

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.RC.No.70 of 2017
and
CRL.M.P.No.773 of 2017

K.Selvaperunthagai @ K.Selvam ... petitioner/
Sole Accused

Vs.

State rep.
The Inspector of Police,
Central Bureau of Investigation,
Special Crime Branch,
Chennai. ...Respondent/
Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w.401 of Cr.P.C., to call for the records from the file of the learned Additional Chief Metropolitan Magistrate, Allikulam, Egmore, Chennai-600 003 in M.P.No.1848 of 2016 in C.C.No.5177 of 2016 and to revise the order dated 30.12.2016 by setting aside the same.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.L.Praveen Kumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor

ORDER

The Criminal Revision Case has been filed by the revision petitioner challenging the order passed by the learned Additional Chief Metropolitan Magistrate, Egmore at Allikulam, Chennai - 600 003 in M.P.No.1848 of 2016 in C.C.No.5177 of 2016 dated 30.12.2016.

2. The case of the prosecution is that on 01.05.2003, one T.Nandakumar, the complainant, was walking in front of

Ramprasad Hotel in L.B. Road, Adyar, Chennai, at that time, he saw a vehicle rushing from South to East in an uncontrollable speed. On noticing the rash and negligent driving, the said Nandhakumar shouted the driver to drive the vehicle properly. On hearing his voice, the said vehicle was stopped immediately and an occupant of the vehicle came out and stated that he is DPI Selvam. He abused Nandakumar with filthy language. When this insolent behavior was questioned by Nandakumar, the said Selvam went back to the above said vehicle bearing Registration No.TN-07-R4361 and he took out a round object and threw it towards the said Nandakumar, the object on hitting the ground blasted emitting smoke, the said Nandakumar realised the object to be a bomb and he sustained injury on his thigh and knees. The said Selvam again threatened Nandakumar and left in the same vehicle. Immediately, the said Nandakumar was taken to the Government Hospital, Royapettah, Chennai and his medical examination revealed that he sustained minor injury on the right thigh, right leg and left knee. Hence, the petitioner/accused has committed offences punishable under Sections 324, 506(ii) IPC and Section 3 of Explosive Substances Act, 1908.

3. Originally, there were four criminal cases including this case registered against the petitioner by the local police. Those cases are Crime No.136 of 2003, in J-3, Shasthri Nagar Police Station, Chennai, Crime No.138 and 451 of 2003 in J-6 Police Station, Thiruvannamiyur, Chennai and Crime No.277 of 2003 in R-4, Pondy Bazaar Police Station, Chennai. This petitioner has filed a petition in CrI.O.P.Nos.3443 to 3446 of 2004 before this Court to transfer those cases to the CBI for further investigation. This Court, by order dated 19.04.2004, ordered to transfer those cases to the CBI,SCB, Chennai for further investigation and filing a final report. As per the order of this Court, those cases were taken up by the CBI for further investigation. After completing the further investigation in all the above said four cases, except this case in Crime No.451 of 2003, CBI had filed final report stating that "not charge sheet for want of evidence". Thereafter, CBI had filed charge sheet for this case only arraying the petitioner as accused in C.C.No.5177 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore at Allikulam, Chennai. In the above circumstances, the petitioner has filed a petition before the trial Court in CrI.M.P.No.1848 of 2016 in C.C.No.5177 of 2016 under Section 239 of Cr.P.C. to discharge him from the charges levelled against him. The trial Court, by its order dated 30.12.2016, dismissed the said petition. Aggrieved against the same, the present criminal revision case has been filed.

4. Mr.N.R.Elango, the learned Senior counsel appearing for the petitioner would submit that due to political vengeance,

a false case has been foisted against the petitioner. Initially, the respondent police registered four cases against the petitioner, namely, 1) J-6, Thiruvanniyur Police station Crime No.138 of 2003. 2) J-5, Sastri Nagar Police Station Crime No.136 of 2003. 3) R-4, Pondy Bazaar Police Station Crime No.277 of 2003 and 4)J-6, Thiruvanniyur Police Station Crime No.451 of 2003. Since the police foisted the false case against the petitioner, he moved the petitions in CrI.O.P.Nos.3443 to 3446 of 2004 before this Court with a prayer to transfer all the 4 cases from State police to CBI. In fact during the pendency of the petitions in this Court, the State Government even offered that if the court wants the charge to be quashed, but opposed the transfer of cases to the respondent. After considering all the facts and circumstances of the case, this Court, by its order dated 19.04.2004, ordered to transfer those cases to the CBI for further investigation. After investigation, the CBI found that except the case in Crime No.451 of 2003 in J-6, Thiruvanniyur Police Station, other three cases were falsely registered against the petitioner. After completing the investigation, CBI filed the charge sheet before the trial Court in this case. The learned Senior Counsel further submitted that even during the investigation, the defacto complainant has given statement before the investigating agency under Section 164 Cr.P.C. and the CBI forcibly taken statement from the defacto complainant. Thereafter, on 11.08.2003, the defacto complainant written a letter to the Director of Medical Services, DMS Compound, Chennai, stating that "since the above incident never took place and no injury was sustained, the Accident Register has been recorded falsely due to the pressure of police. It would be pertinent to note that even the identification marks have not been mentioned in the said Accident Register. Later, the police may state that the incident really took place and that I am withdrawing my complaint because I am frightened or I am won over by the accused in the said case". Therefore, CBI have not produced any documents before the trial Court and also due to political pressure, they have falsely implicated the petitioner in this case and laid charge sheet before the trial Court. Aggrieved against the charge sheet filed by the CBI, the petitioner filed a petition, before the trial Court, in CrI.M.P.No.1848 of 2016 in C.C.No.5177 of 2016 under Section 239 of Cr.P.C. to discharge him from the charge. The trial Court, by its order dated 30.12.2016, dismissed the said petition, stating that since the sanctioning authority has not accorded sanction for prosecution under Section 3 of Explosive Substances Act, the trial Court relieved the accused for the offence under Section 3 of Explosive Substances Act and only the offences under Section 324 and 506(ii) IPC are made out against the petitioner. But, the trial Court has failed to consider the fact that the sanctioning authority has refused to accord sanction under Section 3 of Explosive Substances Act and to this effect,

statement was given by the defacto complainant which was also retracted before the investigation agency. Therefore, the document produced by the CBI itself shows that the defacto complainant himself has withdrawn the earlier statement, while so, there is nothing to implicate this accused in this case and the petitioner has to be acquitted. Therefore, under these circumstances, without considering the facts and circumstances, the trial Court dismissed the petition. Aggrieved against the same, the present revision has been filed. In support of his contention, the learned Senior Counsel appearing for the petitioner relied upon a Judgment of Hon'ble Supreme Court in STATE OF KARNATAKA Vs. L.MUNISWAMY AND OTHERS reported in [1977 (2) SCC 699].

5. Per contra, the learned Special Public Prosecutor for CBI cases vehemently opposed the contentions raised by the learned Senior Counsel appearing for the petitioner that out of political vengeance they have lodged the case and also due to the political pressure, CBI has filed the charge sheet against the accused in this case. But, where as, on the direction issued by this Court, all the four cases have been transferred to CBI. Out of the four cases, CBI found that three cases have been falsely registered against the petitioner and only in one case, after investigation, it found there are material available to lay the charge sheet in Crime No.451/2003. If at all as contended by the learned Senior Counsel appearing for the petitioner that CBI was under the pressure of political influence, they ought to have filed the charge sheet in all the cases. The investigation agency has conducted fair investigation and found that except in Crime No.451 of 2003, all the other three cases registered against the petitioner are false. There is material available on record to show that the very same defacto complainant, as referred by the learned Senior Counsel, though retracted the statement made earlier, in the letter dated 11.08.2003 written by the defacto complainant to the Director of Medical Services and he made statement before the Judicial Magistrate under Section 164 Cr.P.C. He reiterated the same version and again the defacto complainant has given another statement before the investigating agency retracting the same version, stating that he was under threat and compulsion to retract the statement. Therefore, the statement under Section 164 Cr.P.C. given by the defacto complainant before the CBI is valid, admissible and acceptable and ultimately the Court has to testify the veracity of the statement given by the defacto complainant at the time of trial.

6. In STATE OF KARNATAKA Vs. L.MUNISWAMY AND OTHERS (supra), the Hon'ble Supreme Court has held as follows:

"10. On the other hand, the decisions cited.

by learned counsel for the respondents in Vadilal Panchal v D.D. Ghadigaonkar and Century Spinning & Manufacturing Co. v. State of Maharashtra show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In Vadilal Panchal's case (supra) section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case. To an extent section 327 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record. If unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

सत्यमेव जयते

There is no proposition laid down by the Hon'ble Supreme Court for discharging in the referred decision and at the same time on perusal of the records and the facts and circumstances of the case, it is seen that the present case is entirely different from the facts of this case as referred by the learned Senior Counsel appearing for the petitioner. Though, in this case, the defacto complainant himself has given 161 statement initially and subsequently he retracted the same and he has given another statement to show that he has no constant mind. Therefore, at this stage, the case referred by the learned senior counsel appearing for the petitioner is not applicable to the present facts of this case.

7. Therefore, after considering the facts and circumstances of the case and after going through the entire materials placed before the trial Court, the trial Court applied its mind correctly and dismissed the petition filed by the petitioner and there is no infirmity or perversity in the order passed by the trial Court. However, for limited scope, this Court applied its mind independently to the charge sheet filed by the CBI and also statement given by the defacto complainant, as referred by the Senior Counsel appearing for the petitioner and also the learned Special Public Prosecutor for CBI cases and carefully gone through the statement given by the defacto complainant on various dates and also the relevant materials which shows that the prima facie case has been made out and there are incriminating materials available against the petitioner. Under these circumstances, this Court find no infirmity or perversity in the order passed by the Court below. In the above said circumstances, the order passed by the trial court in dismissing the petition preferred by the revision petitioner is legally sustainable.

8. In the result, the criminal revision case fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rrg

To

1. The Additional Chief Metropolitan Magistrate,
Egmore at Allikulam, Chennai.

2.-Do thro the Chief Metropolitan Magistrate,
Egmore, Chennai-8.

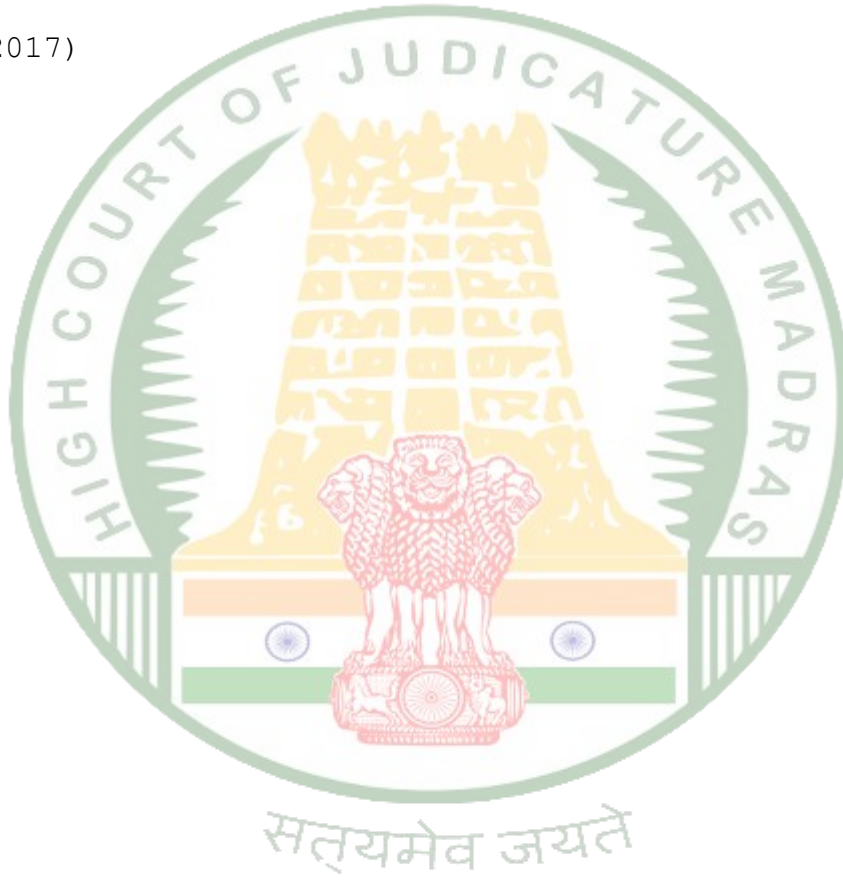
3. The Inspector of Police,
Central Bureau of Investigation,
Special Crime Branch,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.L.Praveen Kumar, Advocate Sr. 53241

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and
CRL.M.P.No.773 of 2017

SV (CO)
VR(03/08/2017)



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