 of 2007 in Sessions Case No. 223 of 2006

by the Additional Sessions cum Fast Track Court No. I, Tuticorin, is now under challenge.

2. The wife of the deceased by name Krishnammal has filed Criminal Miscellaneous Petition No. 269 of 2007, praying to frame additional charges

under Sections 302, read with 34, 120(b), 201, 217, 218, 220, 331, 342, 348 and 367 of the Indian Penal Code. The Court below has come to

the conclusion to the effect that framing of additional charge does not arise at this stage. Against the order passed by the Court below, the present

criminal revision case has been filed.

3. The learned Counsel appearing for the revision petitioner has repeatedly contended that all the accused have committed offences under Sections

302, read with 34, 120(b), 201, 217, 218, 220, 331, 342, 348 and 367 of the Indian Penal Code, but, the Court below has framed a charge

simpliciter u/s 302 of the Indian Penal Code and in order to frame additional charges, the revision petitioner as petitioner has filed Criminal

Miscellaneous Petition No. 269 of 2007, but, the Court below without considering the contentions urged on the side of the revision petitioner, has

erroneously dismissed the same and therefore, the impugned order passed by the Court below is liable to be set aside and necessary direction to

be given to the Court below for framing additional charges.

4. The learned Counsel appearing for the respondents 2 to 11 has also equally contended that the revision petitioner has no locus standi to file the

present petition for framing additional charges and the power of framing charges, additional charges and altering the same, vests with the Court and

the Court below, after considering the rival contentions raised on either side, has rightly rejected the claim of the revision petitioner and therefore,

the impugned order passed by the Court below is not liable to be interfered with.

5. For analyzing the divergent submissions made by either counsel, it would be more useful to look into the relevant Sections of the Code of

Criminal Procedure.

Section 211 of the Code of Criminal procedure reads as follows;

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the

accused notice of the matter with which he is charged.

(4) The law and Section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was

fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by

reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Section 216 of the Code of Criminal Procedure reads as follows;

(1) Any Court may alter or add to any charge at any time before Judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice

the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been

made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or

the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be

proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which

the altered or added charge is founded.

Section 211 of the said code deals with contents of charge and Section 216 of the said Code deals with the powers of the Court to alter or add to

any charge at any time before judgment is pronounced.

6. From the conjoint reading of the provisions of the said Sections, it is pellucid that only the Court is having power to frame charge or alter it or

add new charges at any time before judgment is pronounced. Neither the prosecution nor the person interested, has right to file petition by invoking

either of the said Sections so as to delete the existing charges or add new charges. In short, either the prosecution or the person interested, has no

right to ask the Court either to alter the existing charges or to add new charges.

7. In the instant case, the Court below after considering all the materials available on record, has framed a charge simpliciter u/s 302 of the Indian

Penal Code against the accused found therein. After framing a charge u/s 302 of the Indian Penal Code, the revision petitioner has filed Criminal

Miscellaneous Petition No. 269 of 2007, praying to frame additional charges against the accused under Sections 302, read with 34, 120(b), 201,

217, 218, 220, 331, 342, 348 and 367 of the Indian Penal Code. The Court below has found that the charge u/s 302 of the Indian Penal Code

has been framed on the basis of available material on records. Since the Court below has framed charge u/s 302 of the Indian Penal Code, on the

basis of available records, it is totally unwarranted on the part of the revision petitioner to file Criminal Miscellaneous Petition No. 269 of 2007 and

further, as stated earlier, the revision petitioner has no right to file the present petition u/s 216 of the Code of Criminal Procedure and further it is

totally unwarranted on her part.

8. In fact, the revision petitioner has made a faint attempt to dictate the Court below so as to frame charges as per the Sections mentioned supra.

Since the petition itself is not legally maintainable, it is needless to say that the order passed by the Court below is perfectly correct and the same

needs no interference. Therefore, the argument advanced by the learned Counsel appearing for the revision petitioner is totally against law and

whereas the argument advanced by the learned Counsel appearing for the respondents 2 to 11 is really having acceptable force.

9. In fine, this criminal revision case deserves dismissal and accordingly is dismissed. The order dated 17-8-2007 passed in Criminal

Miscellaneous Petition No. 269 of 2007 in Sessions Case No. 223 of 2006 by the Additional Sessions cum Fast Track Court No. I, Tuticorin, is

confirmed.