

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1118 of 2014
and
M.P. Nos. 1 and 2 of 2014

P. Dharamchand .. Petitioner/ Accused 6

Versus

1. The Inspector of Police
E-1, Mylapore Police Station
Chennai - 600 004

2. H. Premchand
(Impleaded as per the Order dated
30.10.2014 made in Crl.R.C. No.
1118 of 2014)

.. Respondents/
Defacto Complainant

Criminal Revision Case filed under Section 397 and r/w 401 of Criminal Procedure Code to set aside the order dated 17.10.2014 passed in Crl.MP No. 492 of 2014 in S.C. No. 7 of 2004 on the file of the Sessions Judge for trial of Bomb Blast and POTA Cases, Chennai @ Poonamallee.

For Petitioner : Mr. N.R. Elango, Senior Advocate
for Mr. R. Vivekananthan

For Respondents : Mr. V. Arul
Government Advocate (Crl.side) for R1
Mr. Ar.L. Sundaresan, Senior Counsel
for Mr. R. Natesh Kumar for R2

ORDER

The revision petitioner is the sixth accused in S.C. No. 7 of 2004 on the file of the learned Sessions Judge for trial of Bomb Blast and POTA Cases, Chennai. This revision petition is filed by the revision petitioner questioning the correctness of the order dated 17.10.2014 passed in Crl.MP No. 492 of 2014 in S.C. No. 7 of 2014 on the file of the Sessions Judge for trial of Bomb Blast and POTA Cases, Chennai whereby the petition filed by him for discharge from the criminal trial has been dismissed.

2. The case of the prosecution is that on 07.06.2001, on the basis of information received from the control room at 22.35 hours, Tr. Mani, Sub-Inspector of police attached to the respondent police Station along with Head Constable Raveendran reached the place of

occurrence at No.7, Muthuram Street where they saw some persons engaged in a wordy altercation. At that time, it is alleged by the second respondent/defacto complainant that at the instigation of the revision petitioner herein, who had a dispute with him with respect to a sale of the property at Mandaveli Market, Chennai, four persons have trespassed into his house and they were in possession of country made bombs and knives and threatened the defacto complainant and his family with dire consequences. When the Police personnel attempted to apprehend them, two of them rushed out of the house and hurled the bomb by which one of the accused as also the police personnel sustained injuries. However, the police personnel could nab one of the accused at the scene of occurrence and the others ran away from the place. According to the defacto complainant, it is at the instigation of the revision petitioner/A-6, the other accused persons have come to the scene of occurrence and committed the offence. The revision petitioner/A-6 had indulged in criminal conspiracy along with other accused, who were in possession of country made bombs, to commit the offence. In such circumstances, on the basis of a special report given by Tr. S. Mani, Sub Inspector of Police, a case in Crime No. 1139 of 2001 came to be registered for the offences under Sections 448, 307, 332 and 506 (ii) of IPC and Section 3 (1) of Indian Explosive Substance Act. Subsequently, the investigation officer filed a report before the learned XVIII Metropolitan Magistrate, Saidapet altering the offences in to one under Section 452, 307, 332, 306 (ii), 109 and 120-B of IPC and Section 3, 6, 4 (a) of Indian Explosive Substances Act. After investigation, a charge sheet was filed and the case was committed to the Court of Sessions for trial.

3. The learned senior counsel for the revision petitioner would contend that during the pendency of the trial, A-7, Appu, died and therefore his confession statement made before LWs 15 and 16 has no significance in this case or it cannot be used against him. Except the confession statement of A-7, there is no other material evidence made available against the revision petitioner to connect him to the offence alleged. Even though it is alleged by the defacto complainant that the entire episode was enacted at the instance of the revision petitioner, so far, there is no evidence, much less a prima facie evidence made available. There was also no evidence to establish direct link between the revision petitioner and the other accused. Merely because the defacto complainant who is the son of the revision petitioner portrayed an enemical attitude towards him, it cannot be said that at the instigation of the revision petitioner the other accused have committed the alleged offence.

4. The learned Senior counsel mainly focussed his argument on the basis of the report dated 19.12.2006 sent by the Inspector of Police, E-1 Mylapore Police Station, Chennai to the District Collector, Chennai. According to the learned Senior Counsel for the revision petitioner, the report dated 19.12.2006 was filed before the trial Court pursuant to a direction issued by this Court in the earlier round of litigation between the parties. In the said report, it was stated that there was a dispute between the revision petitioner and the defacto complainant with regard to the

ownership of the property situated at Mandaveli, Chennai. It was further stated that as per the documents obtained from the registering officials, the property originally belonged to one Janakia Chettiyar and thereafter, the property came to be owned by the revision petitioner herein. By placing reliance on the above report, the learned Senior counsel for the petitioner would contend that the entire complaint given by the defacto complainant is false. When the ownership of the property vests with the revision petitioner, there is no necessity for the revision petitioner to indulge in committing the offence complained of. It is further contended that from a reading of the statement given by LW 15 and 16, it could be clear that there is no material evidence made as against the revision petitioner warranting him to face the ordeal of trial. Further, the deceased Appu (A-7) in his extra judicial confession has not stated anything relating to the involvement of the revision petitioner in the crime. When there is no material evidence available either to implicate the revision petitioner or to establish his involvement in the commission of offence, the petitioner need not face the ordeal of trial and therefore he is entitled for discharge.

5. Per contra, the learned Government Advocate would contend that the evidence of LW15 and 16 would make the position abundantly clear that the extra judicial confession given by the deceased Appu (A-7) is reliable and trust worthy. Even though Appu (A-7) died during trial, the confession statement given by him is still reliable in the nature of a dying declaration inasmuch as the statement given by the deceased Appu (A-7) was adequately corroborated by LW15 and 16, who stood as witnesses to his confession. Therefore, the argument that the confession statement of Appu (A-7) had lost his significance by reason of his death cannot be countenanced. Further, LW15 and 16 have clearly stated that at the instigation of the revision petitioner the entire episode was enacted especially when there are property dispute between the revision petitioner and the defacto complainant. The revision petitioner has not denied the fact that there was an occurrence in which country made bombs were hurled which resulted in causing injury to one of the accused and the police personnel. The revision petitioner also did not dispute the fact that one of the accused was apprehended by the police personnel at the scene of occurrence. In such circumstances, when there are adequate material made available to connect the revision petitioner to the crime, it is too early for him to have filed the petition for discharge. The trial court has therefore rightly dismissed the petition for discharge and directed the revision petitioner to face the trial. For the purpose of discharge, it is sufficient for the prosecution to make out a prima facie case and only for the purpose of conviction, it has to be established that the accused in the criminal case has really committed the offence by proving the case of the prosecution beyond reasonable doubt. In such circumstances, the learned Government Advocate prayed for dismissal of the Criminal Revision Case which would pave way for completion of the trial in the criminal case.

6. The learned Senior counsel appearing for the defacto complainant would contend that after the death of Appu (A-7) the

confession given by him was duly corroborated by LW 15 and 16 and it can be used against the accused in the case in the nature of an extra judicial confession as contemplated under Section 32 of the Indian Evidence Act. As far as the report dated 19.12.2006 of the investigation officer addressed to the District Collector, at best, it can be made use of by the revision petitioner in the civil proceedings to establish his alleged ownership over the property, however, such report has no application to the criminal trial where the conspiracy of the revision petitioner along with the other accused to commit the offence complained of is sought to be established. According to the learned senior counsel for the defacto complainant, there was an agreement of sale between the revision petitioner and the defacto complainant and it was also stated in the complaint, but that was not referred to in the report dated 19.12.2006 of the investigation officer. In the complaint given by the defacto complainant, it is clearly stated that at the instigation of the revision petitioner, the entire episode came to be enacted. The revision petitioner also did not dispute the occurrence took place on 07.06.2001. When that be so, the revision petitioner has to subject himself to the criminal trial where he can agitate and raise all the defences that are left open to him. When the prosecution had established a prima facie case against the revision petitioner, he cannot be discharged from the criminal prosecution. Therefore, the learned senior counsel for the defacto complainant prayed for dismissal of the Criminal Revision Case.

7. I heard the learned senior counsel for the revision petitioner/A6, the learned Government Advocate (Crl.side) appearing for the State and the learned Senior counsel for the defacto complainant/second respondent. I have also gone through the materials placed before this Court. The learned Senior counsel for the petitioner placed heavy reliance on the report dated 19.12.2006 sent by the investigation officer to the District Collector, Chennai wherein reference was made to the ownership of the property by the revision petitioner and the subsequent transaction made between the revision petitioner and the defacto complainant. In the report, according to the learned senior counsel for the petitioner, it is clearly stated that the property in question was purchased by the revision petitioner in which the defacto complainant has signed as a witness. Therefore, the complaint given by the defacto complainant as though there is dispute with the revision petitioner in respect of the property is false and incorrect.

8. I had gone through the report dated 19.12.2006 sent by the investigation officer to the District Collector, Chennai. In the report, it is also stated that as per the confession statement and statement recorded by the investigation officer from various parties, it is evident that at the instigation of the revision petitioner/A-6 the occurrence took place. Further it is stated in the report that such report is sent to the District Collector, Chennai because a report was called for by the Home Secretary of the State and a copy of the same is marked to the District Collector, Chennai. It is therefore evident that such report was sent to the District Collector, Chennai only for information and no order was sought for from the District Collector, Chennai. This

report is mainly relied on by the learned Senior Counsel for the petitioner to discharge the revision petitioner from the criminal trial.

9. It is seen from the records that earlier, the prosecution has filed Crl.M.P. No. 478 of 2006 before the trial Court seeking permission to carry out further investigation on the basis of the documents received from the Special Secretary to Government, Home (Police) Department by a letter dated 30.08.2006. This petition filed by the prosecution was dismissed by the trial Court on 02.12.2006 against which the revision petitioner has approached this Court by filing Crl.R.C. no. 65 of 2007 on the ground that if further investigation is conducted, he could be exonerated from the criminal prosecution. Even in the earlier case in Crl.R.C. No. 65 of 2007, the revision petitioner heavily relied on the report dated 19.12.2006 sent by the investigation officer to the District Collector, Chennai. By order dated 09.11.2011, this Court, while disposing of the above Crl.R.C. No. 65 of 2007 observed that the criminal case is pending at the stage of framing of charges since 2003. It was further observed that the petitioner has filed petition under Section 309 of Cr.P.C. and the same was dismissed. As against the same, the petitioner unsuccessfully agitated the matter before this Court and the Honourable Supreme Court. Thereafter, the petitioner filed WP No. 556 of 2005 before this Court for a Mandamus directing the Commissioner of Police, Egmore to produce before this Court the report dated 19.12.2006 for further investigation in this case. It is also observed that the petitioner has also filed Crl.OP No. 17321 and 33169 of 2005 seeking the same relief by invoking Section 482 of Cr.P.C. before this Court and this Court closed one of the Criminal Original Petitions and the other was dismissed. As against the same, the revision petitioner has filed Special Leave to Appeal No. 1159 of 2006 which was also dismissed. Thereafter, when the trial court posted the case for initiating proceedings under Section 227 of Cr.P.C., the revision petitioner filed a petition under Section 91 of Cr.P.C. to call for certain documents prior to framing of charge and the same was dismissed. Ultimately, while dismissing Crl.R.C. No. 65 of 2007 on 09.11.2011, this Court observed that already, this Court has passed an order dated 22.12.2009 directing the trial court to complete the case within a time frame but the case could not be completed. Therefore, this Court once again directed the trial court to expeditiously dispose of the criminal case preferably within a period of six months from the date of receipt of a copy of the order.

10. Thereafter, the petitioner has filed Crl.OP No. 9373 of 2012 before this Court praying this Court to direct the investigation officer to forward a copy of the enquiry report dated 19.12.2006 addressed to the District Collector, Chennai to the trial Court. By an order dated 19.04.2012, this Court allowed the Criminal Original Petition directing the investigation officer to produce a copy of the report dated 19.12.2006 within a period of two weeks and thereafter, the trial court shall proceed with the trial in accordance with law and use the document dated 19.12.2006. In the order dated 19.04.2012, this Court also observed that it is for the trial Court to go into the question as to what extent the

document dated 19.12.2006 could be used either by the prosecution or by the defence and at what stage (emphasis supplied). In this context, useful reference can be made to the observation made by this Court in the order dated 19.04.2012 in CrI.OP No. 9373 of 2012 in para Nos. 4 and 5, which reads as follows:-

"4. The learned Government Advocate (CrI.side) on instruction from the respondent police would submit that the respondent is prepared to submit a copy of the same to the Court. However, he would submit that the prosecution may be given liberty to make comments about the report at the appropriate stage before the trial Court. The said statement is recorded."

5. In my considered opinion, fair trial is a sine quo non of the fundamental rights guaranteed under Article 21 of The Constitution of India. To afford fair trial, the accused who is facing trial, more particularly a grave charge, should be afforded every opportunity to defend his case. In the instant case, the petitioner feels that the report of the Inspector of Police will be of immense help to him to establish his innocence. In my considered opinion, it forms part of the right of fair trial to be afforded to the petitioner. Therefore, the respondent cannot have any objection for producing the said document before the trial Court. It is for the trial Court, on production of the said document, to look into the said document if it is relevant at the time of framing of charges or at any later stage strictly in accordance with the provisions of the Evidence Act or the Code of Criminal Procedure."

11. This is how the document dated 19.12.2006 came to be produced before the trial court by the prosecution and on the basis of this report dated 19.12.2006, the revision petitioner is seeking to discharge him from the criminal case. It is also to be mentioned that inspite of the order dated 09.11.2011 passed in CrI.R.C. No. 65 of 2007 as well as the order dated 19.04.2012 passed by this Court in CrI.OP No. 9373 of 2012, the trial Court not proceed with the trial in view of the fact that the petitioner has repeatedly approached this Court and stalled the trial court from proceeding further with the trial. In fact, in the earlier order passed by this Court on 09.11.2011 in CrI.R.C. No. 65 of 2007, this Court, in para No.10 has observed that "....As is reflected in the order of the Court below, the petitioner taking recourse to one petition after another has resulted in the case remaining at the stage of framing charges since the year 2003.(emphasis supplied)" This Court is also of the considered opinion that the petitioner has stalled the criminal trial from being proceeded with by filing one petition or the other, with the result, the trial Court could not comply with the directions issued by this Court to expeditiously dispose of the Criminal trial. When this Court had already observed that the prosecution shall produce the document dated 19.12.2006 and also directed the trial Court to look in to the relevancy or otherwise of the document at the time of framing of charges or at any later stage strictly in accordance with the

provisions of the Evidence Act or the Code of Criminal Procedure, the grievance of the petitioner for discharge from the criminal prosecution is unfounded.

12. As far as discharging the petitioner from the criminal case is concerned, it is mainly contended that there is a specific statement made by the Investigation Officer in the report dated 19.12.2006 relating to the ownership of the property in questioned. As already mentioned, the report dated 19.12.2006 was sent as per the directions issued by the Home Secretary of the State and a copy was addressed to the District Collector, Chennai. The District Collector, Chennai was only apprised about the occurrence that took place on 07.06.2001 and no order was sought to be passed by the District Collector, Chennai thereon. Therefore, such a report dated 19.12.2006 can be a piece of evidence in the trial proceedings and the contents in the report dated 19.12.2006 will not enure to the benefit of the revision petitioner for discharging him from the criminal prosecution.

13. As regards the material evidence collected against the petitioner, the prosecution has obtained the statements of LW15 and 16, who have corroborated the statement given by the deceased Appu (A-7). This is more so that LW15 and 16 are the attesting witness to the statement given by deceased Appu (A-7). Further, LW4 and 5 have categorically stated about the occurrence that four persons, armed with country made bombs and knife have barged into the house of the defacto complainant and threatened the inmates. At that time, the father of the defacto complainant asked them who they are to come to his house and the accused have stated that they have come to their house at the instance of the revision petitioner herein to settle the dispute in connection with the Mandaveli property. This piece of evidence adduced by LW4 and 5 against the revision petitioner have to be tested at the time of trial.

14. The learned Senior counsel for the revision petitioner placed reliance on the decision of the Honourable Supreme Court in the case of (State of Maharashtra and others vs. Som Nath Thappa and others) reported in (1996) 4 Supreme Court Cases 659 to contend that the conclusion arrived at by the trial Court that the accused might have committed an offence is a ground for discharge. The ratio laid down by the Honourable Supreme Court in this decision cannot be made applicable to the facts of this case. In the very same decision, it was held by the Honourable Supreme Court that if there is any ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused. It was further held that if the Court thinks that the accused might have committed the offence, it can frame the charge. It was further held 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. It was further held that at the time of framing of 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.

15. It is well settled proposition of law that for framing of a charge, it is sufficient for the prosecution to make out a prima facie case against the accused. The burden is on the prosecution to prove the material evidence against the accused beyond reasonable doubt only at the time of trial so as to award a judgment of conviction. In other words, the trial court can frame charges against an accused if there are materials showing the possibility about the commission of the crime against an accused. In the present case, in my considered opinion, there are adequate material evidences made available against the revision petitioner/A-6 in the form of confession statement made by the deceased Appu (A-7) which was duly corroborated by LW15 and 16, the complaint given by the defacto complainant complaining that the occurrence was the brain child of the revision petitioner and it is at his instance the other accused, armed with country made bombs, trespassed in to the house of the defacto complainant. Therefore, It is not as though there are no material evidence made available against the revision petitioner warranting him to seek for discharge from the criminal trial.

16. It is seen from the records that no where the revision petitioner has denied the occurrence took place on 07.06.2001. It is also admitted that there is a dispute between the revision petitioner and the defacto complainant with respect to a property at Mandaveli. It is also admitted that at the time of occurrence, country made bombs have been hurled by the accused. According to the defacto complainant, the other accused have barged into his house at the instigation of the revision petitioner, which is denied by the revision petitioner. It is also admitted that one of the accused and few police personnel have sustained injuries by the hurling of bombs by the other accused at the occurrence spot. It is also admitted that one of the accused was apprehended by the police personnel at the occurrence spot itself. In spite of the above, the revision petitioner harps upon the report dated 19.12.2006 to discharge him from the criminal trial. Merely because the report dated 19.12.2006 indicates that the revision petitioner is the owner of the property, it will not in any manner entitle the revision petitioner to seek for discharge from the criminal trial. In fact, this Court in the order dated 19.04.2012 in CrI.OP No. 9373 of 2012 directed the trial Court to look into the reliability of the report dated 19.12.2006 at the time of framing of charges, but even without allowing the trial Court to comply with such direction issued by this Court, the petitioner has come forward with the present application for discharge. Therefore, I am of the view that the trial Court is right in dismissing the application filed by the petitioner for discharge and it does not call for interference by this Court.

17. In the result, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed. It is needless to mention that the trial in the criminal case could not be completed from the year 2011 in spite of the fact that this Court, on more than one occasion, had issued direction to the trial Court to complete the criminal trial within a time frame. Therefore, a direction is hereby issued to the revision petitioner/A-6 to extend his co-operation for expeditious

completion of the criminal trial. The trial Court is also directed to complete the trial in the Sessions Case No. 7 of 2004 within a period of six months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Sessions Judge for trial of
Bomb Blast and POTA Cases
Chennai

2. The Public Prosecutor
High Court, Madras

Copy to

The Section Officer
Crl.Section
High Court, Madras
(For sending the Records if received)

1 cc to M/s.R. Natesh Kumar, Advocate., Sr. 34828

Crl.R.C. No. 1118 of 2014

SAI (CO)
kk 22/7

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