

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 1-9-2015

Pronounced on : 8-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.30393 of 2012

M.P.Nos.1, 2 of 2012

1. P.Venkatachalam
2. M. Saravanamuthu
3. S. Easwaran .. Petitioners

Vs.

1. State Rep. by
The Inspector of Police,
C.B.,C.I.D., Erode District,
(Crime No.11 of 2007)
2. The Chief Divisional Manager,
United India Insurance Co. Ltd.,
Mettur Road,
Erode. .. Respondents

(R-2 impleaded as per order of the Court in
M.P.No.1/2014 dated 19.8.2014)

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to quash the proceedings in C.C.No.329 of 2011 on the file of the Judicial Magistrate No.III, Erode.

For Petitioners : Mr.D.Selvaraju
For 1st Respondent : Mr.C.Emalias,
Additional Public Prosecutor
For 2nd Respondent : Mr.T.Ravichandran

O R D E R

The case of the prosecution is that the petitioners/accused herein had made a false insurance claim in respect of an alleged motor vehicle accident and had received compensation. At the first blush, the allegation appeared to be gargantuan, but on a close scrutiny of the facts, it is otherwise.

2. Venkatachalam (A-1) lodged a police complaint alleging that on 17.1.2005 while he was standing with his two-wheeler behind a lorry bearing registration No.TND-2792, the driver of the lorry reversed the lorry, on account of which Venkatachalam suffered injuries. Based on the complaint of Venkatachalam (A-1), Siruvalur Police registered a case in Crime No.5 of 2005 under Sections 279, 337 IPC against Palanisamy, the driver of the lorry TND 2792.

3. Venkatachalam (A-1) also filed MCOP No.202 of 2005 before the Sub Court, Gobichettipalayam, and the Insurance Company and Palanisamy, lorry owner-cum-driver hotly contested that no such accident as alleged by Venkatachalam took place, but Venkatachalam came by two-wheeler and hit the stationary lorry from behind and suffered injuries. This defence taken by the Insurance Company and Palanisamy was negatived by the Tribunal and a sum of Rs.2,96,000/- was awarded as compensation to Venkatachalam, which was also paid to him.

4. Whiles, a batch of writ petitions were filed before the First Bench of this Court by an Insurance Company alleging that false MACTOP cases are in galore in the the State of Tamilnadu, supporting which plea, credible materials were placed before the Court. The First Bench ordered CBCID investigation and also CBI investigation in some cases, and getting scent of it, hundreds of MACTOP cases were withdrawn by various claimants in the State.

5. The off-shoot of that litigation prompted the Insurance Company/second respondent herein to lodge a complaint to the District Crime Branch alleging that the claim of Venkatachalam was a bogus one. A case was registered in Crime No.11 of 2007 and after completing investigation, Police filed a report as mistake of fact before the Judicial Magistrate No.I, Gobichettipalayam on 16.7.2008. Not content with that, CBCID took up further investigation and filed the present final report against Venkatachalam (A-1), Saravanamuthu (A-2), and Easwaran (A-3) for offences under Section 420 r/w 120B IPC in C.C.No.329 of 2011 before the Judicial Magistrate No.III, Erode, challenging which the three accused are before this Court.

6. The State has filed a counter affidavit supporting the final report and opposing the quashment of the charge sheet.

7. Heard Mr.D.Selvaraju, learned Counsel for the petitioners/accused; Mr.C.Emalias, learned Additional Public Prosecutor for the State; and Mr.T.Ravichandran, learned Counsel for the defacto complainant/Insurance Company/2nd respondent herein.

8. The learned Counsel for the Insurance Company submitted that the accused have unjustly enriched themselves by obtaining an award by misrepresentation.

9. This Court carefully perused the materials on record. It is not the case of the prosecution that no such accident ever took place, or that Venkatachalam had sustained injuries somewhere in his house and with the connivance of the Police had created a make-believe accident for the purpose of claiming insurance. It may be apposite to state here that Advocates, Policemen and Claimants had formed a cartel to raise bogus claims in the State in respect of accidents that never took place. In all those cases the Police Officers, who registered the FIRs and filed the final reports, as if an accident had taken place, were made as co-accused by the CBCID and the CBI. In this case, the Siruvalur Police, who registered the FIR in Crime No.5 of 2005 and filed final report in STC No.2501 of 2006 on the file of Judicial Magistrate No.I, Gobichettipalayam against Palanisamy for the offences under Sections 279 and 337 of IPC, have not been made as accused in the present prosecution in C.C.No.329 of 2011. Venkatachalam (A-1) is the Claimant and Saravanamuthu (A-2) and Easwaran (A-3) are persons, who appeared before the MCOP Tribunal and gave evidence as eye witnesses to the accident. It is contended by the learned counsel for the Insurance Company that Saravanamuthu (A-2) and Easwaran (A-3) are not eye witnesses and they were set up by Venkatachalam (A-1). In support of this contention there is no iota of material that has been collected by the CBCID in this case. To reiterate, it is not the case of the CBCID or Insurance Company that no accident ever took place on 17.1.2005. It is their case that Venkatachalam had hit a stationary lorry and sustained injuries. This plea was rejected by the MCOP Tribunal when it passed the award in MCOP No.202 of 2005 on 30.1.2006, which was not even challenged by the Insurance Company. After disbursal of the award, when the First Bench of this Court ordered reinvestigation in some other cases, this case has been raked up.

10. For giving false evidence, Saravanamuthu (A-2) and Easwaran (A-3) can be prosecuted only as provided under section 195 Cr.P.C. Here, the Court is not the complainant. The dispute is essentially between assertion by Venkatachalam that the accident took place when the driver reversed the lorry and the asseveration by the prosecution that Venkatachalam hit a stationary lorry. The MCOP Court has believed Venkatachalam's version and rejected the Insurance Company's version. Thereafter, it is not open to the Police to register a case to debunk the findings of a competent Court. To recapitulate, the local Police conducted investigation on Venkatachalam's complaint and charge sheeted the driver of the lorry Palanisamy in STC No.2501 of 2006 before the Judicial Magistrate No.I, Gobichettipalayam for offences under sections 279 and 337 IPC. It was contended by the Insurance Company that Palanisamy was acquitted in the trial. Palanisamy was acquitted for the failure of the prosecution to prove the charge beyond reasonable doubt, and not on the ground that no accident took place.

11. Under such circumstances, in the considered opinion of this Court, the present prosecution in C.C.No.329 of 2011 is clearly an abuse of process of law, and therefore, the same is quashed and this petition is allowed. Connected miscellaneous petitions are closed.

vr

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police, C.B.,C.I.D., Erode District,
(Crime No.11 of 2007)
 2. The Judicial Magistrate No.III, Erode
 3. Do thro'The Chief Judicial Magistrate, Erode.
 4. The Public Prosecutor, High Court, Madras.
- + 2 ccs to Mr.D.Selvaraj, Advocate SR 47450 48989

nm(co)
prk25/9

CrI.O.P.No.30393 of 2012

सत्यमेव जयते

WEB COPY