

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.O.P.No.2493 of 2014
and M.P.Nos.1 and 2 of 2014

1.Azhaguselvan
2.Selvarasu

... Petitioners

-VS-

1.State Represented by
The Inspector of Police,
Thittagudi, Cuddalore.
Crime No.247/2010.

2.Muthtamizhvannan

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in P.R.C.No.12 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, Tittagudi and quash the same.

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

For Respondents : Mr.M.Mohammed Riyaz,
Govt. Advocate [Crl. Side] for R1

ORDER

Petitioners seek quash of proceedings in P.R.C.No.12 of 2010 on the file of learned District Munsif cum Judicial Magistrate, Tittagudi.

2. Petitioners are accused 3 and 4 in case pending committal in P.R.C.No.12 of 2010 on the file of learned District Munsif cum Judicial Magistrate, Tittagudi. Case in Crime No.247 of 2010 was registered for offence u/s. 302 IPC on 23.07.2010.

3. On completion of investigation, a charge sheet informing commission of offences u/s.120 B r/w 302 and 302 IPC, has been filed. The occurrence informed is that on 23.04.2010 at about 10.30 p.m., the deceased Kanthamizh Ilavazhagan, proceeded on his motor cycle bearing registration No.TN-31-AZ 0986 to a hotel at Thittakudi towards picking up a meal for his mother. When he was before the house of Manickam, S/o.Krishnan on the Thozhudur-Thittakudi Main Road, Elamangalam Village, accused 1 and 2 armed with spears, intercepted him. The first accused sought to cause injury to the head of the deceased which the deceased warded off using his hands. In doing so, deceased suffered injuries to his hands. When the deceased sought to turn his vehicle around towards making a get away, the second accused attacked and caused injuries to the head. Uttering "are u still alive", first accused cut him on his neck, both accused 1 and 2 caused injuries to the head and neck

resulting in the death of the deceased.

4. The prosecution allegation against petitioners is of commission of offence u/s.120-B IPC.

5. Heard learned senior counsel for petitioners and learned Government Advocate (Crl. Side) for first respondent.

6. Learned Government Advocate [Crl.side] brings to notice that second petitioner/A4 is not more.

7. It is in a rare case that this Court would proceed to quash proceedings against the accused in a case of murder. The charge of criminal conspiracy levelled against first petitioner is on the basis of Section 161(3) Cr.P.C. statements of list witnesses 9 and 10. Both are similar and this Court would reproduce the translation of statement of L.W.9 viz., Raja:

"I am residing in the above address along with my father Adimoolam and mother Devaki. My parents are doing agricultural work. I am working as a coolie and unmarried. Myself and one Sugumar, Son of Thangavel, who is a resident in our colony, are friends. We daily go to work together. We roam around when we have no work. On 20.04.2010 at about 8.00 p.m, when we were returning from north of the village, we heard the noise of four persons talking in the house of Ambedkar, who is an

Advocate. On hearing their voice, we were able to recognize them as Ambedkar, his elder brother Azhaghu Selvam, his father Selvaraj and their friend Pendatathan @ Muthukumar. They were planning to kill one Kanthamizh Ilavazhagan, Son of Muthu Arangasamy, who alleged to have had illegal intimacy with the sister of Ambedkar since he cheated her and marriage arrangements were going on for him today at Cuddalore. On coming to know about the relationship between Kanthamizh Ilavazhagan and Manonmani, problems arose between them, they started threatening him and prevented him from getting married. We assumed that likewise they are now also planning to kill him. At that time, the said four persons came out through the front gate and we turned back on hearing the noise and the aforesaid four persons were standing. We left the place as if we did not know anything. But, on coming to know that on 23.04.2010 night, at T.Ilamangalam Main Road, Kanthamizh Ilavazhagan was murdered by Ambedkar and Muthukar, I and Sugumar discussed that it was done as conspired by them earlier. I told this on investigation by yourself as regards the murder.”

The 161(3) Cr.P.C. statements of LWs.9 and 10 have been recorded on 25.04.2010 and 28.04.2010. The occurrence date is 23.04.2010.

8. Informing a charge of conspiracy on statements such as above recorded would be highly unsafe. On statements such as these almost anybody can be roped in as an accused. Requiring a person to suffer rigour of trial and particularly, for offence of conspiracy to commit murder, on such statements,

would be harmful to the public cause.

The Criminal Original Petition stands allowed and proceedings in P.R.C.No.12 of 2010 on the file of learned District Munsif cum Judicial Magistrate, Tittagudi, against first petitioner/A3 shall stand quashed. Of course, in the event of material surfacing as would probablize his conviction against first petitioner/A3 in the course of trial, it would always be open to the trial Court to proceed under Section 319 Cr.P.C. Connected miscellaneous petitions are closed.

11.04.2017

Index : Yes / No

Internet: Yes

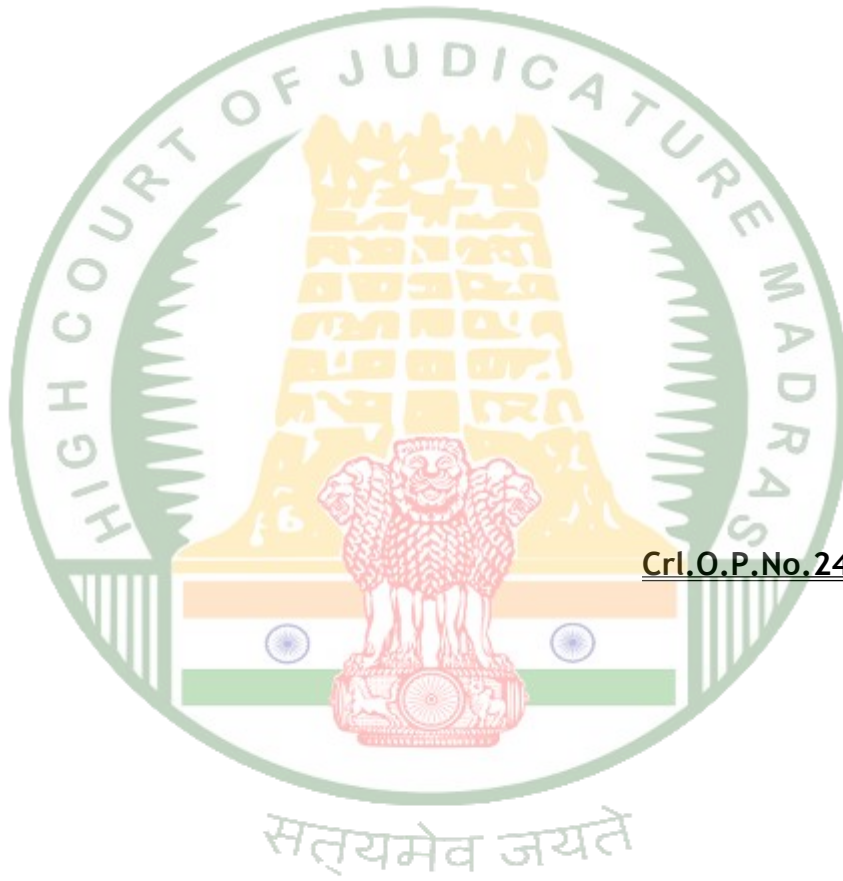
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To

- 1.The Inspector of Police,
Thittagudi, Cuddalore.
- 2.The District Munsif cum Judicial Magistrate,
Tittagudi.

C.T.SELVAM, J

vsm



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