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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Cr1.OP(MD)No.15545 of 2017

and

Cr1.MP(MD)Nos.10342 & 10343 of 2017

Manivannan

:Petitioner/Accused No.5/
Rank Not Mentioned

Vs.

1.The State of Tamil Nadu,
Rep. by the Inspector of Police,
Sivakasi East Police Station,
Sivakasi,
Virudhunagar District. ... Respondent/Complainant/ Complainant

Senthil Kumar (Died) ... Respondent/Defacto Complainant/ Defacto
Complainant

2.Murugalakshmi ... Respondent/Defacto Complainant Wife/ Defacto
Complainant Wife

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the proceedings in S.C.No.68 of 2017 on the file of the learned Assistant Sessions Judge, Sivakasi and quash the same insofar as the petitioner is concerned.

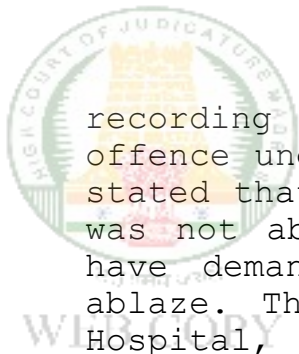
For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.R.Anandharaj,
Additional Public Prosecutor
for R.1
No appearance
for R.2

ORDER

This criminal original petition is filed by the petitioner / 5th accused to quash the proceedings pending against him in S.C.No.68 of 2017 on the file of the learned Assistant Sessions Judge, Sivakasi.

2. The brief facts of the case are that the second respondent's husband, one Senthil Kumar, has poured petrol over him and set fire on himself on 05.05.2014 at 03.15 pm. He was taken to the Government Hospital, Sivakasi and on intimation, the Sivakasi East Police has registered a case in Crime No.229 of 2014 on 05.05.2014, after



recording the statement from the injured Senthil Kumar, for the offence under Section 309 IPC. Senthil Kumar, in his statement, has stated that he has borrowed money from various persons and since he was not able to repay the same and those persons, who lend money have demanded the loan often, he poured petrol and set himself ablaze. The victim was thereafter taken to the Government Rajaji Hospital, Madurai, where, a dying declaration was recorded by the learned Judicial Magistrate No.I, Madurai, on 05.05.2014 at about 11.20 pm. The first respondent Police, after investigation, has filed the final report for the offence under Section 306 IPC and as against the same, the petitioner / 5th accused is before this Court.

3. Mr.N.Dilip Kumar, learned Counsel appearing for the petitioner would submit that the case in Crime No.229 of 2014 was registered based on the statement obtained from the deceased. In the said statement, the deceased has stated that he was involved in real estate and finance business, for which, he borrowed heavily from one Ganesan, Verma, Kannan, Thirumalai Murugan and Jeyapal. Since he was not able to repay the amount and in view of the harassment made by the aforementioned persons while demanding the amount, he poured petrol on himself and self-immolated. Similarly, in the dying declaration recorded by the learned Judicial Magistrate, the deceased has mentioned the names of Verma, his staff Thavamani, Ganesan, Thirumalai Murugan and Jeyapal. Nowhere, in the complaint or in the dying declaration, the deceased has mentioned the name of the petitioner that the petitioner has harassed him or abetted him to commit suicide. But, during the investigation, the respondent Police on a statement made by the witnesses that the petitioner also had money transactions with the deceased, the petitioner was also implicated as an accused.

4. The learned Counsel would further submit that the witnesses themselves have stated that the deceased had some money transactions with the petitioner and the same was settled by his ex-employer, Dakka. There is no allegation or averment or any material as against this petitioner that he harassed the deceased seeking repayment of loan and therefore, the learned Counsel prays for allowing this petition. He has also made reliance upon the decision of the Hon'ble Apex Court in **Gangula Mohan Reddy v. State of Andhra Pradesh**, reported in **2010 (1) SCC 750**.

5. Heard the submissions of the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the official respondent. There is no representation on behalf of the second respondent.

6. The facts of the case are not in much dispute. The deceased borrowed money from several persons, but, he was not able to repay the same. The creditors demanded repayment and harassed the deceased, followed by which, the deceased committed suicide. But, as rightly pointed out by the learned Counsel appearing for the



petitioner, neither in the statement recorded by the respondent Police, based on which the case was registered, nor in the dying declaration recorded by the learned Judicial Magistrate, the deceased has mentioned the name of the petitioner or that the petitioner has harassed him by demanding repayment of loan.

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7. In fact, the deceased, in his dying declaration, has stated as follows:

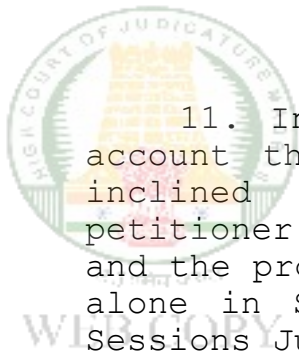
"There is an Advocate by name Kannan at Srivilliputhur. I borrowed money from one Varma. His staff Thavamani threatened me. I borrowed money for interest from one Ganesh. Ganesh often threatened me. Thirumalai Murugan, Dinakaran reporter and his sister's son, Jeyapal have also threatened me. Thirumalai Murugan and Jeyapal borrowed money from me. On frustration, I poured petrol at about 02.30 pm."

8. During the course of investigation, the second respondent, Murugalakshmi and one Muthuselvam have stated that the deceased had money transactions with the petitioner also and that issue was solved by one Dakka. Based on the statements recorded under Section 161(3) Cr.P.C., the petitioner has also been roped-in as an accused and a final report has been filed as against the petitioner and others for the offence under Section 306 IPC.

9. As stated supra, the deceased, neither in the statement given before the respondent police nor in the dying declaration given before the learned Magistrate, has mentioned anything about this petitioner. Even the statements recorded under Section 161(3) Cr.P.C., would not make out a case that there is any proximity or any abetment leading to the commission of offence on the money transaction between the petitioner and the deceased.

10. In the decision relied upon the learned Counsel appearing for the petitioner in **Gangula Mohan Reddy's** case (supra), the Hon'ble Apex Court has held as follows:

"17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide."



11. In view of the aforesaid position of law and taking into account the facts and circumstances of this case, this Court is inclined to quash the proceedings pending as against this petitioner. Accordingly, this criminal original petition is allowed and the proceedings pending as against this petitioner / 5th accused alone in S.C.No.68 of 2017 on the file of the learned Assistant Sessions Judge, Sivakasi, stands quashed.

12. It is represented that in view of the pendency of this petition before this Court, the trial has not proceeded with. Since this criminal original petition is now disposed of, it is open to the trial Court to proceed with the trial insofar as the rest of the accused are concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

To

1.THE ASSISTANT SESSIONS JUDGE,
SIVAKASI.

2.THE INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
SIVAKASI,
VIRUDHUNAGAR DISTRICT.

3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1cc to Mr. N.Dilip Kumar, Advocate Sr.No.17094

Cr1.OP(MD)No.15545 of 2017
20.04.2021

VB (30/04/2021) 4P / 5C