

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

C O R A M

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.25857 of 2016
and
Crl.MP.No.12765 of 2016

1. K.Kumar
2. K.VedhagiriPetitioners

Vs.

1. The State
Rep. by Inspector of Police
V-5, Thirumangalam Police Station,
Anna Nagar West Extension,
Chennai-600 040.
2. Selvi ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in S.C.No.129 of 2013 and to quash the proceeding pending on the file of the First Additional Sessions Court at Chennai-600 104 in Crime No.289/2006 on the file of the 1st respondent Inspector of Police, V-5, Thirumangalam Police Station, Chennai District.

For Petitioners : Mr.P.Palaninathan

For R1 : Mr.C.Emalias
Additional Public Prosecutor

For R2 : Mr.N.K.Nithilavani

O R D E R

This criminal original petition has been filed to call for the records in S.C.No.129 of 2013 and quash the proceedings pending on the file of the I Additional Sessions Court, Chennai-600 104 in Crime No.289/2006.

2. Heard the learned counsel appearing for the petitioners, the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the 2nd respondent.

3. Today, Mr.M.Zaheer Hussain, Gr.I PC 25625, V5 Thirumangalam Police Station, Chennai, and Mr.Thangadurai, Sub-Inspector of Police, V5 Thirumangalam Police Station, Chennai are present.

4. On the complaint lodged by Venkatesan, the respondent police registered a case in Crime No.289 of 2006 on 24/25.05.2016 for offences under Sections 341 & 307 IPC against Selvam and after completing the investigation filed a final report, which is now pending in S.C.No.129 of 2013 before the I Additional Sessions Court, Chennai for offences under Sections 341, 307 r/w 34 IPC against Selvam, Kumar and Vedhagiri. Challenging the final report, K.Kumar (A2) and K.Vedhagiri (A3) are before this Court.

5. On instructions, learned Additional Public Prosecutor submitted that Selvam (A1) died on 04.10.2013 and Venkatesh, the de-facto complainant died on 08.09.2012.

6. A compromise has been arrived between K.Kumar (A2), K.Vedhagiri (A3) and Selvi, the widow of Venkatesh, the de-facto complainant. Under normal circumstances, this Court will not quash the prosecution under Section 307 IPC. However, the facts in this case are little different. Selvam (A1), Kumar (A2) and Vedhagiri (A3) are blood brothers of the de-facto complainant, Venkatesh. All the four brothers were living with their families in the same house, but in different portions. Of course, there is envy among the brothers, which is, quite understandable.

7. Venkatesh, the de-facto complainant purchased a Air-conditioner and installed it in his portion. Selvam (A1), the elder brother, lodged a complaint with the Electricity Board authorities alleging that Venkatesh is illegally tapping current for his Air-conditioner unit. On 24.05.2006, the Electricity Board Officials came to the premises of Venkatesh and after checking the Air-conditioner unit stated that, there is no illegal tapping of electricity as alleged by Selvam (A1). Selvam (A1) was not satisfied with it and was having grievances against Venkatesh.

8. It is alleged by Venkatesh, around 10.30 p.m. on 24.05.2006, that Selvam (A1) attacked him with a sickle and caused serious head injuries, on account of previous enmity. Venkatesh was admitted in the Sundaram Medical Hospital, where his statement was recorded by the police. Based on the statement given by Venkatesh, police registered the FIR as stated above. Even in the complaint given by Venkatesh, he has implicated only Selvam (A1) and very clearly stated that the incident was witnessed by other brothers, namely Kumar (A2) and Vedhagiri (A3). The police recorded further statements from Selvam (A1) implicating Kumar (A2) and Vedhagiri (A3) in the offences. From the further statement of Venkatesh, it is seen that Kumar (A2) and Vedhagiri (A3) had tightly held Venkatesh, when Selvam (A1) attacked him. Based on the further statement of Venkatesh, the police completed the investigation and filed charge sheet against Selvam (A1), Kumar (A2) and Vedhagiri (A3) for offences under Sections 341, 307 r/w 34 IPC. The further statements recorded by the police does not inspire the confidence of the Court, inasmuch as in the statement given by Venkatesh, which forms the basis of FIR, he has narrated the role of his brothers and stated that it was only Selvam (A1) who attacked him and Kumar (A2) and Vedhagiri (A3) were witnesses to the incident. After having recorded the statement, the police have recorded the further statement, implicating Kumar (A2) and Vedhagiri (A3), as if they were holding Venkatesh tight, when Selvam attacked him.

9. Be that as it may, admittedly, Selvam (A1), prime accused died on 04.10.2013 and Venkatesh, the de-facto complainant has also died on 08.09.2012. Now the remaining accused Kumar (A2) and Vedhagiri (A3) have amicably arrived at a compromise with the widow of Venkatesh, pursuant to which, the parties are before this Court to quash the entire prosecution. In the Joint compromise memo dated 25.11.2016, it is stated as follows :-

"It is submitted that on the intervention and the attempt of the elders in the family, the second respondent wife of the defacto complainant consented, decided to amicably settle the dispute with the family members and wants to give a quietus to the criminal case, which was registered on the complaint given by the second respondent husband Venkatesan on 25.05.2006 and the husband died on the pending trial. Being the wife of the defacto complainant no objection to get the case to quash the S.C.No.129 of 2013

in Crime No.289 of 2006 against the petitioners."

10. Today Selvi, the widow of Venkatesh, the de-facto complainant, Kumar (A2) and Vedhagiri (A3) are present and they are identified by Mr.Thangadurai, Sub-Inspector of Police, V5 Thirumangalam Police Station, Chennai.

11. On enquiry, Selvi stated that the accused are none other than her brothers-in-law and they are living peacefully after the death of Selvam (A1) and Venkatesh, de-facto complainant. Therefore, she has no objection for quashing the prosecution against her brothers-in-law. It may be relevant to extract the law laid down by the Supreme Court in Narinder Singh & Others -VS- State of Punjab & another [(2014) SCC], with regard to Section 307 IPC:

"Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital / delegate parts of the body, nature of weapons used etc., Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this

stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. (emphasis supplied)."

In view of the above, this petition is allowed and the prosecution in S.C.No.129 of 2013 on the file of the I Additional Sessions Court, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The I Additional Sessions Judge,
Chennai-600 104.
- 2 The Principal Sessions Judge,
Chennai
3. The Inspector of Police
V-5, Thirumangalam Police Station,
Anna Nagar West Extension,
Chennai-600 040.
4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Palaninathan, Advocate Sr.No.70802

Cr1.O.P.No.25857 of 2016

CO/SSI

RRI 29/12/2016

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