

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.7262 of 2015

Anbazhagan

... Petitioners/ Accused

Vs.

1.State rep. By
Inspector of Police,
Vedaranyam Police Station,
Vedaranyam,
Nagapattinam District.
(Crime No.404/2005)

... Respondent / Complainant

2.S.Sivanandam ... Respondent / Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the pending criminal case registered in Cr.No.404 of 2005 on the file of the first respondent and to quash the same, in so far as it concern with the petitioner.

For Petitioner : Mr.K.M.Subrahmaniam

For Respondents: Mr.T.Shanmugarajeswaran
Government Advocate (Crl.side)for R1
: No Appearance for R2

सत्यमेव जयते
O R D E R

This petition has been filed by the accused to quash the FIR against him in Crime No.404 of 2005 on the file of the first respondent.

2. Though private notice was served on the second respondent, he has not appeared either in person or through counsel. Hence, after hearing arguments of the learned counsel for the petitioner and learned Government Advocate (Crl.side), who is appearing for the first respondent and perusing the records, order is being passed.

3. The learned counsel for the petitioner has submitted that based on the complaint given by the second respondent, the first respondent has registered a case in Crime No.404 of 2005 under Sections 147, 148, 294(b), 323, 379 and 307 IPC r/w Section 3(1) of PPD Act and Sections 3 & 4 of Explosive Act, 1989. He further submitted that the petitioner's name is not found place in the FIR. He further submitted that the petitioner was arrested by the first respondent on 06.07.2005 and remanded to Judicial Custody and subsequently, he was released on bail. He further submitted that since the petitioner was working as Overseer in the Panchayat Union, Vedaranyam, at the time of remand, the petitioner was suspended from his service. He further submitted that since the first respondent has not filed final report, the petitioner herein has filed Crl.O.P.No.24690 of 2008 before this Court to direct the first respondent to file final report at early, and in the said petition, this Court has passed an order on 23.08.2008, directing the first respondent to file final report within a period of one month from the date of receipt of a copy of the said order. He further submitted that even after ten years, the first respondent has not filed final report. He further submitted that after arresting the petitioner, no steps have been taken by the first respondent for conducting identification parade and therefore, there is no material to implicate the petitioner in the above case and therefore, he prayed to quash the FIR against the petitioner herein.

4. The learned Government Advocate (Crl.side) who is appearing for the first respondent has submitted that since the police station has been shifted to new building, the Case Diary relating to this case is misplaced and hence with the records available before the Judicial Magistrate, Vedaranyam, the Case Diary has been re-constructed. He further submitted that even though in the FIR, the petitioner's name has not been specifically mentioned, in the said FIR, it is stated that some other persons also involved in the said occurrence and based on the same, during investigation, the petitioner has been arrested on 06.07.2005 and remanded to judicial custody. He further submitted that since the Investigation Officer has been transferred, steps have not been taken for conducting identification parade and hence the final report also has not been filed within the time stipulated by this Court. He further submitted that some more time may be granted for completing the investigation and filing final report.

5. Admittedly, in the FIR, the name of the petitioner herein has not been mentioned. A perusal of the CD file would show that on 06.07.2005, the petitioner herein was arrested along with four other persons by the first respondent and remanded to

judicial custody. It is stated that the petitioner herein was arrested on the basis of the identification made by the witnesses, but it is not stated who are the said witnesses. Further, statements under Section 161(3) Cr.P.C. also not obtained from the witnesses with regard to the fact that the petitioner herein also involved in the aforesaid occurrence. Admittedly, the petitioner herein was not subjected to any identification parade and therefore, this Court is of the view that there is no material to implicate the petitioner herein in the above case. Further, in spite of the specific directions issued by this court in CrI.OP.No.24690 of 2008 by the order dated 23.08.2008, for the past 13 years final report not filed. The reason stated by the first respondent that the case diary misplaced cannot be accepted as a proper reason for not filing of final report from the year 2005. Taking into consideration of all the aforesaid facts, this Court is inclined to allow this petition.

6. In the result, this Criminal Original Petition is allowed. The FIR in Crime No.404 of 2005 against the petitioner herein alone is quashed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Vedaranyam Police Station,
Vedaranyam,
Nagapattinam District.

2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.K.M.Subrahmaniam, Advocate sr.no.76550

Judgment made in
CrI.O.P.No.7262 of 2015

kk(co)
nr 08/02/19