

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.7914 of 2017

and Crl.M.P.Nos. 5718 & 5719 of 2017

Latha

... Petitioner

Vs

The State rep by
The Sub Inspector of Police,
Central Crime Branch,
Coimbatore

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.288 of 2002 on the file of the learned Judicial Magistrate No.II, Tiruppur and quash the same in respect of the petitioner herein.

For Petitioner : Mr.S.Ashok Kumar, Senior Counsel
for Mr.P.Palaninathan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.288 of 2002 on the file of the learned Judicial Magistrate No.II, Tiruppur and quash the same in respect of the petitioner herein.

2.The petitioner herein is the fifth accused in C.C.No.288 of 2002 on the file of the learned Judicial Magistrate No.II, Tiruppur, who had purchased the subject property from the first accused. The third and fourth accused have also purchased the subject properties in the pending proceedings in C.C.No.288 of 2002.

3. It is seen that the petitioner's name was never in the F.I.R. nor in the 161 statement or in the charge sheet. It is also submitted by the learned Senior Counsel appearing for the petitioner that the witnesses during the trial had also not mentioned the name of the petitioner.

4. In the mean time, the trial Court, on 01.08.2007, had allowed the application in Crl.M.P.No.10110 of 2006 in C.C.No.288 of 2002, filed by the second accused under Section 319 of Cr.P.C.,

whereby the petitioner and the third and fourth accused are now implicated in the proceedings. Challenging the said order, the third and fourth accused had filed a revision case before this Court in CrI.R.C.No.1443 of 2008 and by an order dated 18.06.2015, the proceedings insofar as the third and fourth accused came to be closed. The relevant portion is extracted hereunder :-

"9. In this case as rightly pointed out by the learned counsel appearing for the petitioners the neither in the First Information report nor in the 161 statement nor in the charge sheet, the name of the petitioners have been included or stated as accused and even thereafter, during the time of trial also, the witnesses had not whispered about the name of the petitioners in their evidence or the alleged overt act against the petitioners.

10. In the result, the criminal revision case is allowed. The order dated 01.08.2007 made in CrI.M.P.No.10110 of 2006 in C.C.no.288 of 2002 on the file of the learned Judicial Magistrate No.II, Tiruppur, is set aside and the petitioners are discharged from the above case. If the case is still pending before the Court below in respect of others, the Court below is directed to consider the same without being influenced by any of the observations made in this revision. Consequently, connected miscellaneous petition is closed."

The said order has become final, since the prosecution has not chosen to challenge the same.

5. Mr.P.Govindarajan, learned Additional Public Prosecutor stated that the petitioner/fifth accused had earlier filed a discharge petition under Section 245 of Cr.P.C. and the same was rejected by the learned Judicial Magistrate No.II, Tiruppur in C.M.P.No.3676 of 2016 on 12.01.2017. It is further submitted by the learned Additional Public Prosecutor that the order under Section 319 had properly implicated the petitioner and therefore there is no illegality, since admittedly the petitioner had purchased the subject property.

6. I do not intend to traverse with the objection raised by the learned Additional Public Prosecutor for the simple reason that the third and fourth accused who are also similarly placed as that of the petitioner had earlier challenged the order passed under Section 319 and the same came to be allowed by this Court. The reasoning given in the revision orders goes to show that the petitioners therein as well as the petitioner herein were never shown as accused in the F.I.R. or 161 statement or charge sheet and

none of the witnesses during trial has not mentioned the name of the petitioner herein. It is due to all these reasoning the revision case came to be closed.

7. I am of the view that the reasoning adduced by this Court in Crl.R.C.No.1443 of 2008 filed by the third and fourth accused will also be applicable to the petitioner herein who is similarly placed as that of the third and fourth accused. In the result, the petitioner herein is entitled to succeed. Consequently, the proceedings in C.C.No.288 of 2002 on the file of the learned Judicial Magistrate No.II, Tiruppur is quashed in sofaras the petitioner is concerned.

8. With the above observation, the criminal original petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

rts

To

1. The Presiding Officer,
The Judicial Magistrate No.II, Tiruppur
2. The Sub Inspector of Police,
Central Crime Branch,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/S.P.PALANINATHAN Advocate SR.NO. 73110

RD 24/06/2015

Crl.O.P.No.7914 of 2017

WEB COPY