

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.25238 of 2010
and
M.P.Nos.1 and 2 of 2010**

K.M.Sirajudeen

... Petitioner

VS.

1.The State of Tamilnadu,
rep. by Inspector of Police,
T-15, SRMC Police Station,
Kanchipuram District.

2.S.Arunachalam

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in C.C.No.216 of 2009, on the file of the learned Judicial Magistrate No.I, Poonamallee, and quash the same in so far as the case against the petitioner/3rd accused is concerned.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)

No Appearance (for R2)

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to call for the records in C.C.No.216 of 2009, on the file of the Judicial Magistrate No.I, Poonamallee and to quash the same.

2.It is the case of the petitioner that on a complaint dated 16.06.2009 lodged by one S.Arunachalam before the 1st respondent police, a case in Crime No.299 of 2009 for the offences under Sections 387, 501 and 506(ii) of IPC was registered by the 1st respondent police. In the said FIR the petitioner was not shown as accused. At the time of registering the FIR only two persons name were mentioned viz., Nagaimugan and Kumar as accused 1 and 2. The allegation in the complaint is only against the accused 1 and 2 and not against the petitioner herein/ accused No.3.

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3.As per the allegation in the FIR, the defacto complainant/2nd respondent herein was the President of Porur Panchayat. The 2nd accused Kumar is running a paper publication in the name and style of "THALAI NAGARAM" and the 1st accused Nagaimugan is the Chief Editor of the said publication. It is alleged in the complaint that during the month of March,

2010 the accused 1 and 2 have published news wherein it is alleged that while awarding Metro Water Pipe Line contract, the defacto complainant received lakhs of rupees. When the same was questioned by the defacto complainant, the accused 1 and 2 demanded a huge amount of Rs.5,00,000/- from the defacto complainant for not precipitating the issue further. As the said demand was refused by the 2nd respondent herein, the accused 1 and 2 have threatened to kill the defacto complainant.

4. According to the petitioner, in the said complaint nowhere there is a single word about the involvement of the petitioner herein in the alleged commission of offence. But to the shock and surprise of the petitioner, the 1st respondent Police filed Charge Sheet in C.C.No.216 of 2009 before the learned Judicial Magistrate No.I, Poonamallee, arraying the petitioner herein as absconding 3rd accused. As per the charge sheet, the accused 1 and 2 demanded Rs.5,00,000/- from the 2nd respondent herein only at the instigation of the petitioner herein and the publication of defamatory article by the accused 1 and 2 also at the instigation of the petitioner herein. Therefore, the petitioner was charged for the offences under Sections 387, 506 (ii), 502 r/w 34 I.P.C questioning the same, the petitioner has approached this Court to quash the charge sheet filed against him.

5.I heard Mr.C.K.M.Appaji, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and perused the entire records. There was no representation on behalf of the 2nd respondent.

6.This Court has carefully perused the entire charge sheet including the statement of witnesses recorded under Section 161 (3) of Cr.P.C. From the reading of 161(3) statement of the witnesses, none of the witnesses have spoken about the name of the petitioner herein or his involvement in the commission of offence. There is no word uttered against the petitioner herein by the witnesses examined by the 1st respondent police. Therefore, this Court finds that the implication of the petitioner herein as 3rd accused in C.C.No.216 of 2009 is nothing but an abuse of process of law and Court.

7.In the list of witnesses annexed in the charge sheet disclose the names of 11 witnesses, including the defacto complainant and the Investigation Officer. All the witnesses have spoken about the involvement of accused 1 and 2 in the commission of offence. Hence, prima facie there is no material evidence available to prosecute the petitioner herein in the above criminal case. Therefore, facing the ordeal

8.It is useful to refer the judgments relied on by the learned counsel for the petitioner. In the judgment reported in **AIR 1977 SC 1489 (1)** the Hon'ble Apex Court held that:

"when a charge of conspiracy is hit upon for mere reason that evidence of direct involvement of the accused is lacking, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondent".

9.In another judgment reported in **2013 Crl.L.J 411 (1) SC** it is held that:

"Material collected during investigation also not disclosing any positive role of appellants in matter. Mere fact that appellants are senior Managers in bank cannot be a ground to hold that they are, even prima facie, liable for alleged wrongful acts".

10.Further, in the basic principles of criminal jurisprudence, the confession of co-accused cannot be relied upon to implicate a person in a criminal case. In the present case on hand, it is the only averment in the charge sheet that the petitioner was arrayed as 3rd accused in the above criminal case only on the basis of the confession of accused 1 and 2 and the same cannot be relied upon as per the settled legal proposition of law.

Hence, the charge sheet filed against the petitioner herein is liable to be quashed.

11.From the above, it is crystal clear that the inherent power of this Court is to be exercised as and when there is a compelling necessity, such as, to undo injustice caused to anyone to prevent miscarriage of justice.

12.For the foregoing reasons, I am of the considered opinion that absolutely there is no material or witnesses for the 1st respondent police to implicate the petitioner herein as 3rd accused in the above C.C. and therefore, the charge sheet filed against him is liable to be quashed.

13.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.216 of 2009, on the file of the Judicial Magistrate No.I, Poonamallee is hereby quashed in so far as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

04.10.2017

vs

Speaking order
Index : Yes

To
The Judicial Magistrate No.I, Poonamallee.

M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.25238 of 2010
and
M.P.Nos.1 and 2 of 2010**

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