

(1990) 10 MAD CK 0078

In the Madras High Court

Case No : Criminal Revision Case No. 21 of 1986

Muthuraman

APPELLANT

Vs

State by Sub Inspector of Police, Crime Branch, Madars

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239, 91
Penal Code, 1860 (IPC) — Section 420

Citation : (1991) LW(Cri) 223

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : S. Sampath Kumar, for the Appellant; R. Shanmughasundaram, Assistant Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.—The Petitioner, who is the sole accused in C.C. No. 4865 of 1985, challenges the order of the learned XI Metropolitan Magistrate, Madras, made in M.P. Nos. 1 and 2 of 1986 on his file, refusing to discharge the Petitioner u/s 239 Code of Criminal Procedure, by looking into the documents which do not form part of the record forwarded to Court u/s 173, Code of Criminal Procedure, but extraneous records which the Petitioner wanted the Magistrate to summon u/s 91, Code of Criminal Procedure, to substantiate that the framing of the charge would be groundless. The Petitioner is being prosecuted at the instance of the State for the alleged commission of an offence punishable u/s 420, I.P.C.

2. The question involved in this revision case is directly governed by the decision of S. Ratnavel Pandian, Officiating C.J., as he then was, in *Angusami v. Kaleeswaran Ambalam* 1989 L.W. (Cri.) 108. In that case the trial Magistrate had passed an order of discharge u/s 239, Code of Criminal Procedure, after considering the documents filed by the accused at the stage of his examination. The learned Sessions Judge reversed the order of the trial Magistrate in revision and remitted the matter back for proper disposal to the learned Magistrate. The learned Judge while upholding the order of Court of Session, had elaborately

discussed the scope of the Magistrate's duty and power u/s 239, Code of Criminal Procedure. It was observed that at the stage of Section 239, Code of Criminal Procedure prior to the framing of the charge u/s 240, Code of Criminal Procedure, there was no scope for a dress rehearsal of a trial. The Magistrate was not required to consider at this stage any other document, which was not covered by Section 207 Code of Criminal Procedure, and the examination of the accused. At this stage, prior to the framing of the charge, it is not open to the Magistrate to consider any other document, which does not form part of the record forwarded u/s 173, Code of Criminal Procedure, and the examination of the accused, if any, which must necessarily be with regard to the materials placed by the prosecution against him. The documents produced by the accused or which have been sought to be summoned, are not to be taken into consideration by the Magistrate while applying his mind whether the accusation levelled against the accused was groundless or not.

3. The decision aforestated applies squarely to facts in issue. Hence, I do not find any merit in this revision. This revision case is accordingly dismissed.