

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2015

Pronounced on : 01-12-2015

Coram :

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

Criminal Revision Case No. 769 of 2015

and

M.P. No. 1 of 2015

Tamilvanan @ Vanan @ Raju

.. Petitioner

Versus

The State represented by
Inspector of Police
Barur Police Station
Dharmapuri District

.. Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Criminal Procedure Code against the order dated 10.07.2015 passed in S.C. No. 109 of 2010 on the file of the Additional District Sessions Judge, Krishnagiri

For Petitioner : Mr.R.Sankara Subbu

For Respondent : Mr.V.Arul

Government Advocate (Crl.side)

ORDER

The petitioner has come forward with this Criminal Revision Case aggrieved by the order dated 10.07.2015 passed by the trial Court. By the said order, the trial Court framed the charges against the petitioner under Section 120 (b) IPC read with Section 302 read with 109 of IPC.

2. The case of the prosecution is that between January 1973 to 8th February 1973, the accused have entered into a criminal conspiracy and in furtherance thereof, they have entered into an unlawful assembly with deadly weapons in Nagarasampatti Village on 08.02.1973 at about 19.15 hours with an intention to cause the murder of deceased H.C. Ramalingam Chettiar and accordingly they have caused the murder of the deceased H.C.Ramalingam Chettiar. The charge against the petitioner is that he abetted the crime by supplying deadly weapons which was used in the commission of offence.

3. The learned counsel for the petitioner would vehemently contend that the trial Court erred in not complying with the provisions contemplated under Section 205 of Cr.P.C. As contemplated under Section 209 of Cr.P.C. the trial Court is expected to hear the counsel for the accused or the accused on the question of framing charges. According to the counsel for the petitioner, on 22.07.2015,

on behalf of the petitioner, petition in CrI.M.P. No. 84 of 2015 in S.C. No. 109 of 2010 has been filed under Section 317 of Cr.P.C. on the ground that the petitioner was ill. Consequently, another petition in CrI.M.P. No. 85 of 2015 in S.C. No. 109 of 2010 was filed praying to condone the absence of the petitioner on health grounds and prayed to adjourn the case from 22.07.2015 to any other date as the petitioner was not well, he could not contest the case and to raise his defence. However, the trial court, without considering the reasons assigned on behalf of the petitioner, dismissed both the petitions on 10.07.2015. On the same day viz., 10.07.2015, the trial court has framed the charges against the petitioner and it is opposed to the principles of natural justice. The trial court has failed to follow the procedures contemplated under Section 226 and 227 of Cr.P.C. and therefore, he prayed for setting aside the order dated 10.07.2015.

4. On the other hand, the learned Government Advocate (CrI.side) while opposing this Criminal Revision Case, would contend that this case has a chequered history. According to the learned Government Advocate, the case in Crime No.31 of 1973 was registered against 5 accused in connection with the occurrence that took place on 08.02.1973 in which the accused have caused the murder of one Dharmalingam Chettiar. Upon registration of the case, the trial in the sessions case commenced. As far as the petitioner/A-4 is concerned, he did not appear before the trial Court and therefore, the case was split up and the trial commenced as against the other accused. As far as first accused is concerned, by a judgment dated 12.09.1974, the Sessions Judge, Krishnagiri has awarded death sentence against him and on a referred trial before this Court in RT No. 44 of 1974, this Court, by judgment dated 20.11.1974 modified the death sentence into one of imprisonment for life. The second accused in this case has turned approver. Similarly, as against the third accused, the Sessions Court at Salem, by judgment dated 30.06.1975 awarded death sentence and it was taken up by this Court as R.T. No. 19 of 1985. Ultimately, by judgment dated 07.01.1986, this Court modified the death sentence of the third accused in this case into one of imprisonment for life. The fifth accused in this case died on 28.12.1980 in an encounter.

5. As far as the petitioner/A-4 is concerned, the case against him was pending in PRC No.11 of 1974. After a long delay, the petitioner was arrested on PT warrant on 05.12.2009. On 05.08.2010, copies of the documents were furnished to the petitioner by the learned Judicial Magistrate, Pochampalli. As the offences against the petitioner are triable by a Court of Sessions, the learned Judicial Magistrate, Pochampalli committed the case and it was numbered as S.C. No. 109 of 2010 before the trial Court.

6. The learned Government Advocate (CrI.side) brought to the notice of this Court that the petitioner did not cooperate with the trial in the Sessions Case and successfully dragged on the trial by filing one petition or the other. Earlier, the petitioner has filed CrI.OP No. 1264 of 2010 seeking bail on 12.01.2010. This Court, by order dated 12.01.2010 refused to grant bail to the petitioner and dismissed the petition with a direction to the trial court to complete the trial in the Sessions Case in three months. Thereafter,

on 07.07.2010, the petitioner has filed another petition in Crl.OP No. 18581 of 2010 seeking bail. This petition was also dismissed on 07.09.2010 and directed the trial court to complete the trial within three months, as directed earlier. However, in the order dated 07.09.2010, it was directed that if the trial is not completed within three months, the petitioner can approach the trial court seeking bail. Accordingly, as the trial did not complete within the time frame, the petitioner approached the trial court and obtained bail on 09.04.2011. Thereafter, the petitioner did not appear before the trial court for the hearing date and therefore, on 22.04.2013, non-bailable warrant was issued against the petitioner. On 25.04.2013, the petitioner has filed a petition to recall the non-bailable warrant issued to him. On 16.12.2013, when copies of the prosecution documents were served on the petitioner, he has complained that some of the documents were not legible. Therefore, as directed by the trial court, the petitioner was furnished with a fresh set of documents. On 24.09.2014, as requested by the counsel for the petitioner, legible copies of the deposition of four witnesses were furnished to the petitioner. However, on 05.12.2014, it was complained on behalf of the accused that of the documents furnished to him, copy of 30 pages are not readable. This defect was rectified and the petitioner was furnished with legible copies of the documents on 25.03.2015. While so, the petitioner has filed Crl.OP No. 2150 of 2015 before this Court praying to transfer the case in S.C. No. 109 of 2010 to some other Court. In this petition, the prosecution has filed their objection on 26.03.2015 and it is pending before this Court.

7. During the pendency of Crl.OP No. 2150 of 2015, the petitioner has filed Crl.M.P.No.39 of 2015 praying to furnish translated copies of some documents. This petition was dismissed by the trial court on 10.07.2015 by imposing costs of Rs.25,000/- with a direction to the petitioner to get along with the trial. While so, on 30.04.2015, the petitioner did not appear before the trial court which resulted in issuance of non-bailable warrant against him. The petitioner therefore has filed Crl.OP No. 12131 of 2015 before this Court seeking anticipatory bail. On the basis of the direction issued by this Court in Crl.OP No. 12131 of 2015, the non-bailable warrant issued to the petitioner was recalled on 04.06.2015. Again, on 20.07.2015, the petitioner filed Crl.OP No. 17884 of 2015 before this Court challenging the order dated 10.07.2015 passed by the trial Court. By an order dated 27.07.2015, this Court dismissed Crl.OP No. 17884 of 2015 and confirmed the imposition of costs of Rs.25,000/- by the trial Court. In the meantime, in the process of trial, the trial Court has issued summons to 11 witnesses for their appearance before the trial Court on 10.07.2015 and they were served. While so, on 10.07.2015, the petitioner has filed the instant application for dispensing with his personal appearance under Section 317 of Cr.P.C. The trial Court, while dismissing the petition by the order dated 10.07.2015, framed the charges against him. As against the order dated 29.07.2015, the petitioner has filed the instant Criminal Revision Case. The petitioner also filed another petition in Crl.OP No. 19442 of 2015 before this Court praying. On 05.08.2015, when Crl.OP No. 19442 of 2015, on the basis of the representation of the counsel for the petitioner to permit the petitioner to appear before the trial court and to re-call the non-bailable warrant, this

Court granted permission to the petitioner to appear before the trial court and to recall the non-bailable warrant issued against him. By the order dated 05.08.2015, this Court also directed the petitioner to extend his cooperation for early disposal of the trial.

8. The learned Government Advocate (Crl.side) by relying on the above narration of facts would contend that the petitioner has filed the present Criminal Revision Case only to drag on the trial. The petitioner was instrumental in the trial court not completing the trial, which was split against the petitioner for nearly four decades. The learned Government Advocate therefore prayed for dismissal of this Criminal Revision Case.

9. I heard the learned counsel for the petitioner, learned Government Advocate (Crl.side) appearing for the respondent and perused the entire materials made available. From the narration of factual events, as furnished by the learned Government Advocate, this Court can come to an irresistible conclusion that the petitioner, at each and every stage of the trial, has successfully filed one petition or the other and was instrumental in dragging on the trial. It is also evident that atleast on three occasion, the trial court was compelled to issue non-bailable warrant to the petitioner owing to his non-appearance before the trial Court. In such circumstance, I am of the view that the trial Court is justified in framing the charges with an intention to commence the trial, which is pending for several years, as against the petitioner.

10. The learned counsel for the petitioner relied on the decision of this Court in the case of (In re-Ramasamy and others) reported in 1976 Crl.Law Journal 770 to contend that when a case is to be committed or made over, it is mandatory that the Magistrate taking cognisance of the offence shall examine the person accepting a tender of pardon made under Section 306 sub-section (1), viz., the approver, as a witness. In other words, the examination of the approver is a condition precedent for the committal. Therefore, section 306 should be read in conjunction with Section 209 and any violation of the mandatory provisions of Section 306 (4) and (5) of Cr.P.C. by the Magistrate amounts to an illegality which would vitiate the entire criminal proceedings.

11. The learned counsel for the petitioner also relied on the decision rendered by the Kerala High Court in the case of (State of Kerala vs. Monu D. Surendran and another) reported in 1991 Criminal Law Journal 27 (Kerala) for the same proposition that examination of approver is necessary.

12. Even though examination of approver is mandatory, in the present case, charges have been framed against the petitioner only now and at this stage, the petitioner cannot contend that approver has not been examined. Such a contention urged on behalf of the petitioner is premature and it cannot be countenanced.

13. The learned counsel for the petitioner further relied on the decision of the Honourable Supreme Court in the case of (Mohammed Hussain @ Julfikar Ali vs. State (Government of NCT), Delhi) reported in (2012 Criminal Law Journal (SC) 1069) to contend that denial of

assistance of counsel for the accused is not proper. This decision has no application to the present case. The counsel for the petitioner ought not to have relied on this decision to lend support to his case. In the present case, the accused is effectively assisted by his counsel, which is evident from the number of petitions filed by the petitioner through his counsel. The fact that the petitioner has so far filed several petitions before this Court and also before the trial court would only indicate that he was effectively assisted by his counsel in defending the trial pending against him.

14. The learned counsel for the petitioner further relied on the decision rendered by the Honourable Supreme Court in the case of (Suresh Chandra Bahri vs. State of Bihar) reported in 1995 Supreme Court Cases (Crl) 60 wherein it was held that where agreement is for accomplishment of an act which by itself constitutes an offence, no overt act is necessary to be proved by the prosecution. This decision ought not to have been relied on by the counsel for the petitioner as it fully supports the prosecution. In this case, it was held by the Honourable Supreme Court that though examination of approver is mandatory, non-examination of the approver is a curable defect and it can be rectified later. As mentioned above, in the present case, only charges have been framed against the petitioner and the contention of the petitioner that approver is not examined is premature. Even otherwise, as held by the Honourable Supreme Court, it is a curable defect and it can be rectified later. But in this case, the approver has been examined before the trial court, as could be evident from the order passed in the very same case as against the co-accused.

15. It is necessary to point out that in Crl.OP No. 2150 and 21006 of 2015 filed by the petitioner before this Court, this Court had an occasion to consider whether examination of approver is mandatory or not. By the order dated 01.09.2015 passed in the above mentioned cases, this Court held in para Nos. 6 and 7 as follows:-

"6. Mr. Sankarasubbu further submitted that the petitioner should be given Tamil translated copies of all the documents. In support of his contention, he relied upon a Judgment of the learned single Judge of this Court. This plea was also rejected in Crl.OP No. 17884 of 2015 and therefore it cannot be reopened.

7. Mr. R. Sankarasubbu relied upon the judgment of a Division Bench of this Court in Lakshmi vs. Deputy Superintendent of Police (1994 (2) Crimes 208). In this very judgment, this Court has held as follows:-

"28. As far as Section 272, Cr.P.C. is concerned, we have referred to certain notifications placed for our scrutiny by the learned Additional Public Prosecutor. As a matter of fact, Tamil Nadu Official Language Act, 1956, was ushered in almost on similar lines, as the earlier notifications, which, on the advent of the Act, have ceased to be operative. To reiterate,

language of the subordinate Courts is Tamil for a limited extent and not that English had been barred entry from proceedings in subordinate Courts lock, stock and barre."

Much reliance was placed upon the above by the learned counsel for the accused. In that case, accused Velu returned the papers given to him under Section 207 Cr.P.C. to the designated Court and the trial Court framed charges against the accused ignoring that. In that context, this Court had quashed the charges and directed the trial court to furnish the copies and frame charges again. In fact, the Division Bench was very critical of the conduct of the counsel for the accused and the Court, which is evident from the following comment:

"The procedure adopted by the counsel and the Court reminds us of playing ducks and drakes."

8. The next contention of Mr. R.Sankarasubbu is that the approver was given pardon by the Revenue Divisional Officer and not by the Chief Judicial Magistrate, and therefore the tender of pardon stands vitiated. It should be remembered that the offence in this case took place on 08.02.1973 when the Code of Criminal Procedure 1898 was in vogue. Nevertheless, the approver was examined by the Committal Court on 30.12.1974 in terms of Section 306 (4) of Cr.P.C. Fortunately, the approver is alive today and he will be examined before the Sessions Court to thwart, which the accused is taking such pleas challenging the very tender of pardon that was given to him way back in 1973."

16. From the above decision rendered by this Court in the earlier Petition filed by the petitioner himself, it is clear that all the points which the petitioner has raised in the present Criminal Revision Case has been dealt with by this Court and therefore the petitioner is estopped from raising the same plea before this Court in this Criminal Revision Case.

17. In the light of the above, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to proceed with the trial against the petitioner and to conclude it as expeditiously as possible.
rsh

Sd/-
Assistant Registrar (CS-III)

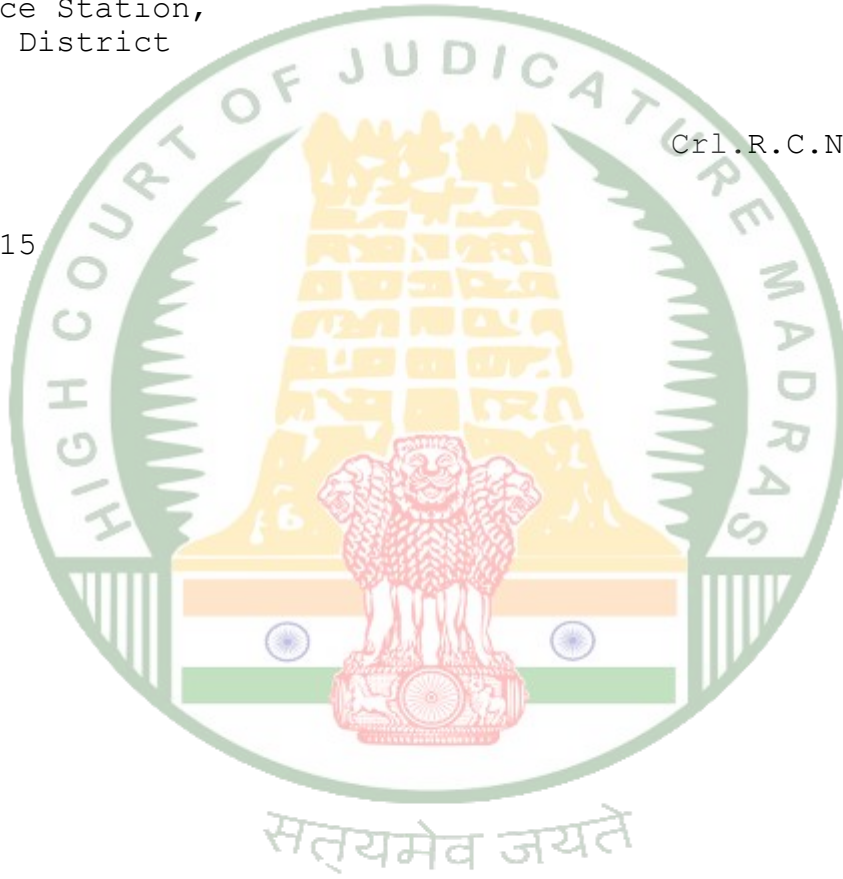
/True Copy/

To

1. The Additional District Sessions Judge
Krishnagiri
2. The Principal District Sessions Judge,
Krishnagiri
3. The Public Prosecutor,
High Court, Madras
4. The Inspector of Police,
Barur Police Station,
Dharmapuri District

Cr1.R.C.No 769 of 2015

VD(CO)
SD : 28/12/2015



WEB COPY