

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

Cr1.O.P.No.21918 of 2014

Chandrika Krishnan @ Chandra (A2)

Petitioner/Accused-2

vs.

State rep. By

1.The Inspector of Police,
Aurovil Police Station,
Tamil Nadu.

2.The Inspector of Police,
CB CID OCU-II
Chennai.

.. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the final report filed in PRC No.7 of 2014 pending before the Judicial Magistrate, Vanur and to quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.C.Emalias, APP

O R D E R

The petitioner, who is the second accused in Cr.No.100/2009 culminated as PRC.No.7/2014 on the file of the Judicial Magistrate, Vanur, has come forward with the present petition to quash the criminal proceedings initiated against her.

2.The criminal proceedings is initiated on the basis of the complaint given by one Vaidyanatha Swamy on 27.05.2009 about the death of one Andre Vizoat caused by murder inside his house. The FIR was registered immediately for the offence under section 302 IPC. As no suspicion was raised against any one, the FIR was not registered against any one. Originally, the case was investigated by Auroville Police Station and the same was thereafter referred to CBCID in 2011. Thereafter, CBCID completed the investigation and file the charge sheet against 11 named accused for the offences under sections 120B r/w 147, 148, 452, 302 r/w 149 IPC and the same was taken up on file as PRC.No.7/2014, by the Judicial Magistrate, Vanur.

3.The allegations raised in the charge sheet are that the deceased Andre Vizoat @ Vizoat Andre Elie Paul was a French national, settled down at Turiya Garden, Edayanchavadi and the owner of M/s.Auro Electronics, Puducherry and M/s.Aurozon (India) Pvt. Ltd and he married one Chandrika Krishnan @ Chandra, who is the petitioner herein/A2 and out of their wedlock, she gave birth to a female child by name Savithri Vizoat @ Gayathri and the deceased and the petitioner along with their female child started living at Turiya House, Edyanchavadi, Vanur Taluk, Villupuram District. While so, matrimonial dispute arose between the deceased on one hand and wife and child on other hand and they got separated and the misunderstanding led to civil and criminal proceedings between the two by and against each other. While they were living separately, the petitioner was unable to meet her family expenses as well as educational expenses of her daughter and the petitioner along with her daughter attempted to borrow money and attempted to sell the property to A1 -Dr.Lakshmi Narayanan @ Ramkumar and sold the property measuring 2.81 acres for the sale consideration of Rs.75 lakhs by two registered sale deeds dated 18.1.2008 in favour of the wife of A1 by name Revathy @ Chinnaponnu and A6 Kannan. When the purchasers attempted to take possession, they were prevented by the deceased, who also laid criminal case against them. As a result, the petitioner was compelled to settle the amount received from A1 and the petitioner also made attempt to sell the companies and the residence, in which the deceased was living as they stand in her name and none were ready either to buy it or lend money against the same. Due to her financial constraints, the petitioner entered into conspiracy with A1 to murder her husband so as to acquire his entire wealth. The first accused, in pursuance of such conspiracy, approached A3 Manikandan, who is a notorious rowdy and A3 gave a plan to his brother A4 Arumugam, who arranged A5 Jana @ Janarthanan, A8 Suresh S/o.Perumal, A9 Palani @ Palanivel and A10 Suresh S/o.Periyannan to execute the plan and they reached the house of the deceased and as per the direction of A3, A4 along with A5 and A8 went to the house of A1 and A1 lent his car as well as cash to A4 and A4 and A5, A8, A9 and A10, who were already present there, along with A6, A7 and A11, who were either closely known to or relative of A1, went to the house of the deceased, waited there for arrival of the deceased and on his arrival into his house from his car at about 2.20 hours on 27.5.2009, A4, A5 and A9 assaulted him by using dangerous weapons and the deceased sustained injuries on various parts of his body and died due to carnio-cerebral injuries and the dead body was thereafter taken to his farmhouse and thrown on the south western side of the residence and thereafter all the accused flew away from the scene of occurrence. Thus, the allegations raised against A2 in the charge sheet are that A2 due to her previous civil and criminal dispute with the deceased and due to the financial strain suffered by her on account of enimical and non co-operative attitude of the deceased to help her financially and to help her to sell her property

conspired with A1 to kill the deceased in order to grab the wealth of the deceased.

4.The petitioner/A2 has come forward with the present petition to quash the charges so raised against her mainly on the ground that the charges so raised against her are devoid of any particulars and are based on no material to prove her mens rea and her part in preparation for the commission of the offence and her participation in the commission of the offence.

5.The learned counsel for the petitioner would seriously argue that none of the witnesses examined herein and cited on the prosecution side spoke about the involvement of the petitioner either directly or indirectly and the statements made against her are only hearsay in nature and the statements regarding her involvement were recorded from the witnesses not at the first instance, but two years after the investigation was transferred to CBCID. It is also argued by the learned counsel for the petitioner that the charges laid against her for the act of conspiracy are only by reason of the disputes between herself and her deceased husband and by reason of pendency of civil and criminal cases between each other and except the same, no other material much less legally permissible material is available to connect her in any manner in the preparation for or in the commission of the offence.

6.Per contra, the learned Additional Public Prosecutor would, by relying on the statements of the named witnesses as enclosed in the typed set of papers filed on the side of the respondent, seek to make out the charges levelled against the petitioner. It is contended by the Additional Public Prosecutor that the statements so made and other materials collected in the course of investigation are sufficient enough to make out a strong case against the petitioner regarding her involvement in the commission of the offence.

7.Heard the rival submissions made on both sides and perused the records.

8.The relationship between the deceased and the petitioner as husband and wife is not denied. The facts that the deceased was a French National and settled down here and he was, during his life time, the Managing Director of two companies and was owning valuable movable and immovable properties and he married the petitioner and a female child was born to them and while the deceased, his wife/petitioner herein and their daughter Savithri Vizoat @ Gayathri were living together in the farm house, dispute arose between the deceased on one hand and the wife and daughter on other hand and the deceased started living alone along with his servant maid in the farm house and the wife and daughter moved to separate living and the daughter was sent to US for her studies and the husband and wife frequently fought against each other on several issues and the same

gave rise to civil and criminal proceedings by and against each other, are not so seriously disputed.

9.The petitioner is sought to be implicated in the present case for an act of conspiracy with A1 to murder her husband mainly by reason of her dispute with her husband. The prosecution case sought to be introduced against the petitioner/A2 is that A2 and her daughter in order to meet their financial needs, attempted to either mortgage or sell the properties and sold an extent of 3.01 acres for sale consideration of Rs.85 lakhs and the sale deed was cancelled in respect of 0.85 cents in the name of the petitioner as there was an injunction order against her and the remaining extent of 2.81 acres was sold by the daughter in favour of the wife of A1 and A6 who is the close associate of A1 for sale consideration of Rs.75 lakhs and after the purchase, the purchasers attempted to take possession and the same was prevented by the deceased and the deceased had also lodged a complaint, which was registered against 35 persons. As a result of dispute, the petitioner/A2 was compelled to settle the amount due to A1 and having failed to arrange for funds through other means, the petitioner colluded with A1 and hatched a conspiracy and killed the deceased in order to acquire the entire estate belonging to the deceased. The rest of the allegations raised are regarding the criminal acts committed by A1 and A2 to A11, which are according to the prosecution in furtherance of the act of conspiracy between A1 and A2.

10.It is relevant to mention at this juncture that A2 was not involved either directly or indirectly in any of the events following the alleged act of conspiracy. It is not the case of the prosecution that after the act of conspiracy, A1 allegedly hired the service of A3 and others and assisted them by giving his car and cash, either with the consent or approval of A2. It is also not the case of the prosecution that either of the accused i.e., A1 or A3 to A11 before, during or after the commission of the offence, met A2 and obtained and acted according to any instructions given by A2. Thus, the only charge levelled against the petitioner is that she consented to murder her husband and she held conspiracy with A1 for that purpose.

11.While according to the petitioner/A2, the entire allegations raised against her are not supported by any legally permissible evidence, according to the second respondent/Inspector of Police, CBCID, the prosecution has collected sufficient oral and documentary evidence to bring home the allegations raised against the petitioner/A2. It is also the case of the second respondent/IO that there are enough circumstantial evidence to point at her direct involvement with other accused in planning to commit the heinous act. The second respondent Inspector of Police has in his counter narrated in detail the relationship between the parties, nature of the dispute arose between them and the properties owned by the deceased and the petitioner and their daughter and their style of living and financial

constraints faced by the petitioner and her daughter, after getting separated from the deceased and the efforts made by the petitioner either to sell the properties or to mortgage the same for raising loans for meeting out their family expenses and educational expenses of her daughter, resulting in civil and criminal proceedings by and against each other and the sale transaction effected between A1 and A2 in respect of 3.01 acres and the cancellation of part of the sale transaction and subsequent sale transaction effected by the daughter in favour of the wife of A1 and one of the associates of A1 and the stage of the criminal prosecution and the conduct of A2 in agreeing to repay the amount paid by way of sale consideration to A1 and the inability of the petitioner to find out the buyers and the financial assistance sought for by her from others etc. The second respondent Inspector of Police has also referred to the so called confession statement of some of the accused and oral statement of some of the witnesses, which according to him, prima facie make out the role played by the petitioner/A2 in the act of murder of the deceased. The second respondent has also referred to the letter dated 23.7.2008 purported to be the complaint addressed to the Station House Office, D-Nagar Police Station, Puducherry by the deceased. The circumstantial evidence referred to is financial difficulty and the indebtedness suffered by the petitioner/A2 and her daughter.

12. It is no doubt true that the husband and wife were seriously on enmity towards each other and there are civil and criminal proceedings initiated by and against each other. From the facts made available herein, it is now seen that the dispute arose between the husband and wife during 2002 and 2003 and the parties started living separately from 2005. Since 2005 onwards, the parties have been fighting with each other either before civil forum or criminal forum. But the mere fact that the deceased failed to render any financial assistance to the petitioner and her daughter and they were struggling for enough money to meet out their family expenses and educational expenses and the same compelled them to seek financial assistance from others either for selling the property or for raising loans against the property, and their conduct in effecting sale transaction with others cannot be considered to be one of the circumstances to prima facie disclose her mens rea to do away with her husband. Further, the wife and daughter of the deceased after the death of the deceased, were able to succeed to the properties, cannot be the ground to raise any suspicion regarding her involvement in the murder of the deceased for the simple reason that there was no divorce between the husband and wife and the wife and daughter being the natural heirs of the deceased, they are legally entitled to succeed to the entire properties left by him and no criminal intention can be attached to the petitioner in occupying the residence and in taking over the companies left by her husband.

13. The learned counsel for the petitioner has at this juncture drawn the attention of this court regarding the manner in which the

statements were obtained from A1 and A2. While no question is put to A1 regarding his acquaintance or association with A2, no serious question is put to A2 regarding the consent given by her and the act of conspiracy between herself and A1 to commit such a serious offence. The learned counsel for the petitioner has also drawn the attention of this court to the absence of any material to prove the lavishing style of living of the petitioner and her daughter, which is according to the prosecution case the main cause for difference of opinion and misunderstanding between the husband and wife. However, no witnesses do either directly or individually specifically speak about the same.

14.As far as the complaints dated 22.7.2008 and 23.7.2008 are concerned, the same are stated to be addressed to the Station House Officer, D-Nagar Police Station, Puducherry. Though it is admitted by LW15 Priyanka @ Priyadharshini that the same were typed by her, while the deceased was alive, the same were brought into light only in the course of house search by CBCID on 16.2.2011 ie., nearly two years after the murder. Regarding other complaint dated 24.4.2006, the copy of the same is produced along with Receipt memo dated 27.4.2012, but no statement is obtained, to whom it was purported to be addressed regarding receipt of the same. The prosecution sought to rely on the complaint dated 23.7.2008, however, the copy of which, is not produced before the original is stated to be sent to the Court. Even otherwise, the same being only in the form of complaint raising allegations against the alleged attempt made on the part of the wife to kill her husband, the same cannot be now after the death of the author of the same treated as legally permissible evidence to prove her link either directly or indirectly in the preparation of commission of the offence. There are no other corroborating legally permissible document collected in the course of investigation to prima facie establish the role played by A2 either directly or indirectly in the commission of the offence.

15.Next comes the statement in the form of confession statement few of the accused and the statement of the witnesses. Before going into the sufficiency and relevancy of the same for allowing the prosecution to continue the prosecution against A2, it is but necessary to refer to the following few facts. As already referred to, the complaint contains no allegation and raises no suspicion either against the petitioner or against other accused for homicidal nature of death of the deceased. The charge sheet also does not contain the time, date and place at which the parties met and decided to kill the deceased and the wife gave her consent for the same and the act of conspiracy entered into between A1 and A2 in furtherance of the same. It is also relevant to point out at this juncture that the petitioner's husband was found murdered on 27.5.2009 and the complaint was given and the same was registered as FIR on the same day and the investigation was commenced and the same was thereafter, as per the averment made in para 4 of the counter filed by the second

respondent, transferred to the second respondent CBCID during March 2011. Between 2009 and September 2011, no witnesses were examined either by local Inspector of Police or CBCID. The witnesses, who were reported to be closely associated with the deceased, were examined only from September 2011 onwards. The complainant himself was examined only during September 2011. All the witnesses, whose statements are relied on by the prosecution for making out the motive of A2 for killing her husband to grab the properties belonging to him, did not think it fit to voluntarily give statement before the first respondent/Investigating Officer. It is nobody's case that they approached the first respondent/IO to assist him in the course of investigation and he refused to avail their assistance. It is also nobody's case that they have voluntarily appeared and gave their statement before the second respondent/Inspector of Police. The fact remains undisputed is that A2 was implicated in the present case only during 2011 on the strength of so called confession statement of A3 Dadha Manikandan @ Manikandan, A5 Jana @ Janarthanan, A6 Kannan, A7 Saravanan, A9 Palani and A10 Suresh.

16.As far as the confession statements of the named accused are concerned, except A5 Jana @ Janarthanan, the statement of other accused about the consent given by the petitioner/A2 to kill her husband is only hearsay in nature. The remaining accused would only mention in their confession statement that they were informed by A1 Dr.Ramkumar as if A2 gave her consent to kill her husband. That being so, the entire confession statement of other accused would not directly refer to the involvement of A2. As far as the confession statement of A5 is concerned, he refers to the presence of the wife of A1 Dr.Ramkumar and the wife of the foreigner in the house of A1 Dr.Ramkumar, when they met the doctor and informed him about their meeting with A3 Dadha Manikandan @ Manikandan. But, he did not mention the name of the wife of the foreigner as Chandrika Krishnan @ Chandrika, who is the petitioner herein. When it is nobody's case that A5 already had acquaintance with the foreigner's wife, the reference to foreigner's wife in the statement is not sufficient enough to point at the presence of petitioner/A2. Even otherwise, the confession statement of A5 is not corroborated with the confession statement of other accused regarding the presence of the foreigner's wife in the house of A1 Dr.Ramkumar. Further, the confession statement of other accused only refers to the presence of the doctor's wife and his brother-in-law and not the presence of the petitioner/A2. There is also no other independent evidence, corroborating the confession statement of the accused in this regard. It is also to be noted herein that A5 did not further say that the foreigner's wife either directly or indirectly participated in their conversation and gave any consent to them to kill her husband. That being so, the confession statement of the accused are of no help to prove any link between A2 with A1 and other accused in the commission of the offence.

17.What is required to be considered next is the statement of the following witnesses in support of the allegation regarding the act of conspiracy between A2 and A1: LW1 Vaidyanathaswami, LW2 Cyril Mathew, LW8 Balakrishnan, LW11 Narayanan, LW12 Gibson, LW14 Prabhakar, LW15 Priyanka @ Priyadharshini Parida, LW19 Mohan @ Paper Mohan, LW22 Venkatesan, LW23 Ramani LW25 Jayaraman, LW26 Padmanaban @ Pathu, LW27 G.Murugan, LW44 Lingeswari, LW45 Oothukattan @ Chandran, LW46 Ganesh, LW47 Roja and LW48 Mathi @ Kanthan. According to the learned Additional Public Prosecutor, the statements of the witnesses as referred to above are sufficient enough to prove the role played by A2 Chandrika Krishnan @ Chandra in consenting and conspiring with A1 to make arrangements to murder her husband.

18.As far as the statements of the witnesses are concerned, except LW19 Mohan @ Paper Mohan, LW23 Ramani, LW25 Jayaraman, LW26 Padmanabhan and LW27 Murugan, other witnesses do not make out any statement regarding the involvement of A2 in any act of conspiracy and the events following the same. All the witnesses do speak only about the difference of opinion and misunderstanding between the deceased and his wife, who is the petitioner herein/A2 and pendency of the civil and criminal proceedings by and against each other and the financial strain that was undergoing by A2 and the difficulties faced by her in effecting the sale of any properties standing in her name. The witnesses do thus conclude their statements abruptly by raising suspicion against the petitioner and A1 and others and the same are not sufficient enough either to raise any suspicion or to prima facie make out any act of conspiracy between A2 and A1 for committing the murder of the deceased.

19.Regarding the remaining 5 witnesses as referred to above are concerned, their statements would reveal that while Chandrika Krishnan @ Chandra along with her sister were staying in the house belonging to LW23 Ramani as tenant, she approached Ramani for helping her to sell two properties (i)company under the name and style of M/s.Auro Electronics and (ii)Turiya Garden and Ramani inturn approached LW25 Jayaraman and at that time, LW27 G.Murugan informed him to approach LW19 Mohan @ Paper Mohan and all the three met Mohan @ Paper Mohan and all of them met Chandrika Krishnan @ Chandra, who at that time, sought their help to sell the properties. It is their further case that the petitioner Chandrika Krishnan @ Chandra told them that no one will come to his rescue, even if her husband Andre Vizoat is killed and LW19 Mohan @ Paper Mohan did not agree for the same and he agreed to have negotiation with Andre and he negotiated with Andre for paying lump sum to Chandrika Krishnan @ Chandra and it was not fructified etc.

20.However, all the above 5 witnesses do not furnish the particulars regarding the date, month and time during which they met Chandrika Krishnan @ Chandra. It is only vaguely stated by them that

it is two or three months prior to the death of Andre. It is also not stated by them that A2 told them so in the presence of A1 Ramkumar. None of the witnesses do further say that in furtherance of their discussion with A2, A2 had further discussion with A1 in this regard. None of the witnesses do also speak about their having any knowledge about the association of A2 with A1 and their having conspired together to murder the deceased. As rightly argued by the learned counsel for the petitioner, the statements of the witnesses would not prima facie make out the consent given by A2 to A1 and the act of conspiracy between A2 and A1 to kill her husband as alleged in the charge sheet.

21. Thus, the discussions held above would reveal that none of the witnesses do make specific reference about the consent given by the petitioner and the act of conspiracy between A1 and A2 and there is no reference about the meeting of the minds of A1 and A2 and the decision arrived at between them to go ahead with their plan and that A1 has in furtherance of the same, made rest of the arrangements. In the absence of one such legally permissible material, no case is made out against the petitioner for any act of conspiracy and in the absence of one such case, the petitioner cannot be subjected to face the ordeal of trial for the offence of an act of conspiracy. Further, this Court is of the considered view that no wife can be implicated as one of the accused for the murder of her husband by reason of any matrimonial dispute between the two or by reason of her living separately and fighting for her right before civil and criminal forum. As such, in the event of the prosecution being allowed to go on against the petitioner for such offence, it will amount to abuse of process of law and will cause serious prejudice to the petitioner herein. Hence, it is a fit case, wherein the criminal prosecution initiated against the petitioner herein is liable to be quashed.

22. In the result, this criminal original petition is allowed and the criminal proceedings in PRC No.7 of 2014 pending on the file of the Judicial Magistrate, Vanur stands quashed insofar as the petitioner is concerned. सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, Vanur.

2.Inspector of Police, Aurovil Police Station,
Tamil Nadu.

3.The Inspector of Police, CB CID OCU-II
Chennai.

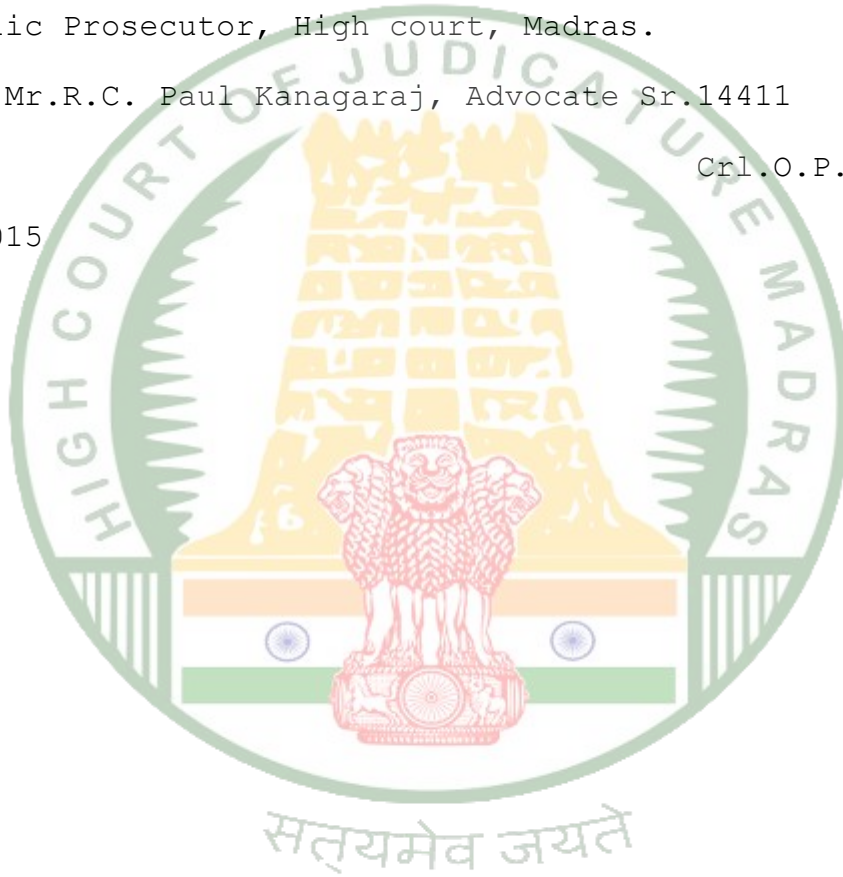
4.The Public Prosecutor, High court, Madras.

+ 1 cc to Mr.R.C. Paul Kanagaraj, Advocate Sr.14411

Crl.O.P.No.21918 of 2014

JSV(CO)

EU 28.4.2015



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