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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.05.2017

DELIVERED ON: 07.06.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. (MD) No.3536 of 2017 & CrI. M.P. (MD) Nos.2644 and 2645 of 2017

Seeni. Elango

..Petitioner

vs.

1 The State represented by
the Inspector of Police
Pattukottai Town Police Station
Pattukottai
Thanjavur District ..1st Respondent/Complainant
(Cr. No.307/2016)

2 B. Parivel Karthik ..2nd Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records pertaining to the case in P.R.C. No.8 of 2017 on the file of the Judicial Magistrate Court, Pattukottai, Thanjavur District and quash the same.

For petitioner : Mr. K. Chellapandian, Sr. Counsel
for Mr. R.M. Arun Swaminathan

For R1 : Mr. K. Anbarasan
Government Advocate (CrI. Side)

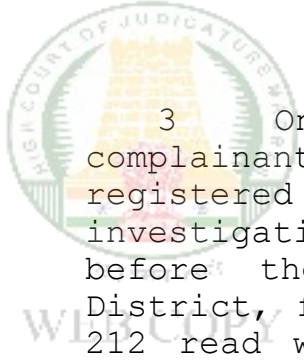
For R2 : Mr. S. Ravi

ORDER

This Criminal Original Petition has been preferred seeking to call for the records pertaining to the case in P.R.C. No.8 of 2017 on the file of the Judicial Magistrate Court, Pattukottai, Thanjavur District and quash the same.

2 For the sake of convenience, the parties will be referred to by their name.

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3 On the complaint of Parivel Karthik (de facto complainant/second respondent herein), the first respondent police registered a case in Cr. No.307 of 2016 and after completing the investigation, has filed a final report in P.R.C. No. 8 of 2017 before the Judicial Magistrate Court, Pattukottai, Thanjavur District, for offences under Sections 120-B, 147, 148, 341, 302 and 212 read with Section 109 read with Section 149, IPC against 24 accused, for quashing which, Seeni. Elango (A1) is before this Court.

4 Heard Mr. K. Chellapandian, learned Senior Counsel appearing for Seeni. Elango (A1), Mr. K. Anbarasan, learned Government Advocate (Crl. Side) appearing for the first respondent/State and Mr. S. Ravi, learned counsel for Parivel Karthik.

5 Mr. K. Chellapandian, learned Senior Counsel appearing for Seeni. Elango (A1) submitted that the prosecution case suffers from internal defects inasmuch as the theory that was projected by Parivel Karthik in the FIR that was given by him, has been given a go-by in the charge sheet, which, by itself, shows that the prosecution against Seeni.Elango (A1), is an abuse of process of law and requires to be quashed. He further contended that there are absolutely no materials to show that Seeni.Elango (A1) was part of the conspiracy to eliminate the deceased.

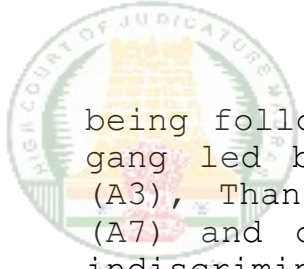
6 The aforesaid contentions put forth by the learned Senior Counsel were strongly refuted by the learned Government Advocate (Crl. Side) appearing for the first respondent and also the learned counsel for Parivel Karthik.

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

8 To appreciate the contentions of Mr. Chellapandian, learned Senior Counsel, it may be necessary to discuss the prosecution case from the FIR.

8.1 It is the specific case of Parivel Karthik that one week prior to 03.07.2016, while he was talking to his paternal uncle Manoharan (deceased), Udaya, Bala and Jaikumar, opposite Indian Bank in Big Street, Pattukottai, Seeni. Elango (A1) came in a motor bike and stopped the bike on seeing them. He openly warned Manoharan that if he competes with his brother Seeni. Annadurai (A2) and seeks nomination for the post of Municipal Chairman in the DMK party, he would be eliminated. This was indeed shocking to Parivel Karthik and when he asked Manoharan about this, Manoharan just dismissed it with a shrug.

8.2 Parivel Karthik has further stated in the complaint that on 03.07.2016, while Manoharan (deceased) was going in a motor bike



being followed by him and one Ramanujam, they were intercepted by a gang led by Seeni. Elango (A1), Seeni. Annadurai (A2), Manimaran (A3), Thani Arasu (A4), Vikram (A5), Dakshinamoorthy (A6), Sadaam (A7) and others, who surrounded Manoharan (deceased) and started indiscriminately attacking him with deadly weapons.

8.3 In the complaint, Parivel Karthik has clearly set down the overt acts of the accused, viz., Seeni. Elango (A1) attacking Manoharan on his face with a knife, Seeni. Annadurai (A2) attacking Manoharan on his left hand with a sword, Manimaran (A3) attacking Manoharan in his stomach using a sword, Thani Arasu (A4) and Vikram (A5) attacking Manoharan using an axe and Sadaam (A10) and some others attacking Manoharan using a bludgeon, etc. According to Parivel Karthik, after indiscriminately attacking Manoharan, they fled from the place of occurrence. It is further stated by Parivel Karthik in his complaint that he carried Manoharan, who was in a pool of blood, to Meenakshi Hospital at Thanjavur, where, he was declared brought dead and therefore, the body was taken to Thanjavur Medical College Hospital. This written complaint was obtained by the police from Parivel Karthik at Thanjavur Medical College Hospital on 03.07.2016 at 22.00 hours and the FIR in this case was registered immediately thereafter.

9 Seeni. Elango (A1), Seeni. Annadurai (A2) and Thani Arasu (A4) were arrested by the police and they filed bail applications in CrI. O.P. (MD) Nos.14973, 14974 and 14975 of 2016 respectively before this Court. In the bail applications, they contended that Seeni. Elango (A1) was never in the place of occurrence and that he was in Vinodhagan Memorial Hospital at Thanjavur as his wife had undergone a surgery. In support of this plea of alibi, they submitted a CCTV recording to show that Seeni. Elango (A1) was in Vinodhagan Memorial Hospital at Thanjavur, at that time.

10 At this juncture, it may be profitable to extract the relevant portions of the order dated 22.08.2016 passed by this Court in CrI. O.P. (MD) Nos.14973, 14974 and 14975 of 2016:

"4. The learned Senior Counsel for the petitioners has produced a copy of Accident Register of the deceased and submitted that assault was done by some unknown persons. The learned Senior Counsel has also produced CCTV footage to show that the petitioners were in Vinodhagan Memorial Hospital, Thanjavur, on the date of occurrence.

5 The learned Government Advocate (CrI.Side) submitted that prior to the occurrence, a case has been registered against the petitioners and others in Crime No.536 of 2015 and due to that motive, as a revenge, the petitioners and other



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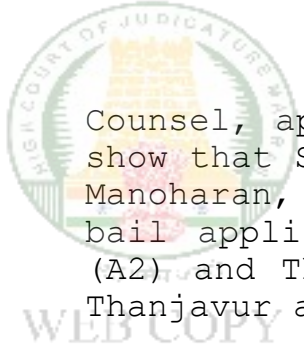
accused persons attacked the deceased. The CCTV footage produced by the learned Senior Counsel is true. The petitioners conspired together and arranged others to murder the deceased. Investigation is in preliminary stage and the petitioners are influential persons. If the petitioners are released on bail, they will tamper the evidence and hamper the investigation.

Considering the facts and circumstances of the case and also considering the contention of the learned Senior Counsel for the petitioners and also considering the fact that the petitioner in Crl.O.P. (MD) No.14973 of 2016 is in judicial custody from 06.07.2016 and the petitioners in Crl.O.P. (MD) Nos.14974 and 14975 of 2016 are in judicial custody from 20.07.2016, this Court is inclined to enlarge the petitioners on bail with certain conditions. Accordingly, the petitioners are ordered to be released on bail, subject to the following conditions:"

11 After completing the investigation, the police have filed a charge sheet in P.R.C. No.8 of 2017, wherein, it is stated that Seeni.Elango group and Manoharan belong to DMK party; that Seeni.Annadurai (A2) was the Secretary of Pattukottai Municipal area of the DMK party; that he was removed from the said post and in his place, Manoharan was appointed as Secretary in the year 2015 by the party high command; that Manoharan was seeking a DMK ticket to contest as its party candidate for the post of Chairman of Pattukottai Municipality, for which, Seeni. Annadurai (A2) was also in the race and therefore, accused 1 to 6 had conspired to eliminate Manoharan, pursuant to which, they had engaged hirelings who eliminated Manoharan on that fateful day, i.e., 03.07.2016.

12 In support of his contention, Mr. Chellapandian, learned Senior Counsel took this Court to the Section 161(3), Cr.P.C. statement of Parivel Karthik, recorded by the police, wherein, it has been stated that he had wrongly implicated A1 to A6 in the FIR at the time of giving FIR and that they merely conspired to eliminate Manoharan.

13 Mr. Chellapandian, learned Senior Counsel, further submitted that even for the charge of conspiracy, there is absolutely no material against Seeni. Elango (A1) inasmuch as the statement of Gnanasekaran and Arasakumar show that they overheard Vikram (A5) and Yogesh (A17) discussing the animosity between Seeni. Elango (A1) and the deceased Manoharan and that they followed Vikram (A5) and Yogesh (A17), who went to the house of Seeni. Annadurai (A2) after which, they left. According to the learned Senior



Counsel, apart from these statements, there is no other material to show that Seeni. Elango (A1) was part of the conspiracy to eliminate Manoharan, whereas, the CCTV footage produced during hearing of the bail applications shows that Seeni. Elango (A1), Seeni. Annadurai (A2) and Thani Arasu (A4) were in Vinodhagan Memorial Hospital at Thanjavur and not at the place of occurrence.

14 He further contended that after the alleged assault, about 30 persons carried Manoharan to the Government Hospital at Pattukottai, wherein, it is stated that he was assaulted by some unknown persons and he was taken away by them sans permission from the casualty doctor. In this regard, he placed reliance upon the photocopy of the Accident Register which is said to have been given by the Government Hospital at Pattukottai. Therefore, he submitted that the deceased Manoharan was first taken to the Government Hospital at Pattukottai and thereafter, to Meenakshi Hospital at Thanjavur.

15 Per contra, Mr. S. Ravi, learned counsel for Parivel Karthik submitted that A1 to A6 had a very strong motive to eliminate Manoharan, inasmuch as one week prior to 03.07.2016, Seeni. Elango (A1) had openly warned Manoharan that he would be eliminated if he competes with his brother Seeni. Annadurai (A2) for the post of Chairman of Pattukottai Municipality. He further submitted that with such strong motive, if the statements of Gnanasekaran and Arasakumar are viewed, it cannot be said that there are no *prima facie* materials against the accused.

16 As rightly contended by the learned counsel for Parivel Karthik, the evidence gathered by the police during investigation shows that the Seeni brothers had a strong motive to eliminate Manoharan. This cannot be lost sight of by this Court. The question that falls for the consideration of this Court is whether on account of variance in the eye witness account of Parivel Karthik between FIR and Section 161(3), Cr.P.C. statement, can it be said that the prosecution of Seeni. Elango (A1) and others is an abuse of process of law.

17 In the considered opinion of this Court, in the written complaint given by Parivel Karthik, he has clearly set down the overt acts of A1 to A6 in the attack as narrated in paragraph no.8.3 above. The complaint which forms the basis of the FIR can be used to corroborate or contradict the evidence of Parivel Karthik in the witness box during trial. Though Section 161(3), Cr.P.C. statement has been recorded by the police to the effect that A1 to A6 were not there in the scene of occurrence and that they have been wrongly implicated, that cannot be a reason for this Court to quash the prosecution, because, this Court cannot surmise now as to what evidence Parivel Karthik would give in the witness box. If Parivel Karthik sticks to his version in the complaint and implicates A1 to A6 as stated by him in the FIR, then, his 161(3), Cr.P.C. statement can, at the most be used to contradict him, whereas, his complaint can be used to corroborate him in the witness box.



18 As regards the plea of alibi, the same cannot be determined in a quash application under Section 482, Cr.P.C., inasmuch as it is a fact relevant under Section 11 of the Evidence Act, which has to be established by the person who asserts it, viz., the accused before the Trial Court. It is true that, at the time of hearing the bail applications, the accused had given the CCTV footage to show that they were away in Vinodhagan Memorial Hospital at Thanjavur, which has also been accepted by the learned Government Advocate to be correct. But, a careful reading of the order dated 22.08.2016 passed by this Court in the bail applications reveals that this Court has not given a finding of fact that the CCTV footage is true and that the accused therein were not in the place of occurrence, but, in Vinodhagan Memorial Hospital at Thanjavur. This Court has merely recorded the statement of either side and granted bail to the applicants principally on the ground that the accused were in judicial custody for a long time. That apart, it is noteworthy that a finding in a bail application cannot bind either this Court or the Trial Court. May be that the police, in order to help the accused 1 to 6, wriggle out of the prosecution, have deliberately recorded the Section 161(3), Cr.P.C. statements of the witnesses in the above manner. That is why, much credence is not placed on police statements and proviso to Section 162, Cr.P.C. states that such statements cannot be used for corroboration, but, can be used only for contradiction. This Court cannot step into the shoes of the trial Judge and keep the FIR in the left hand and Section 161(3), Cr.P.C. statement in the right hand and come to a decision that the petitioner is innocent and quash the prosecution.

In the result, this Criminal Original Petition is dismissed as being devoid of merits, with liberty to the petitioner to raise all the points before the Trial Court. It is made clear that whatever is stated in this order is only to the limited extent of deciding this quash petition and the Trial Court shall proceed with the trial in accordance with law, without, in any manner, being influenced by what is stated above. Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1 The Inspector of Police, Pattukottai Town Police Station
Pattukottai, Thanjavur District
- 2 The Judicial Magistrate ,Pattukottai, Thanjavur District
- 3 The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

+One cc to Mr.S.Ravi, Advocate, SR.No.58956

cad

RL/5C/6P/KP/SAR1/14.6.2017

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Order in

Crl.O.P. (MD) No.3536 of 2017

07.06.2017