



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.03.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH
Cr1.O.P.(MD) No.2648 of 2017

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Thiyagasuresh

... Petitioner

-vs-

1.State through the Inspector of Police,
Ammapettai Police Station,
Ammapettai, Thanjavur District.

2.K.Kesavan

.. Respondents/Complainants

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in PRC No.41 of 2015 on the file of the learned District Munsif Cum Judicial Magistrate, Papanasam, Thanjavur District and quash the same as against the petitioner/Accused No.7 above named.

For Petitioners : Mr.N.Ananthapadmanaban

For Respondent :Mr.A.P.Balasubramani

Government Advocate (Cr1. Side) for R1

O R D E R

This petition has been filed to quash the case in PRC No.41/2015 on the file of the learned District Munsif Cum Judicial Magistrate, Papanasam, Thanjavur District.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Cr1. Side) for the 1st respondent.

3. On the complaint lodged by one Kesavan, the respondent police registered a case in Crime No.233/2015 on 08.05.2015 under Sections 147,148, 364, 307 and 506(ii) IPC against 6 accused, in which, the name of the petitioner did not figure. On a reading of the FIR, it is seen that one Manikandan appears to have attacked brutally by the accused. Later, Manikandan succumbed to the injuries and the case was altered into one under Section 302 IPC. During the course of investigation, when the investigation was at the initial stage, the respondent police had recorded the statement of one Selvaraj (L.W.9), who, in his statement, had not mentioned about certain details connecting the petitioner with the crime. However, after the death of Manikandan, further statement appears to have been recorded from Selvaraj, on 23.06.2015, in which, Selvaraj had stated that he found the petitioner along with six accused named in the FIR in the party office, where they were closed in discussion and that they were planning to eliminate Manikandan. Based on the further statement, the petitioner has



been made as accused in the charge sheet. Challenging which, the petitioner is before this Court.

4. Mr.N.Ananthapadmanaban, learned counsel for the petitioner, contended that in the light of the earlier statement dated 08.05.2015, wherein, Selvaraj has not whispered a word about the alleged conspiracy made, ie., said to have held in the party office, the further statement that is recorded by the police on 23.06.2015, after a lapse of 45 days, is undoubtedly made, in order to falsely implicate the petitioner.

5. Per contra, Mr.S.Balasubramani, learned Government Advocate (Crl. Side) refuted the allegations.

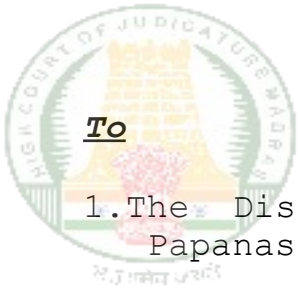
6. This Court gave its anxious consideration to the rival submissions.

7. The fact remains that the petitioner's name does not figure at the time, when the FIR was registered and Manikandan was alive. At that juncture, the police had recorded the statement of Selvaraj on 08.05.2015, in which, apart from making a stray reference to the petitioner, Selvaraj has not given any other details. However, in the further statement ie., recorded on 23.06.2015, Selvaraj has stated that he heard the petitioner and the other accused conspiring in the party office to eliminate Manikandan and on fear, he kept mute. In the considered opinion of this Court, both the statements are not substantive evidences. This Court cannot appraise the statements and given a finding that the subsequent statement is an embellishment in a proceedings under Section 482 Cr.P.C. The factum of the alleged conspiracy will have to be proved only by the prosecution during trial by examining Selvaraj. For the purpose of deciding the quash application, the authenticity of the subsequent statement cannot be gone into. In the light of the above, when there are prima facie materials against the petitioner, the prosecution cannot be quashed.

8. Under such circumstances and in the light of the law laid down by the Hon'ble Supreme Court in **State of Haryana and others v. Bhajan Lal** and others reported in **1992 Supp (1) SCC 335**, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court. Whatever stated above is only to decide this petition. However, the trial Court shall dispose of the case on merits and in accordance with law without being influenced by the order of this Court. Consequently connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)



To

1.The District Munsif Cum Judicial Magistrate,
Papanasam, Thanjavur District

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2.The Inspector of Police,
Ammapettai Police Station,
Ammapettai, Thanjavur District.

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

RR

JS/MR/3/04/2017/3P-4C

Crl.O.P. (MD) No.2648 of 2017
and Crl.M.P.Nos.2028 & 2029/2017
10.03.2017