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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.RC(MD) No.441 of 2016

and

Crl.M.P.(MD) No.5113 of 2016

Poopandi

... Petitioner / Petitioner / A3

-vs-

State through the Inspector of Police

Vigilance and Anti-Corruption, Sivagangai

Cr.No.5 of 2001

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 and 401 Cr.P.C., to set aside the order passed in Cr.M.P.No.123 of 2014 in C.C.No.36 of 2014, dated 04.05.2015, on the file of the Special Court for Trial Cases under Prevention of Corruption Act, Sivagangai.

For Petitioner: Mr.Niranjan S.Kumar

For Respondent: Mrs.S.Prabha

Govt.Advocate (Crl.Side)

O R D E R

A3 in C.C.No.36 of 2014 (originally C.C.No.17 of 2008), on the file of the learned Special Judge under P.C.Act, Sivagangai, in this revision canvases the correctness of dismissal of his discharge petition filed in Crl.M.P.No.123 of 2014.

2. In connection with a Scheme framed by the Government for the Adi -Dravidars to be managed by the Department of Animal Husbandry, allegations have been made as against certain public servants. In this connection, F.I.R., in Crime No.5 of 2001, under Sections 120-B I.P.C., r/w 13(2) r/w Section 13(1)(c) of P.C.Act and Section 120-B I.P.C., r/w Sections 409, 420, 467, 471 I.P.C., r/w 467, 477-A and 167 I.P.C., has been registered by Inspector of Police, Vigilance and Anti-Corruption, Sivagangai.

3. The occurrence is alleged to have taken place in 1995. F.I.R., was registered in 2001. After investigation, the Police filed the Final Report on 30.09.2008 as against A1 to A3. Among them, A3 is the petitioner herein.

4. The learned Special Judge took cognizance there on in C.C.No.17 of 2008. Subsequently, it became C.C.No.36 of 2014. In the Trial Court, A1 and A2 have filed Crl.M.P.Nos.649 and 650 of 2009. They have sought to disengage themselves from the case. It was dismissed by the learned Special Judge. That was challenged by them in Crl.R.C.(MD) Nos.728 and 432 of 2013 before this Court.

5. On 27.06.2014, this Court allowed the said revisions holding that in the facts and circumstances, there is no ground to

proceed further and also the rights of the accused for speedy trial and speedy justice have been completely breached. Incidentally, there is a reference about the present revision petitioner / A3 to the effect that he has passed away.

6. The revision petitioner / A3 filed Crl.M.P.No.123 of 2014 before the Trial Court seeking his discharge from the case.

7. The Trial Court went in detail and since in this Court's Order, dated 27.06.2014, it is recorded that the revision petitioner is dead, unless this aspect is clarified, it can't do anything.

8. In this situation, A3 has filed the present revision.

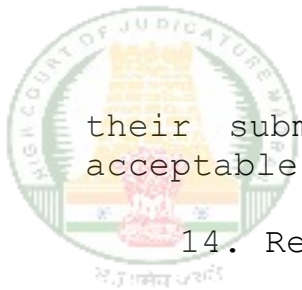
9. In the Orders of this Court, dated 27.06.2014, it is stated that A3 is dead. It is pertinent to note that earlier A3 has not filed any discharge petition either individually or along with A1 and A2. No material was produced that he is dead. It is nobody's case that he is dead. He is alive. That is the reality of the situation. Thus, it is clear that the revision petitioner / A3 is alive in flesh and blood. He may be happy for his rebirth through this Order. But, he too is susceptible to the eventualities of human flesh.

10. According to the learned counsel for the revision petitioner, the revision petitioner ought to have been discharged from the case on two grounds, namely, on merit of the matter and infraction of his right to speedy trial and speedy justice.

11. According to the learned counsel for the petitioner, there is no tangible evidence to sustain the allegations as against the revision petitioner that he has given false certificate with respect to Kumaravelu and Chellamuthu as residents of Keezhasemanur Village in Ramnad District and are belongs to Adi Dravidar Community. Except the *ipse dixit* of Witness No.7 recorded under Section 161 Cr.P.C., there is no recorded evidence such as the Village Voters List, details relating to door number given in the Certificate.

12. The learned counsel for the petitioner further submitted that this case is of the year 1995. The Investigation Officer took very many years. F.I.R., was registered only in 2001. The final report was filed only in 2008. Keeping a man as accused for so long years is really a mental agony. It is in violation of his right to speedy trial and speedy justice.

13. The learned counsel for the revision petitioner also submitted that for the long delay, the revision petitioner is not responsible. Even the prosecution does not say that the revision petitioner had protracted the matter. Further, either before the Trial Court or before this Court and either in the counter or in



their submissions, the prosecution would say that for certain acceptable reasons, the delay had occasioned.

14. Respondent filed counter.

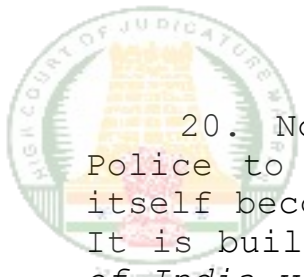
15. According to the learned Government Advocate (Criminal Side), witness No.7 speaks about the revision petitioner having issued Community Certificate to one Kumaravelu and Chellamuthu as Adi-Dravidars residing in Keezhasemanur Village in Ramnad District. In fact, there is no such persons in the said Village. Thus, there is incriminating materials as against the revision petitioner. There is a ground to proceed further as against him. There are materials to frame charges against the petitioner.

16. I have anxiously considered the rival submissions, perused the averments in the discharge petition, counter filed by the Investigation Officer, impugned order and earlier order of this Court, in CrI.R.C.(MD) Nos.728 and 432 of 2013, dated 27.06.2014, and the materials on record.

17. Charging a person is serious on the part of the accused and discharging a person is serious on the part of the prosecution. To charge or not to charge is the question before us. The materials presented by the Investigation Officer at the stage of Section 227 Cr.P.C., can be analyzed with the sole view to find out is there any ground to proceed further. At this stage, the Court cannot travel beyond that. It cannot act like a Trial Court.

18. The allegation as against the revision petitioner / A3 is that he issued Community Certificate to Kumaravelu and Chellamuthu as Adi-Dravidars belongs to Keezhasemanur Village in Ramnad District, for the purpose of claiming some benefits under a Government Scheme. Witness No.7 Murugesan, in his statement under Section 161 Cr.P.C., states that in their Village there is no such person Kumaravelu and Chellamuthu belonging to Adi Dravidar Community. Apart from this, no documentary evidence such as Certificate from the President of the Village, Voters List of the Village, Documentary proof of verification in the address mentioned has been collected from the Investigation Officer and produced in this Case. Thus, except the *ipse dixit* of Witness No.7, there is nothing as against the revision petitioner / A3. There is no tangible evidence.

19. Everyone is presumed to be innocent. No one is a born criminal. Even the allegations / accusations made against a person will remain as such as, unless substantiated by acceptable materials. But, it is not good for a person to be called an accused. There is no pride in being an accused. So, it becomes right of a person to be cleared of the allegations / accusations at the earliest. If he is found guilty, he must be dealt with account to law. Otherwise, he must be acquitted. The fall out is the right of the accused for speedy trial and speedy justice.



20. Now, right of the accused to demand the prosecution / Police to complete the investigation without unreasonable delay, itself becomes a part of right to speedy trial and speedy justice. It is built on Article 21 of the Constitution of India (See *Union of India v. Menaka Gandhi* [1978 AIR 597]).

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21. But, at the same time, it is also the duty of the prosecution to bring the accused to justice. When an accused asks for discharge from the case on account of delay, it is not every delay, that will go to the benefit of the accused. The Court must adjudicate whether the delay was caused by the prosecution or indirectly the accused is responsible for the delay.

22. The occurrence was of the year 1995. F.I.R., was of the year 2001. Final Report was of the year 2008. There is no explanation from the prosecution agency why this long delay. They also did not say that the accused is responsible for it. A1 and A2 were already discharged by this Court, by its Order, dated 27.06.2014, in CrI.R.C.(MD) Nos.728 and 432 of 2013. In such circumstances, the benefit of the said Order applies to A3 also, on the principle of parity. I have no hesitation to hold that the fundamental right of the revision petitioner / A3 for speedy trial and speedy justice has been completely violated in this case. In the facts and circumstances, this Court is of the view that the revision petitioner / A3 is required to be discharged.

23. In view of the foregoing, ordered as under:

- (i) The revision is allowed.
- (ii) The revision petitioner / A3 is discharged from C.C.No.36 of 2014, on the file of the learned Special Judge under P.C.Act, at Sivagangai.
- (iii) Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To:

- 1.The Special Judge under P.C.Act, Sivagangai.
- 2.The Government Advocate (Criminal Side)
Madurai Bench of Madras High Court, Madurai.
- 3.The Inspector of Police
Vigilance and Anti-Corruption, Sivagangai.

Krk

<https://hcservices.courtsofmadras.gov.in/> 7/2016

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