

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-10-2015

CORAM:

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

W.P.No.33756 of 2015

M.P.Nos.1, 2 of 2015

Tamilvanan

.. Petitioner

Vs.

State, rep.by

The Inspector of Police,

'Q' Branch, Krishnagiri District,

Krishnagiri

.. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari to call for the records in charge sheet in S.C.No.109 of 2010 on the file of the Additional Sessions Judge, Krishnagiri and quash the same.

For Petitioner : Mr.A. Ramesh

For Respondent : Mr.Md.Riyaz

Government Advocate (Crl.Side)

Reserved on	Pronounced on
26-10-2015	30-10-2015

O R D E R

This is the 4th round of litigation before this Court by the petitioner herein on the same subject matter. Earlier this petitioner filed Crl.O.P.No.2150/2015, 17884/2015 and 21006/2015, which were all dismissed by this Court by detailed orders. Realising that it would be a futile exercise once again to file a petition under section 482 of Cr.P.C. for quashing the prosecution, petitioner attempted 'Forum Shopping' by ingeniously filing this writ petition under Article 226 of the Constitution of India, for quashing the charge sheet. Unfortunately for him, this case was listed before this Court pursuant to the Notification No.41/2015 dated 6.2.2015 issued by the Registry under the orders of the Honourable the Chief Justice to list writ petitions, challenging the orders/proceedings/directions issued by invoking the provisions

of Criminal Procedure Code and seeking directions falling within the purview of the Code, before the Court dealing with petitions under Section 482 of Cr.P.C.

2. This writ petition deserves to be dismissed on the short score that the petitioner has not disclosed in his affidavit about the filing of earlier three Criminal Original Petitions relating to the same subject, though the relief claimed therein were little different. But the grounds raised in this writ petition for quashing the prosecution were raised in the earlier Criminal Original Petitions also and were negated by this Court.

3. Instead of narrating the entire facts once again, it will suffice, if the preamble portion of the earlier order in CrI.O.P.No.17884 of 2015 dated 27.7.2015 is extracted verbatim, as it contains the concatenation of events in a chronological order.

"2. It is the case of the prosecution that this petitioner and three others were members of Communist Party [Marxist-Leninist] and in furtherance of their political philosophy, they entered into a criminal conspiracy to commit the murder of one Dharmalingam Chettiar, landlord and money lender, pursuant to which the said Dharmalingam Chettiar was murdered on 08.02.1973. In respect of this incident, the respondent police registered a case in Cr.No.31 of 1973 and after completing the investigation, filed a Final Report under Sections 120B, 302 and 109 IPC against 5 persons, including the petitioner herein, of whom one of them by name Venkatachalam, was treated as an approver. The Final Report was taken on file as PRC No.20 of 1974 by the learned Judicial Second Class Magistrate, Uthangarai. This petitioner was in abscondance since 1974. Therefore, the case against this petitioner was split up and the case in respect of the other accused was committed to the Court of Sessions and it appears that, the other accused were convicted and sentenced in accordance with law. This petitioner was arrested only in the year 2009, and after he was in jail for about two years, he was granted bail.

[i] The case that was split up against this petitioner was committed to the Court of Sessions and when the trial before the learned Additional District and Sessions Judge, Krishnagiri was about to commence in S.C.No.109 of 2010, this

petitioner filed CrI.M.P.No.39 of 2015 for two prayers:

[a] for a direction to the Court to furnish Tamil translation of pages 34 to 56 of the documents accompanying the Final Report; and

[b] for the examination of the approver by the Committal Magistrate in terms of Section 306 (4) (a) of the Code of Criminal Procedure.

[ii] The Sessions Judge by a well considered order, dismissed CrI.M.P.No.39 of 2015 with costs of Rs.25,000/-, as the trial Court found that this petitioner has been doing everything possible within his means for protracting the trial. Challenging the order dated 10.07.2015, the petitioner/accused has approached this Court in this petition."

4. The contention of the learned Counsel for the petitioner that he was not supplied with material papers under Section 207 Cr.P.C., is not correct. After his arrest, he was produced before the committal Court, where he was furnished with the copies of all documents under Section 207 Cr.P.C. On receipt of the papers he did not protest. The case was committed to the Court of Sessions and after two years, he has come up with the plea that he was furnished with illegible copies, which cannot be countenanced. In fact, this argument was raised in CrI.O.P.No.2150 and 21006 of 2015 and was negatived by this Court by order dated 1.9.2015 as follows:

"4. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submitted that the petitioner has not been furnished with legible copies of the police statements and other records under Section 207 of Cr.P.C. He produced a bunch of papers in support of this contention and requested this Court to peruse the same. What was produced before this Court was not the actual papers that were furnished to the accused, but photo copies of it, and therefore this Court cannot come to the conclusion that illegible copies of the documents have been furnished to the accused. It is seen that the accused was furnished with the papers under section 207 Cr.P.C. by the Committal Court viz., Judicial Magistrate Court, Pochampalli, on 5.8.2010 and at that time he did not raise any objection that the documents that are

furnished to him are not legible. Only when the case was posted for trial, the accused has come up with the plea that the copies furnished to him are illegible. However, on the directions of the trial Court, the accused was furnished with typed copies of the statements of Venkatachalam @ Govindan, Approver; Krishnan; Sadasivam Chettiar; and certain others.

5. The learned Additional Public Prosecutor submitted that out of 58 witnesses cited in the final report, 39 witnesses died and there are only 19 witnesses, and that, the prosecution is ready to furnish the typed copies of the police statements of those 19 witnesses to the accused. Taking into consideration the conduct of the accused in not protesting at the time when the copies were furnished to him on 5.8.2010, and thereafter complaining now that the copies are illegible, this Court is unable to accede to the request of Mr.R.Sankarasubbu to furnish all the documents to the accused afresh. However, the prosecution have agreed to furnish typed copies of the statements of 19 witnesses, which may be complied with."

5. In this writ petition petitioner once again raised the ground relating to the tender of pardon given to the Approver, which was also considered by this Court in the order dated 1.9.2015 in CrI.O.P.No.2150 & 21006 of 2015 in paragraphs 8 to 10. This petitioner made allegations against the trial Judge and filed CrI.O.P.No.2150 of 2015 for transferring the case to another Court, which was also rejected.

6. Charges in this case have been framed by the Sessions Judge and the Approver has to be examined by the trial Court. On perusal of the Final Report it is evident that there are sufficient materials incriminating the petitioner, especially the statement of the Approver. In the teeth of availability of overwhelming materials against the petitioner, this is not the fit case to quash the prosecution.

In the result, this writ petition is dismissed as devoid of merits. Connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vr

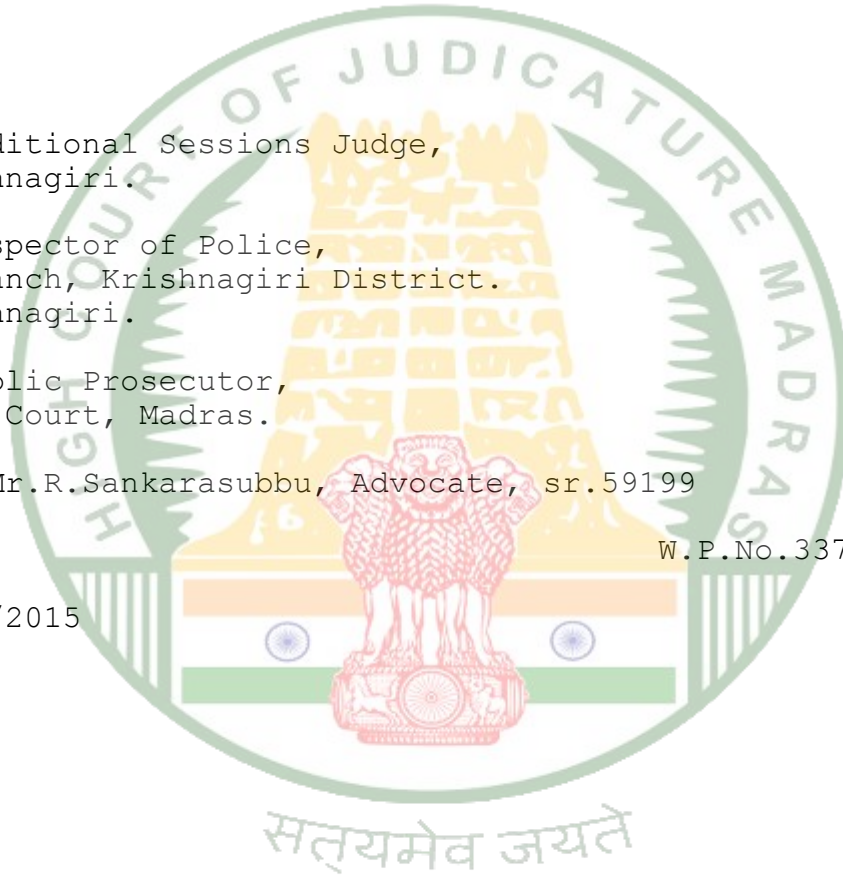
To

1. The ADDitional Sessions Judge,
Krishnagiri.
2. The Inspector of Police,
Q Branch, Krishnagiri District.
Krishnagiri.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.R.Sankarasubbu, Advocate, sr.59199

W.P.No.33756 of 2015

ak co
kra 06/11/2015



WEB COPY