

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2017

DELIVERED ON : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1268 of 2016

P.Baskar

S/o.Pachiappa Gounder

... Petitioner

vs

1.State represented by

The Inspector of Police
Crime Branch CID,
Organized Crime Unit,
Salem City.

2.K.Ravi

S/o.Krishnan

(R2 impleaded as per the order
of this Court in Crl.M.P.No.13232/16
in Crl.R.C.No.1268/16 dated 21.12.2016)

... Respondents

Criminal Revision Case filed under Sections 397 and 401
Cr.P.C. to call for records in S.C.No.90 of 2015 and set aside
the charges framed by learned Principal Sessions Judge,
Dharmapuri, on 18.10.2016.

For Petitioner : Mr.N.R.Elango, Senior Counsel
for Mr.R.Vivekananthan

For Respondents: Mr.R.Rajarathinam,
Public Prosecutor [R1]
Mr.V.Ramakrishnan [R2]

O R D E R

This revision arises against the order of learned Principal
Sessions Judge, Dharmapuri, framing charges in S.C.No.90 of 2015
on 18.10.2016.

2. Petitioner is second accused in case pending trial in
S.C.No.90 of 2015 on the file of learned Principal Sessions
Judge, Dharmapuri. There are as many as 31 accused in the case
spawned by intra party political rivalry leading to occurrences
and resulting in the death of one and injury to others. First
respondent filed a final report informing commission of offences
as follows:

Accused	Section of law
A1 to A31	120-B IPC
A1, A4 to A31	148 IPC
A3	147 IPC
A1, A3, A7	302 IPC
A4 to A6, A8 to A31	302 r/w 149 IPC
A2	302 r/w 120-B IPC
A4, A5, A8	307 IPC (2 counts)
A1, A3, A6, A7, A9 to A31	307 r/w 149 IPC (2 counts)
A2	307 r/w 120-B IPC (2 counts)
A6 and A7	324 IPC
A1, A3 to A5, A8 to A31	324 r/w 149 IPC
A2	324 r/w 120-B IPC
A9	324 IPC

Thus, petitioner/A2 was charged with substantial offence of criminal conspiracy punishable u/s.120-B IPC read with other offences. Court below initially framed the following charges in the case:

Accused	Section of law
A1 to A26, A28 to A31	147 IPC
A1, A2, A4 to A26 and A28 to A31	148 IPC
A1 and A3	302 IPC
A1 to A3	120-B r/w 302 IPC
A4 to A26 and A28 to A31	302 r/w 149 IPC
A4	326 IPC
A8	326 IPC
A1 to A3, A5 to A26 and A28 to A31	326 IPC r/w 149 IPC
A5	324 IPC
A6 and A7	324 IPC
A9	324 IPC (2 counts)
A1 to A4, A8, A10 to A26, A28 to A31	324 IPC r/w 149 IPC

3. Contending that the framing of charges was inconsistent with the prosecution case, petitioner moved CrI.M.P.No.1679 of

2016 u/s.216 Cr.P.C seeking amendment and alteration of charges and such petition was dismissed on 18.10.2016. Court below on the said date altered charges as follows:

Accused	Section of law
A1 to A31	120-B IPC
A1,A2,A4 to A9	148 IPC
A3, A10 to A31	147 IPC
A1 and A2	302 IPC
A3	341 IPC
A3 to A31	302 r/w 149 IPC
A4	326 IPC
A8	326 IPC
A1 to A3, A5 to A7, A9 to A31	326 r/w 149 IPC
A5	324 IPC
A6 and A7	324 IPC
A1 to A4, A8 to A31	324 IPC r/w 149 IPC (3 Counts)

Contending that the charges are not in keeping with prosecution case, petitioner/A2 has moved the present criminal revision.

4. Heard learned senior counsel for petitioner, learned Public Prosecutor for first respondent and learned counsel for second respondent.

5. Learned senior counsel for petitioner submitted that the case is one of intra party rivalry over holding of posts among AIADMK political party members of Dharmapuri Town. It is the prosecution case that petitioner/A2 has provided financial support to the group led by first accused. In 2009, the AIADMK party leadership announced elections to party posts and the accused persons (A1 to A31), who were against conduct of elections, entered into a criminal conspiracy and pursuant thereto, on 24.11.2009 at about 3.30 p.m., the accused intimidated the prosecution witnesses towards preventing them from contesting the elections. At about 06.00 p.m., when one Ravi and Veeramani proceeded to file nominations, the accused persons assaulted them with weapons, owing to which Veeramani died. Further allegation is that the accused persons also attacked the other prosecution witnesses. Hence, they were charged for offences u/s.120-B, 148, 302, 302 r/w 149, 307 r/w 149, 324 r/w 149 IPC. Petitioner/A2 initially has preferred a petition u/s.227 Cr.P.C. seeking discharge in CrI.M.P.No.974 of 2016 and the same was dismissed. Petitioner/A2 has unsuccessfully challenged such order before this Court in

Crl.R.C.No.953 of 2016. Pursuant to framing of charges on 26.08.2016, petitioner/A2 preferred a petition before this Court challenging the same but subsequently, withdrew such petition. Learned senior counsel submitted that the very challenge in Crl.M.P.No.1679 of 2016 was to the charges as originally framed. The charges as originally framed did not inform commission of offence u/s.302 IPC by petitioner. However, dismissing such petition, Court below has proceeded to alter charges and in doing so, informed commission of offence u/s.302 IPC also by this petitioner. Learned senior counsel submitted that against the order of Court below dismissing the petition for discharge in Crl.M.P.No.974 of 2016 on 01.07.2016, petitioner had preferred Crl.R.C.No.953 of 2016 which was dismissed on 05.08.2016. Till such time, petitioner was led to believe that he was to face a charge only u/s.120-B IPC. Suddenly, upon dismissal of the petition seeking alteration of charges, Court below, inter alia, had included a charge u/s.302 IPC simpliciter against petitioner. Petitioner had not been put on notice there regards nor been afforded an opportunity to contend there against. It is such circumstance that prompted the filing of further petition u/s.206 Cr.P.C. Learned senior counsel submitted that the case initially was investigated by the Inspector of Police, Dharmapuri. This Court directed transfer of investigation to the CBCID, Dharmapuri. Being of the view that investigation had not proceeded on proper lines, the Director General of Police had entrusted further investigation to the organized Crime Unit, CBCID, Salem. The Inspector of Police, Organized Crime Unit, CBCID, Salem, had filed a final report informing that this petitioner/A2 had conspired with the other accused and intentionally had gone out of town (at the time of occurrence) and doctored some oral and documentary evidence in support of his absence from the town on 22.11.2009 to 26.11.2009. As against such specific charge informed in the final report, Court below has relied upon the statements of LWs.1 to 5 recorded by the original investigating officer and wherein the allegations of direct participation of this petitioner/A2 in the occurrence are to be found in framing charge against this petitioner also for offence u/s.302 IPC. Learned senior counsel submitted that the statements of L.Ws.85 to 93, 99 and 101 inform the presence of petitioner at Chennai on the date of occurrence. Learned senior counsel submitted that LW-93 was a high ranking official viz., the Principal Secretary to Government, Co-operation Food and Consumer Protection, Secretariat, St.George Fort, Chennai. Much documentary evidence towards informing the presence of petitioner at Chennai on the date of occurrence had also been gathered. Very elaborate submissions have been made to impress upon this Court that in framing charges, Court below ought to have taken the entire material available into consideration and doing so would have deterred it from framing a charge u/s.302 IPC simpliciter against petitioner.

6. Learned Public Prosecutor, relying on the counter, submitted that pursuant to directions of this Court, the case was transferred to CBCID, Dharmapuri, for further investigation and thereafter, transferred to CBCID, Salem. Learned Public Prosecutor submitted that during the course of investigation, the investigative officer has examined as many as 128 witnesses and recorded their statements and collected relevant documents from the concerned authorities. Upon completion of investigation, the then Inspector of Police, Organized Crime Unit, CBCID, Salem, has laid a charge sheet against the accused and submitted the same before learned Judicial Magistrate I, Dharmapuri, which was taken on file in P.R.C.No.22 of 2011. On committal, learned Principal Sessions Judge, Dharmapuri, has taken up the same for trial in S.C.No.90 of 2015. Earlier petitions filed by petitioner before this Court as well as before Court below have been dismissed on the ground that there is sufficient material available against petitioner. Submitting that petitioner has filed the present revision only to drag on the proceedings, learned Public Prosecutor prayed for dismissal of the revision.

7. Learned counsel for second respondent contended that time and again, petitioner has resorted to protraction of proceedings by moving various petitions and has placed reliance on much case law towards informing that the present revision was not maintainable.

8. This Court has considered the rival submissions and perused the materials on record.

9. The concern of this Court goes beyond that of the contesting parties. This Court has made a detailed study of all the 161(3) Cr.P.C. statements filed along with the charge sheet. The initial investigating officer has examined L.Ws.1 to 7, 18 to 31 and 93. The same witnesses as also L.Ws.8 to 17, 32 to 92 and 94 to 128 have been examined by the investigating officer, who has filed the final report. While the statements of L.Ws.1 to 5, 24, 25, 27 and 93 before both investigating officers are more or less on similar lines, statements of L.Ws.6 to 23, 26, 28 to 31 are at variance, in that in their statements to the investigating officer, who has filed the final report, they have not informed the participation of petitioner in the occurrence proper. According to the prosecution, the occurrence proper took place post noon on 24.11.2009. For illustrative purpose, this Court would state that while some of the witnesses speak to the participation of petitioner therein, LW-93 would have it that petitioner met him at 04.30 p.m. at Chennai while LW-99 would speak to having met him at 07.30 p.m. on the said date, again at Chennai. Dharmapuri and Chennai are approximately 300 kms. apart. Therefore, while some of the statements indicate the

participation of petitioner in the occurrence proper, some would rule out his involvement. The prosecution must be definite of its case. Such definiteness is required also because but therefor the accused would not know what is the prosecution case that he is to meet. Alibi, when claimed by an accused would, as in the case of general exceptions covered under Chapter IV of the Indian Penal Code, have to be pleaded and proved by the accused. This case presents a rare, if not first of its kind, position where the material for claim of alibi is produced by the prosecution itself. Towards providing definiteness to the prosecution case, this Court considers it appropriate to direct further investigation restricted to the question of presence and participation of petitioner at the occurrence proper or his absence thereat.

10. Accordingly, this Court orders as follows:

- (1) The order of learned Principal Sessions Judge, Dharmapuri, framing charges in S.C.No.90 of 2015 on 18.10.2016 is set aside.
- (2) The Additional Director General of Police, CBCID, is directed to cause further investigation in Crime No.2074 of 2009 on the file of first respondent using the offices of a senior police official. This Court trusts that the Additional Director General of Police will entrust such investigation in the hands of an officer of honesty, integrity, good repute and capacity. Further investigation shall be restricted to gathering material towards establishing the presence/participation of petitioner or otherwise in the occurrence proper.
- (3) Further investigation shall be completed within a period of eight weeks from the date of receipt of this order and report u/s.173(8) Cr.P.C. shall be presented before the concerned jurisdictional Magistrate for committal. Upon committal, learned Principal Sessions Judge, Dharmapuri, shall consider the same along with other materials on record towards framing charges in S.C.No.90 of 2015. Court below, shall, then dispose of the case as expeditiously as possible.

The Criminal Revision Case is disposed of with the above direction.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.The Principal Sessions Judge
Dharmapuri

2.The Judicial Magistrate No.I
Dharmapuri

3.The Chief Judicial Magistrate
Dharmapuri

4.The Additional Director General of Police
CBCID Chennai

5.The Director General of Police
Madras-4

6.The Inspector of Police
Crime Branch CID
Organized Crime Unit,
Salem City

7.The Public Prosecutor
High Court Madras

+1 cc to Mr.R.Vivekanantha Advocate sr54090

Crl.R.C.No.1268 of 2016

sks(co)
aa01/08/2017

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