



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.9718 of 2016
and Crl.M.P.(MD) 4885 of 2016

R.Andiappan @ Rajasekar

... Petitioner/A2

-vs-

1. State through

The Inspector of Police,
Avudayarkoil Circle Police Station,
Pudukkottai District.
(Crime No.3/2015)... 1st Respondent/Complainant

2. S.Palanimuthu

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.316 of 2016 now pending committal on the file of the learned Judicial Magistrate at Aranthangi and quash the same so far as it relates to the petitioner / A2 herein.

For Petitioner : Mr.E.Antony S.Prabakar

For R1 : Mr.K.V.Rajaraman
Govt. Advocate (Crl.Side)For R2 : Mr.Veerakathiravan, Senior Counsel
For Mr.K.Gokul

Orders Reserved on	Orders Pronounced on
16.08.2016	22.08.2016

O R D E R

The ends of justice are higher than the ends of law, though justice is achieved through law enacted by the Legislature. The power to quash the proceedings under Section 482 Cr.P.C., has a salutary public purpose.

2.The cases in which the High Court should exercise the power to quash the proceedings have been enlightened in the decision reported in 1960 AIR 862 R.P.Kapur vs. State of Punjab and it runs as under:



"(i) where it manifestly appears that there is a legal bar against the institution or **continuance of the proceedings**;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no **legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.**"

2.1. Contending that there are neither allegations which would be enough to constitute an offence under Section 120-B nor there is legal evidence / material sufficient to get a conviction for the offence under Section 120-B IPC, this petition to quash the proceedings has been filed. In other words, it is contended that allowing the proceedings to continue would be an abuse of the process of the Court and that ends of justice require that the proceedings must be quashed. In order to appreciate the contention raised, it is necessary to consider the brief facts and the materials collected by the Investigating Agency.

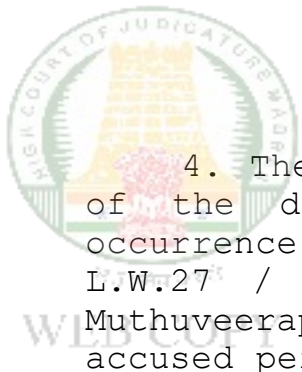
Brief Facts:

3. The defacto complainant / R2 / Palanimuthu / eye witness / is the son of the deceased Subramanian. The deceased was the President of Irrigation Committee. In respect of irrigation problem, there was a dispute between the villagers of his village and Kattamudi village.

3.1. During 2011, the deceased contested for the post of President in the local body election for which he had borrowed a sum of Rs.5,00,000/- from A1 and on account of non payment by the deceased, there was enmity between the defacto complainant and A1.

3.2. On 29.09.2014, there was a wordy quarrel between the deceased on one hand and A1 and A2 on the other hand. A1 and A2 went to the village of the deceased and threatened him. They were forced to return at the intervention of the neighbours. Towards effecting peace, a meeting was arranged for settlement and A1 refused to participate.

3.3. According to prosecution, as the deceased did not return the borrowed money, the accused persons hatched conspiracy on 02.12.2015 at the house of the 3rd accused (during the 11th day death ceremony of his father). Thereafter, on 15.12.2015, the 2nd accused left for Malaysia; thereafter during the 30th day death ceremony of A3's father, the conspiracy continued in which they decided to do away with the life of the deceased.



4. The prosecution relies upon the statements of L.W.1 / son of the deceased, who has spoken about the motive for the occurrence, L.W.21 / statement of the driver of the 1st accused, L.W.27 / statement of Subramanian and L.W.28 / statement of Muthuveerappan, in order to substantiate the charges against the accused persons.

5. It is specifically pointed out that the statement of L.W.1 is falsified by the averments made in the FIR, which are inherently improbable and opposed to common sense and no prudent person would be inclined to place reliance upon the statement of L.W.1 in FIR and in the 161 statement.

5.1. It is contended that the statement of L.Ws.21, 27 and 28 are fabricated and it is highly improbable that the driver of the 1st accused would have given a statement against his own master.

5.2. It is further stated that the statement L.Ws.27 and 28 even assuming it to be true, would not make out the offence under Section 120-B IPC.

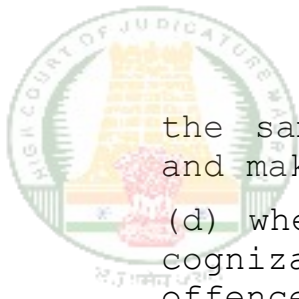
6. The contentions of the learned counsel for the petitioner should be appreciated in the light of the decision reported in the case of **State Of Haryana And Ors vs Ch. Bhajan Lal And Ors, [1992 AIR 604]**, which reads as under:

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under **Section 482 of the Code of Criminal Procedure**, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of



the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. Learned Senior counsel for the defacto complainant contended that according to the statement of witnesses, in the 1st conspiracy, planning was done to do away with the life of the deceased and in the 2nd conspiracy, hirelings were engaged; during the 2nd conspiracy, even though the 2nd accused was not in India, still, as the 2nd conspiracy was the continuation of the 1st conspiracy, which has resulted in the murder of the deceased, the 2nd accused is also liable.

8. This contention cannot be accepted, as a) whether the first meeting can be construed as a meeting in which there had been a conspiracy, b) even assuming it to be so, whether the 2nd conspiracy can be construed as continuation of the 1st conspiracy and whether there was concurrence for the petitioner to have the 2nd conspiracy. These issues are discussed in the subsequent part or the judgment.

9. In order to find out whether the statement of witness make out the offence under Section 120-A, (of which punishment section is Section 120-B IPC) it is necessary to know the ingredients of Section 120-A, which reads as under:



When two or more persons agree to do, or cause to be done,--

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that **no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.**

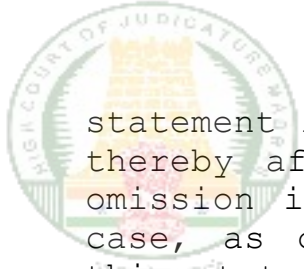
Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.]”

10. What is the nature of conspiracy? By nature, privacy or the secrecy are more characteristics of conspiracy than of a loud discussion in an elevated place, open to public view. Therefore, direct evidence in proof of conspiracy is rarely available. If made available, it should be thoroughly scrutinized and the probability of such statements also have to be deeply considered. Explaining the nature of conspiracy, it was held by the Hon'ble Supreme Court in the case of Abuthagir vs. State, 2009 Cr1.LJ.3987 as follows:

“18. No doubt in the case of conspiracy there cannot be any direct evidence. **The ingredients of the offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal.** Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.”

11. From the decision, it is clear that in most cases, proof of conspiracy is largely inferential and the surrounding circumstances, the conduct of the accused among other factors constitute relevant material.

12. Coming to the facts of the case, it is emphatic statement of L.W.1 that his father had informed him that, his life is at <https://hcservices.eamilsgov.in/hcsamys/> time, he would be murdered by A1 / Arumugam and A2 / Rajasekar and both of them had told him regarding the date of murder also and that he is often threatened over phone. This



statement is conspicuously absent in the First Information Report, thereby affecting the probability of the prosecution case; this omission is very critical touching upon the improbability of the case, as contemplated under Section 11 of the Evidence Act. If this statement under Section 161 Cr.P.C., is to be held reliable, then the complaint at the earliest of point of time, where there is no time left to fabricate or exaggerate or to create, stating that the death of his father could have been either due to Kadangudi village problem or Pandipathiram Place problem or due to any other problem and somebody have engaged assailants to cause the murder of his father stands belied or at any rate, it suffers trustworthiness. Not even a whisper about the alleged conspiracy or information given by his father to him regarding his likely murder, has been disclosed in the First Information Report and this has created innumerable branching question, which this Court is not inclined to elaborate because of the pending trial against the accused persons. Though it is not for this Court to appreciate the entire evidence at this stage, still, due to the improbability of the allegations made in the complaint itself, there is a doubt regarding origin of occurrence, the involvement of accused persons, the alleged conspiracy among the accused persons etc. Therefore, this Court has to critically consider the statement of witnesses regarding the so-called conspiracy.

13. Statements of L.W.27 and 28 are relied upon by the prosecution to speak about the initial / first conspiracy. According to the statement of them, both A1 and A2 had been telling to the persons around them that they are not able to bear the humiliation being caused by the deceased and only if a decision is taken regarding him, they can be peaceful. The question is whether, this alleged open air statement could have been uttered by any prudent person in front of all others, especially in a place where death ceremony was taking place. Even assuming it to be true, the alleged statement bears too many meanings, leading to interpretation in different tangents. The implications are that those statements can be interpreted a) either as ventilating their grievance / sharing of their problem / invitation of the solution for the problem from others / vociferous comments about the conduct of the deceased etc., (despite the reliability of such statement in a death ceremony). In any event, it could be construed only as a plan and not as an agreement between the members of the unlawful assembly to commit murder.

14. Even though the alleged conspiracy had been on 02.12.2015 and 31.12.2015, statement of witnesses, who allegedly overheard A1 and A2, have been examined only during January 2015, i.e. on 26.01.2015. Under normal circumstances, delay in recording statement may not be the critical factor, but when this information relates to the probable murder of the deceased, naturally if it is true, either it should have been disclosed



either as a warning to the son of the deceased or to the Police towards protection of the deceased. But, curiously, this belated statement recorded does not bear any reason for the delay. Therefore, when the allegation is with regard to conspiracy and when the natural conduct of the person overhearing the plan to commit murder would be to disclose the same at the earliest point of time, then the delay in giving the statement before the Investigating Officer has to be viewed with suspicion.

15. Learned counsel for the petitioner relied upon the following decisions, where-under, the effect of delay in recording statement has been considered.

i) **Sudershan Kumar vs. State of Himachal Pradesh**, reported in **(2014) 15 SCC 666**;

"30. There is another striking and significant feature in this case which cannot be lost sight of, namely, there was a delay of 77 days in recording the statements of persons under Section 161 CrPC. No explanation, worth the name, is coming forth as to why such an abnormal delay took place and it tells a lot about the way investigation was carried out in the present case. This factor also shakes the credibility of the deposition of PW2, who may have been led to give the statement to save his skin."

ii) **Shahid Khan vs. State of Rajasthan**, reported in **(2016) 4 SCC 96**;

"20..... The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants...."

iii) **Maruti Rama Naik vs. State of Maharashtra**, reported in **(2003) 10 SCC 670**;

"7..... The prosecution has also failed to explain in recording the statement of this witness, therefore, bearing in mind the conduct of PW 4 in not informing anybody about his having witnessed the incident



and the delay in recording his statement makes us hesitant to place any reliance on his evidence..."

15.1 These decisions are pertaining to statements which have been tested during trial. Therefore, they are not totally applicable at this stage. However, the basic principle stated therein may be applied in considering the overall impact of the delay along with other attendant circumstances.

16. There is also lack of intention / motive on the part of A2 to commit murder, as the money transaction is only between A1 and the deceased and not between A2 and deceased. Under circumstances, the alleged intention and motive are lacking for A2.

17. Admittedly, during the 2nd conspiracy, the 2nd accused was not at all available in India and it is also not the case of the prosecution that the 2nd accused was part of the 2nd conspiracy, in which services of hooligans are stated to have been engaged, which has resulted in murder of the deceased. Admittedly, the first meeting cannot be said to have resulted in any conspiracy being hatched. As there was no agreement to commit any offence and as there is no allegation that **some act besides the plan is done by one or more parties to such a plan in pursuance thereof.** Therefore, the ingredients of Section 120-A is not made out, so far as the petitioner is concerned.

18. Considering the totality of circumstances referred supra, this Court is of the firm view that the likelihood of the case ending in conviction as against A2 is very bleak. Therefore, it is the case to quash the proceedings as against A2.

19. In the result, this Criminal Original Petition is allowed and the entire proceedings in P.R.C.No.316 of 2016 on the file of the learned Judicial Magistrate, Aranthangi in respect of the petitioner alone are quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate,
Aranthangi.

2. The Inspector of Police,
Aranthangi Circle Police Station,
Pudukkottai District.



3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Antony S.Prabahar, Advocate SR.No.46067/16

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ORDER IN
Crl.O.P.(MD) No.9718 of 2016
and Crl.M.P.(MD) 4885 of 2016
22.08.2016