



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
CRL.RC.(MD)No.543 of 2013

C.Xavier

: Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Inspector of Police,
CBCID, Nagercoil, Kanyakumari District,
[Crime No.828 of 1999, Thiruvattar Police Station].

2.K.Satheesh

: Respondent

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.711 of 2013 in S.C.No.230 of 2003, on the file of the learned District and Sessions Judge, Kanyakumari District at Nagercoil and allow the same.

For Petitioner : Mr.K.Vamanan

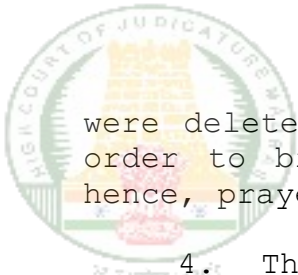
For Respondent No.1 : Mr.P.Kandasamy
Government Advocate [Criminal Side]

O R D E R

By consent, the Criminal Revision Case itself is taken up for final disposal.

2. The petitioner herein is arrayed as Accused No.2 in S.C.No.230 of 2003, on the file of the learned District and Sessions Judge, Kanyakumari District at Nagercoil and he along with the Accused No.1, the second respondent herein, is prosecuted for the commission of offence under Sections 182 and 201 of the Indian Penal Code and the Accused No.1 is prosecuted for the commission of offence under Section 302 of the Indian Penal Code.

3. When the trial is at the advanced stage, the petitioner, who is arrayed as Accused No.2 in S.C.No.230 of 2003, on the file of the learned District and Sessions Judge, Kanyakumari District at Nagercoil, filed Crl.M.P.No.711 of 2013, under Section 173(8) of the Code of Criminal Procedure, praying for further investigation of the case, contending among other things, that the deceased - Bellarmin is none other than his own brother and in fact, he was the *de facto* complainant in Crime No.828 of 1999 and initially, four accused were arrested and taken into custody by the jurisdictional police and later on, the case was transferred to the CBCID and the CBCID has deleted the names of four accused and arrayed the petitioner herein as one of the accused and the investigation carried out by the CBCID is nothing but a tainted one and there are persons, who



were deleted from the array of the accused, are the real accused and in order to bring home the truth, further investigation is necessary and hence, prayed for appropriate orders.

4. The prosecution has filed a counter, opposing the said application, contending among other things, that the trial of the case has reached the advanced stage and this Court, vide order dated 05.10.2012, made in CrI.OP[MD].Nos.1180 and 4455 of 2010, has directed the Trial Court to expedite the trial and complete the same, within a period of six months and only with a view to drag on the proceedings, the petitioner came forward to file such a frivolous petition and hence, prayed for dismissal of this petition.

5. The Trial Court has elaborately considered the plea made by the petitioner and the counter filed by the prosecution and found that the prosecution has let in evidence and when the trial is at the advanced stage, the petitioner came forward to file the said petition and also taken note of the fact that originally, the case was investigated by the Thiruvattar Police and thereafter, it was transferred to the file of the CBCID, vide Roc No.C1/420/14797/2000, dated 17.08.2000 and the CBCID, after investigation, has deleted the names of the four accused and included the accused No.1 and this petitioner, who is the brother of the deceased and in the facts and circumstances of the case, the further investigation, as sought for by the petitioner, cannot be granted and accordingly, dismissed the petition, vide order dated 26.04.2013.

6. The learned counsel appearing for the petitioner would submit that the petitioner was the *de facto* complainant in Crime No.828 of 1999 and after transfer of the case to the CBCID, it has not done fair and proper investigation and deleted the original four accused and surprisingly, included this petitioner, who was none other the *de facto* complainant, as one of the accused and since the investigation is a tainted one, further investigation is to be ordered.

7. Per contra, the learned Government Advocate appearing for the respondents would contend that the Trial Court, taking into consideration of the facts and circumstances of the case, more particularly the fact that the trial is in advanced stage and that this Court has also passed an order for early completion of the trial, has rightly dismissed petition and hence, prayed for dismissal of this Revision.

8. This Court has also called for a report from the learned District and Sessions Judge, Kanniyakumari at Nagercoil, and the contents of the said report would disclose that the trial has reached the advanced stage and DW-3 was also examined on 22.11.2013. It is to be pointed out, at this juncture, that the offences were said to have committed on 14.09.1999 at about 10.45 PM and this petitioner has lodged the complaint on 15.09.1999 and the case was originally investigated by the Thiruvattar Police and later on, it was transferred to the CBCID and on investigation, the CBCID has deleted the four accused and included the accused No.1 and this petitioner as one of the accused.

9. It is the case of the petitioner that due to political influence and interference, the names of real four accused have been deleted by the CBCID and the CBCID has included the Accused No.1, who is nothing to do



with the case and this petitioner, who himself was the *de facto* complainant and therefore, further investigation should be done.

10. In the considered opinion of this Court, the said stand taken by the petitioner is wholly untenable, for the reason that the CBCID is a Specialized Investigation Agency and it was entrusted with the duty of investigating the matter and after investigation, it filed a final report, implicating the accused No.1 and this petitioner. As rightly pointed out by the Trial Court, the Trial has reached the advanced stage and DW-3 was also examined on 22.11.2013 and this Court has also passed an order, directing expeditious completion of the trial and therefore, under the said circumstances, the Trial Court has held that the further investigation, as sought for by the petitioner, cannot be granted. The Trial Court has also considered the decisions cited by the learned counsel for the petitioner and held that those decisions cannot be made applicable to the facts and circumstances of the case. As rightly observed by the Trial Court, the intention of the petitioner is to drag on the proceedings to gain some kind of advantage and ordering further investigation is within the discretion of the Court and in the considered opinion of this Court, the Trial Court has rightly declined to entertain such petition.

11. This Court, on an independent application of mind to the materials placed before it, is of the considered view that the present Revision lacks merits and is liable to be dismissed. Hence, the Criminal Revision Case is dismissed, confirming the order dated 26.04.2013 made in Crl.M.P.No.711 of 2013 in S.C.No.230 of 2003 and the Trial Court is directed to give utmost priority, complete the trial and pronounce verdict.

Sd/-
Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Judge,
Kanyakumari District at Nagercoil.
- 2.The Inspector of Police,
CBCID, Nagercoil, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to MR.K.VAMANAN, ADVOCATE IN SR : 7434

Nb

SR : 24.02.2015 : 3p/5c