

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.3897 of 2016 and Crl.M.P. No.2022 of 2016

1 M.L. Gerald Pubalan

2 M. Soloman

3 K. Gunasekar

4 Jayaprakash

Petitioners

vs.

1 The Government of Tamil Nadu
represented by Secretary to Home Department
(Reg. Appointment of Public Prosecutors in
Sessions Court/District Magistrate Courts)
Fort St. George
Chennai 600 009

2 The Deputy Director of Prosecution
Collectorate Compound
Coimbatore - 18

3 The Inspector of Police (CB CID)
No.800 Avinasi Road
Coimbatore

4 M. Ramanujam, M.A., B.L.,
Additional Public Prosecutor in
Chief Judicial Magistrate Court
District Court Complex
Coimbatore

5 R. John Bosco
Parish Priest
C/o Bishop House
Post Box No.6, Big Bazaar Street
Coimbatore

Respondents

Criminal Original Petition filed under Section 482 CrI.P.C. to issue directions to scrap the oral and documentary evidence, recorded in C.C. Nos.200/11, 201/11 and 202/11 on the file of the Chief Judicial Magistrate, Coimbatore, till today, directing conducting of a "De-nova" trial of the said 3 cases adducing necessary oral and documentary evidence requiring that the 3 cases are conducted by any other Public Prosecutor than the 4th respondent herein.

For petitioners Mr. M. Kalyanasundaram
 for Mr. R. Vasudevan

For RR 1 to 3 Mr. C. Emalias
 Addl. Public Prosecutor

For R4 Mr. V. Balamurugane

For R5 Mr. K.R. Sankaran

ORDER

This Criminal Original Petition is filed to issue directions to scrap the oral and documentary evidence, recorded in C.C. Nos.200/11, 201/11 and 202/11 on the file of the Chief Judicial Magistrate, Coimbatore, till today, directing conducting of a "De-nova" trial of the said 3 cases adducing necessary oral and documentary evidence requiring that the 3 cases are conducted by any other Public Prosecutor than the 4th respondent herein.

2 Heard the learned Senior Counsel appearing for the petitioners, learned Additional Public Prosecutor appearing for respondents 1 to 3, the learned counsel for the fourth respondent and the learned counsel for the fifth respondent.

3 The long and short of the case is as follows:

3.1 John Bosco, the fifth respondent is facing prosecutions in C.C. Nos.200/2011, 201/2011 and 202/2011 for offences under Section 420 and 406 IPC in respect of alleged embezzlement of church funds. The prosecutions were initiated on the complaint lodged by the petitioners herein.

3.2 It is the case of the petitioners that M. Ramanujam, the fourth respondent, who is the Additional Public Prosecutor in charge of the case, has mishandled the case by not examining the prosecution witnesses in a proper manner, thereby, an apprehension is voiced that he is in collusion with the accused. In support of this allegation, the petitioners have relied on paragraph nos. 6 and 7 of their affidavit, wherein, it has been stated as follows:

"6. x x x x x In C.C. No.200/11 there are 38 witnesses, in C.C. No. 202/11 there are 24 witnesses and in all the 3 cases main witnesses through whom the prosecution case could be proved, the witnesses have been given up in the case by 4th respondent the P.P. as noted in the last page of charge sheet. Almost all the witnesses have been examined, and what remains to be done is examination of Bishop of Coimbatore, who is listed as a witness in all the three cases and the examination of Investigating Officer the 3rd respondent herein. It is submitted that respondent - 4, the Additional Public Prosecutor in collusion with respondent - 5, has omitted to examine very relevant witnesses, particularly, the Zonal Manager of Catholic Syrian Bank to show the monetary transactions of the 5th respondent had with the bank. One B. Jayaraj son of Vincent who was associated

with respondent - 7, Ms. Dollarni Dhandi, an Anglo Indian who had contributed huge amounts by way of donations to the church and other relevant witnesses.

7. Even in respect of witnesses who were examined by the prosecutions, when 4 de facto complainants were examined, they were not allowed to depose freely by the 4th respondent (P.P.) who curtailed their deposition and directed to depose in a particular way. In respect of other witnesses as well, when the witness deposed, the 4th respondent immediately went out of Court, without eliciting the relevant pieces of evidence relevant for the prosecution by the cases. These aspects are known to everyone in the court that the 4th respondent (P.P.) was associated with 5th respondent, the accused in the case and the prosecution has been conducted in a way to favour the accused, causing serious prejudice to the prosecution, so as to make the prosecution fail. If the 3 cases are considered on the basis of evidence recorded in this case, the 3 - cases are bound to fail causing great prejudice to law and justice and to the public and to the Christian community, as the 4th respondent has failed to do his legal and public duty properly, which would make the strenuous exercise of the 3rd respondent-Investigating Officer, infructuous."

4 M. Ramanujam, the fourth respondent, has filed counter affidavit, wherein, he has stated that P.W.1 was examined only on 30.07.2013 and P.Ws.2 and 3 were examined on 25.09.2013; he assumed office as Additional Public Prosecutor in the said Court on 07.10.2013 and therefore, the allegation in paragraph no.7 of the affidavit that he had not allowed the petitioners to depose freely cannot be true.

5 It is further contended by the petitioners that the prosecution has failed to examine the Zonal Manager of Catholic Syrian Bank in order to show the monetary transaction the accused had in this case.

6 This Court perused the memorandum of evidence and found that the prosecution has examined one Babu J. Kavalakkatt, Chief Manager, Catholic Syrian Bank (P.W.7), Singanallur Branch, Coimbatore, who has spoken about the accounts held by the accused and the transactions found therein. Under such circumstances, it is not necessary to replicate evidence, inasmuch as it is not the number of witness that matters, but, the quality of evidence.

7 As regards Dollarne Dhandi, Ramanujam, the Additional Public Prosecutor (4th respondent) felt that she would not support the prosecution case and that she would turn hostile and therefore, he had dispensed with her examination which is permissible in the light of the judgment of the Supreme Court in Banti @ Guddu vs. State of Madhya Pradesh [2003 AIR SCW 5979]. That apart, the trial Court has also got the power under Section 311, CrI.P.C., to summon any person whose evidence is relevant and essential for the just decision of the case and examine him during trial.

8 In view of the foregoing discussion, this Court does not find any merit in the allegation levelled by the petitioners against the fourth respondent, viz., Ramanujam.

In the result, this Criminal Original Petition is dismissed with a direction to the Trial Court to proceed with the trial expeditiously. Connected Crl.M.P. is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1 The Secretary to Home Department
(Reg. Appointment of Public Prosecutors in
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- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1 cc Mr.R.Vasudevan, Advocate, SR.36666

+1 cc to Mr.V.Balamurugane, Advocate, SR.36793

+1 cc to Mr.K.S.Karthik Raja, Advocate, SR.36463.

nm(co)
krd 18/7

Crl.O.P.No. 3897 of 2016