
(1988) 06 MAD CK 0013
In the Madras High Court
Case No : Criminal M.P. No. 5167 of 1985

Suresh

APPELLANT

Vs

State (H-4 Police Station)

RESPONDENT

Date of Decision : 17-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 379, 418, 461

Citation : (1988) 06 MAD CK 0013

Hon'ble Judges : S.A. Kader, J

Bench : Single Bench

Advocate : K. Rangavajjulla, for the Appellant; Kannappa Rajendran, Government Advocate (Crl. Side) on behalf of the State, for the Respondent

Judgement

S.A. Kader, J.—This is a petition to quash the proceedings in C.C. No. 9554 of 1983 on the file of the XV Metropolitan Magistrate, Madras. The accused is the petitioner.

2. The facts are this: The respondent/State of Tamil Nadu has filed a charge sheet against the petitioner before the XV Metropolitan Magistrate under S. 379 Indian Penal Code read with S. 39 of the Indian Electricity Act on 25th March, 1983. On the basis of the charge-sheet the learned Metropolitan Magistrate framed charges against the petitioner under S. 379 Indian Penal Code read with S. 39 of the Indian Electricity Act and the petitioner pleaded not guilty and the case has been pending for two years. Subsequently on 16th April, 1985, when the prosecution case has been pending without any progress, a fresh charge sheet has been filed by the respondent/State against the petitioner for offences under S. 461 and 418 I.P. C. read with S. 39 of the Indian Electricity Act. It is only to quash the second charge sheet the petitioner has come forward with this petition.

3. It is strenuously contended by Mr. Rangavajjulla, learned Counsel for the petitioner, that there is no power on the part of the police to file a second charge-

sheet without further investigation and obtaining further evidence in the matter. This is obvious from the provisions of S. 173(8) Cr. P.C. which runs thus:-

"Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-S. (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed: and the provisions of Sub-Ss. (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-S. (2) ".

4. It is urged by the learned Government Advocate representing the Public Prosecutor that it is open to the Assistant Public Prosecutor to file a memo for amendment of charge after giving notice to the accused and that right may be left open. There is no bar to the Assistant Public Prosecutor moving the Court for amendment of the charge after giving notice to accused and the Court is entitled to pass such order as it deems fit after hearing both the parties. Subject to this observation the second charge sheet filed is quashed.