

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P. No. 712 of 2015
and
M.P.Nos.1 and 2 of 2015

1.Dharmalingam

2.Mrs.D.Revathi

... Petitioners

vs.

State, rep.by
Inspector of Police,
Paramathi Circle,
Namakkal District.
(Ref.Cr.No.195/2012
dated 16.06.2012)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the proceedings in P.R.C.No.14/2014 pending on the file off the District Munsif cum Judicial Magistrate, Paramathi for the offences u/s.201 r/w 302 IPC as against the petitioners.

For Petitioners : Mr. Ramesh,
Senior Counsel
for M/s.R.U.Deepan

For Respondent : Mr. M. Maharaja,
Additional Public Prosecutor

O R D E R

The petitioners are A.5 and A.6 in P.R.C.No.14 of 2014 pending on the file of the District Munsif cum Judicial Magistrate, Paramathi. The respondent police filed charge sheet in Crime No.195 of 2012 against all the accused and the petitioners were charge sheeted for having committed the offence under section 201 r/w 302 IPC.

2. The case of the prosecution as seen from the charge sheet is that the first accused Natarajan was the husband of the deceased Vijayalakshmi and the second accused is the kept mistress of the first accused. The third accused is the father of the first accused. The fourth accused is the mother of the first accused. The fifth accused is the brother in law of the first accused and the sixth accused is the sister of the first accused. The seventh accused is the younger brother of the third accused. The first accused developed illicit intimacy with the second accused and the second accused insisted to marry her. Therefore, A.1 and A.2 hatched a criminal conspiracy to murder the deceased Vijayalakshmi and A.1 murdered Vijayalakshmi and therefore, A.1 and A.2 committed the offence punishable under Section 120-B r/w 302 IPC.

3. The allegations made against the petitioners in the charge sheet is that after committing murder of the deceased Vijayalakshmi and screening the evidence of murder, the fourth accused received Gold Thali Chain, Gold Bangles and Gold Chain belonging to the deceased from first accused and the fifth accused received the cell phone and sim card of the deceased in the presence of A.3 and A.6. A.3 and A.6 dishonestly concealed the same knowing that an offence of murder has been committed by the first accused and therefore A.3 to A.6 committed the offence punishable under section 201 r/w 302 IPC. As stated supra, the petitioners are A.5 and A.6.

4. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioner submitted that though the petitioners are charge sheeted for the offence under section 201 r/w 302 IPC, according to the statement of witnesses and according to the charge sheet, there is no evidence to connect the petitioners with the offence committed by A.1 to A.3 and according to the prosecution, on the basis of confession of A.1, A.4, no case can be made out against the petitioners under section 302 IPC and except the alleged confession of A.1 and A.4, no other incriminating evidence or statements were given by the witnesses and the cell phone as well as the sim card alleged to have been given to A.5 by A.1 were not recovered either from A.5 or from any other place and therefore, except the confession of A.1 and A.4, there is no evidence to connect the petitioners and the first accused with the crime or offence as no recovery was made on the basis of confession. The confession alleged to have been given by A.1, during police custody is hit by section 25 of the Indian Evidence Act and is inadmissible in evidence as no recovery has been made pursuant to the confession. Except the confession, no case has been made out against the petitioners. Therefore, the charge sheet filed against the petitioners is liable to be quashed. The learned Senior Counsel relied upon the following judgments:-

- 1 Mohammed Ashan Vs. The Senior Intelligence Officer, Directorate of Revenue Intelligence [2008-1-LW(Crl)287]
- 2 K.Ramakrishna and others Versus State of Bihar and another [(2000) 8 Supreme Court Cases 547]
- 2 Priavidai Vs. State [1998-LW(Crl) 141]
- 3 Col.Mohan Singh Versus State of Rajasthan [(1979) 4 Supreme Court Cases 11]
- 4 Khatri Hemraj Amulakh Versus The State of Gujarat [(1972) 3 Supreme Court Cases 671]

The learned Senior Counsel further submitted that this Court in Crl.O.P.No.29368 of 2014 dated 15.12.2014 quashed the case against seventh accused.

5. Learned Additional Public Prosecutor filed a detailed counter and reiterated the allegations in the counter and submitted that as per the investigation, A.1 gave confession stating that after committing the murder, he went to his native place, informed the commission of murder to A.3 to A.6 and handedover the jewels of the deceased to his his parents - A.3 and A.4 and gave the Cell Phone and Sim Card belonged to the deceased to A.5 and A.5 in turn informed the occurrence to A.6 and thereafter, A.5 and A.6 destroyed the Cell Phone and Sim Card of the deceased. He therefore, submitted that the accused have been charge sheeted for offence under section 201 r/w 302 IPC. As the petitioners have destroyed the Cell Phone and the Sim Card used by the deceased, which were given by A.1 to the petitioners and thereby screened the evidence leading to the commission of murder by A.1, the petitioners are liable to be punished for the offence under sections 201 r/w 302 IPC and the charge sheet cannot be quashed against the petitioner.

6. On the basis of the submission of the learned Senior Counsel and the learned Additional Public Prosecutor, we will have to see whether the petition for discharge filed by the petitioners can be allowed?

7. Before appreciating the arguments of the learned Senior Counsel and the learned Additional Public Prosecutor, we will have to

see the charge levelled against the petitioners and the materials collected during investigation. It is seen from the statement of witnesses and the charge sheet, as rightly submitted by the learned Senior Counsel, except the confession of A.1 and A.4, there is no evidence or material to connect the petitioners with the crime. The only evidence available as per the prosecution case is that A.1 and A.4 gave confession wherein it is admitted by A.1 that he informed A.3 to A.6 about the murder committed by him and all of them decided to screen the evidence and A.1 gave Cell Phone and Sim Card used by the deceased to A.5 and A.5 and A.6 destroyed the Cell Phone and Sim Card. The number of the Sim Card used by the deceased is 9691080593. Admittedly, the Cell Phone and the Sim Card which were alleged to have been handed over to A.5 by A.1 were not recovered. It is the case of the prosecution that A.5 and A.6 caused disappearance of the Cell Phone and the Sim Card given by the first accused with the intention of screening the first accused from legal punishment. The above confession of the prosecution is that the Cell Phone and the Sim Card of the deceased were handed over to A.5 by A.1 and thereafter, A.5 and A.6 caused disappearance of the Cell Phone and the Sim Card on the basis of confession of A.1 and A.4. Except the confession of A.1 and A.4, there is no other material to connect the petitioners.

8. In this back ground, we will have to see whether the confession of A.1 and A.4 implicating A.5 and A.6 be sufficient to sustain the charge under section 201 r/w 302 IPC.

9. In *Kashmira Singh v. State of Madhya Pradesh* reported in AIR 1952 SC 159, it is held as follows:-

"The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

10. The same judgment was followed in Suresh Budharmal Kalani alias Pappu Kalani v. State of Maharashtra reported in 1998 SUPREME COURT 3258 and it is held by the Hon'ble Supreme Court as follows:-

"At that stage the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore, not at all justified in taking into consideration the confessional statement of Dr.Bansal for framing charges against Kalani."

11. In the judgment reported in 1991-1-L.W.(Crl.) 358 in the matter of V.R.Nedunchezian v. State by Deputy Superintendent of Police, CBCID (Head Quarters), Chennai, His Lordship, M.KARPAGAVINAYAGAM, as he then was, held as follows:-

"46. It is manifest from the reading of the above decisions that the charges can be framed against any accused person only in those discerning few cases where the Court comes to the conclusion that the prosecution has shown a prima facie case against the accused and there is evidence before the Court which is capable of being converted into legal evidence later on during the subsequent proceedings after the framing of the charges. As shown earlier, it is observed in catena of authorities that the prosecution must show a prima facie case against the accused in order to enable the Court to frame a charge against him. If the evidence before the Court is of such type which if unrebutted and unchallenged by way of cross-examination would not be sufficient enough to convict the accused ultimately, then the Court would not be justified in framing the charge against the accused. The Court at that stage is under no obligation to make an elaborate enquiry by sifting and weighing the material to find out a case against the accused beyond a reasonable doubt which is required to do at the time of the final hearing. The trial Court Judge at that preliminary stage is required to

find out whether there is any material which may lead to the inference that the accused has committed an offence. Thus, the charge can be framed by the Court against an accused, if the material placed before it raises a strong suspicion that the accused has committed an offence. In other words, the Court would be justified in framing the charges against an accused, if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a full-fledged tree during trial."

12. In the judgment reported in 1994-1-LW (Cr1) 208 in the matter of P.Pragasam Vs. State rep.by the Inspector of Police, Karaikal Town Police, Pondicherry, it has been held that when the confession does not lead to recovery, the confession is inadmissible in law and the charge sheet based on the confession which does not lead to recovery has no legal basis and is liable to be quashed.

13. The other cases cited by the learned counsel for the petitioner cannot be applied to the facts of this case.

14. Therefore, as per the judgment of the Hon'ble Supreme Court referred to above and as per the judgment of this Court reported in 1994-1-LW (Cr1) 208 supra, the charge sheet cannot be filed against the accused solely on the basis of confession which does not lead to recovery. In this case also, admittedly, except the confession, there is no recovery under section 27 of the Indian Evidence Act. Therefore, the confession cannot be the basis for conviction even accepting the confession as true as the confession is inadmissible in evidence under section 25 of the Indian Evidence Act as the same was made to a police officer and no recovery was made on the basis of confession. It is held in the judgment reported in 1998 SUPREME COURT 3258 supra that the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial.

15. While framing charge the Court has to consider only the evidence which if not rebutted or unchallenged by cross-examination can be sufficient enough to convict the accused. If the evidence before the Court is of such type which if unrebutted and unchallenged by way of cross-examination would not be sufficient

enough to convict the accused, then the Court would not be justified in framing the charge against the accused.

16. As stated supra, except the confession of A.1 to A.4, no material has been collected by the prosecution against the petitioners. The only evidence against the petitioners is the confession of A.1 and 4. and those confessions are inadmissible in evidence and therefore, such confession cannot be relied up on by the Court to arrive at prima facie conclusion that a case has been made out against the petitioners. As the confession is inadmissible as no recovery has been made pursuant to the confession, to permit the prosecution to proceed against the petitioners for offence under Section 201 r/w 302 IPC amounts to abuse of process of Court and there is no legally acceptable evidence against the petitioners and the confession being inadmissible in evidence cannot be relied upon to sustain the conviction and therefore, the prosecution has not produced any material to substantiate the charge sheet filed against the petitioners.

17. In the result, the petition is allowed and the case in P.R.C.No.14 of 2014 pending on the file of the District Munsif cum Judicial Magistrate, Paramathi, is quashed insofar as the petitioners. The connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

asvm

Sub Assistant Registrar

To

1. The District Munsif cum
Judicial Magistrate,
Paramathi.

2. The Inspector of Police,
Paramathi Circle,
Namakkal District.

3. The Public Prosecutor,
High Court, Madras.

SK(CO)
CA(24/03/2015)

CRL.O.P. No.712 of 2015 and
M.P.Nos.1 and 2 of 2015