

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

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

Crl.O.P. No.12138 of 2016 & 14507 of 2016
and
Crl.M.P. Nos.6229 & 7269 of 2016

M. Ramasubramanian Petitioner in Crl.O.P. No.12138 of 2016
1 K. Thirumani
2 Kannagi
3 K. Radhakrishnan
4 V. Athmalingam
5 I. Periyasami Petitioners in Crl.O.P. No.14507 of 2016
VS

The Sub-Divisional Executive Magistrate
Revenue Divisional Officer
Maduranthagam Respondent in both the Crl.O.Ps.

Criminal Original Petitions filed under Section 482, Cr.P.C.
to call for the records in P.R.C. No.23 of 2015 on the file of
the Judicial Magistrate Court, Maduranthakam, Kancheepuram
District and quash the same.

For petitioners in Mr. R. Rajasekaran
both the Crl.O.Ps. in both the Crl.O.Ps.

For respondent in Mrs. Kritika Kamal.P
both the Crl.O.Ps. Govt. Adv. (Crl. Side)

COMMON ORDER

Since both these petitions emerge from the same F.I.R. and
also P.R.C. Number, these petitions are considered and decided
by this common order.

2 These petitions have been preferred to call for the

records in P.R.C.No.23 of 2015 on the file of the Judicial Magistrate Court, Madurantakam, Kancheepuram District and quash the same.

3 The facts of the case are as under:

3.1 The petitioners in these quash applications are A.1 to A.6 in P.R.C. No.23 of 2015, pending on the file of the Judicial Magistrate Court, Maduranthakam.

3.2 While Ramasubramanian (A.1) was working as Inspector in Soonampedu Police Station, Thirumani (A.2) and Kannagi (A.3) were working as Sub-Inspectors and Radhakrishnan (A.4), Athmalingam (A.5) and Periyaswami (A.6) were working as Constables in the said police station.

3.3 On 12.02.2008, A.2 to A.6 were on Prohibition Enforcement drive, during which, A.2 apprehended one Nagalingam and 5 others for illegal possession of 105 litres of ID arrack. The arrested accused were brought to the police station around 6.30 a.m. on 12.02.2008 and a case in Cr. No.79 of 2008 under Section 4(1)(i) and (1-A) of the Tamil Nadu Prohibition Act was registered on the same day, i.e., 12.02.2008, around 8 a.m. Nagalingam and the other accused were produced before the Judicial Magistrate, Madurantakam, on the same day at 5.15 p.m. and were remanded to judicial custody.

3.4 Thereafter, Nagalingam was lodged in the Central Prison, Puzhal. On 13.02.2008 and 14.02.2008, Nagalingam took treatment in the Central Prison, Puzhal, as in-patient, the particulars of which, will be referred to in detail in the latter part of this order.

3.5 On 15.02.2008, while Nagalingam was brushing his teeth around 6.50 a.m. in the prison, he seems to have swooned and fallen on the ground. He was immediately rushed to the Prison Hospital for first aid and thereafter, he was referred to the Government Hospital, Royapettah and en route, he died.

3.6 Pursuant to his death, a case in Puzhal P.S. Cr. No.98 of 2008 was registered under Section 174 Cr.P.C. and the investigation was taken up by the Inspector of Police, Puzhal Police Station, within whose territorial jurisdiction, the Central Prison, Puzhal, falls and the body of Nagalingam was sent for post-mortem.

3.7 Since Nagalingam died while he was in judicial custody, under P.S.O. 151, an enquiry was conducted by the Executive

Magistrate-cum-P.A. (General) to the District Collector (for short "the Executive Magistrate"), in which, several witnesses were examined by the Executive Magistrate, including Vennila, widow of Nagalingam and after conducting the enquiry, the Executive Magistrate submitted a report dated 31.01.2009 to the District Collector, recommending initiation of prosecution against A.1 to A.6.

3.8 On the recommendations of the District Collector, the Government of Tamil Nadu, vide G.O. Ms.No.113, Public (L & O.-E) Department dated 28.01.2011 and G.O. Ms.No.723, Public (L & O.-E) Department dated 17.08.2012, directed the Executive Magistrate, Madurantakam, to launch a criminal prosecution against A.1 to A.6.

3.9 Accordingly, the Executive Magistrate has filed a complaint against A.1 to A.6 before the Judicial Magistrate, Madurantakam in P.R.C. No.23 of 2015 for the offences under Section 147, 449, 342, 302 and 149 IPC, challenging which, while A.1 has preferred Crl.O.P. No.12138 of 2016, A.2 to A.6 have preferred Crl.O.P. No.14507 of 2016.

4 Heard Mr. R. Rajasekaran, learned counsel for the accused and Mr.Kritika Kamal P., learned Government Advocate (Crl. Side) appearing for the respondent-State.

5 Mr. R. Rajasekaran, learned counsel for the accused submitted that there is no iota of material against the accused either in the enquiry conducted by the Executive Magistrate or otherwise implicating the accused in the offence.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the accused.

7 It is beyond cavil that the law relating to quashment of criminal prosecution is fairly well settled. When there is a prima facie case against the accused, the prosecution cannot be quashed. For quashing a prosecution, the test has been laid down by the Supreme Court in State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335]. In this case, the prosecution of the accused is based on the Report dated 31.01.2009 of the Executive Magistrate who conducted the enquiry in terms of P.S.O. 151. The Executive Magistrate has examined 13 witnesses and has recorded their deposition which forms part of the prosecution papers. This Court is required to accept the statements as true and only if there is no prima facie case even after acceptance of those statements, can the prosecution be quashed.

8 The facts admitted by both sides are as under:

- The deceased Nagalingam was arrested by A.2 to A.6 during the Prohibition Enforcement drive on 12.02.2008 at 6.30 a.m. and he was brought to the police along with 5 others and a case in Cr. No.79 of 2008 was registered against Nagalingam for the offences under Section 4(1)(i) and (1-A) of the Tamil Nadu Prohibition Act and he was produced before the Judicial Magistrate, Madurantakam at 5.15 p.m. on the same day. Thereafter, he was admitted to the Central Prison, Puzhal at 10.15 p.m and the remand application was prepared by A.1.
- After he was placed in judicial custody, he was admitted to the Central Prison, Puzhal at 10.15 p.m. on 12.02.2008. In the remand application, the Judicial Magistrate, Madurantakam, has endorsed as follows:

"Accused produced at 5.15 p.m. No complaints of ill treatment against police records perused. Prima facie case made out. Grounds for arrest legal aid informed. Remanded to judicial custody till 26.02.2008."
- Therefore, there was no complaint to the Magistrate at the earliest point of time nor was any injury noticed.
- In the admission register of the Central Prison, Puzhal, no injury on the body of Nagalingam was noted. Nagalingam underwent treatment in the Prison Hospital on 13.02.2008 and 14.02.2008. (The treatment undergone by Nagalingam is indeed very relevant, but, will be discussed in detail later).
- On 15.02.2008, while he was brushing his teeth, around 6.50 a.m. in the Central Prison, Puzhal, he swooned and hence, he was taken to the Prison Hospital for first aid, from where, he was referred to the Government Hospital, Royapettah and en route, he died.

9 Vennila, widow of Nagalingam, has stated that on 12.02.2008, around 6 a.m., policemen from Soonampedu Police Station came to her house and forcibly took her husband Nagalingam to police station and at that time, they assaulted him.

10 Viduthalai Sezhian, brother of the deceased Nagalingam, has stated that the police came to his brother's house and took him into custody and at that time, when Vennila questioned them, they pushed her down and slapped Nagalingam on his face and took him into custody.

11 Thus, the statement of Vennila, wife of the deceased and Viduthalai Sezhian, brother of the deceased was that, the police came to their house and took Nagalingam into custody and at that time, the police had assaulted Nagalingam. Vennila has not stated anything about the nature of the assault, but, had merely stated that her husband was assaulted. However, Viduthalai Sezhian has stated that the police slapped the deceased on his face.

12 At this juncture, it may be necessary to state here that apart from the case in Cr. No.79 of 2008, there are previous cases against the deceased Nagalingam for the offences under the Tamil Nadu Prohibition Act, viz., Cr. 31 of 2004 and 530 of 2005. In fact, he has been convicted and sentenced in Cr. No.530 of 2005 by the Judicial Magistrate, Madurantakam on 10.11.2005. Similarly, there is also a case against his wife, viz., Cr. No.323 of 2004 under the Tamil Nadu Prohibition Act.

13 Be that as it may, the fact remains that after his arrest, Nagalingam was produced before the Judicial Magistrate, Madurantakam at 5.15 p.m. and at the time of his production before the Judicial Magistrate, he did not complain of any ill treatment. This has also been brought on record in the enquiry report of the Executive Magistrate. That apart, at the time of admission of Nagalingam in the Central Prison, Puzhal, no injury has been noted and recorded in the remand register, about which, Anbazhagan, Jailor has given statement. Anbazhagan, Jailor, in his statement, has stated that at the time of admission, Nagalingam told the Prison authorities that he was addicted to liquor and that he would suffer tremors if he does not consume liquor and therefore, he was lodged in the quarantine part of the prison and was admitted to the Prison Hospital on 13.02.2008 for treatment.

14 The Executive Magistrate has examined Dr. Somasundaram, Medical Officer, Central Prison, who has stated that since Nagalingam told the Prison authorities that he was addicted to liquor and that he would suffer tremors in his limbs, if he does not consume liquor, he was taken as an in patient and was given treatment for withdrawal symptoms. This has also been recorded in the hospital records of the prison. Thus, it is beyond doubt that Nagalingam was not treated for any injuries that are said to have been suffered by him at the hands of the police, but, was treated for withdrawal symptoms at the Prison Hospital.

15 As regards the incident that is said to have occurred on 15.02.2008, the Executive Magistrate has examined one Rafiq Raja, a prisoner, who was with Nagalingam at that time. Rafiq Raja has stated that on 15.02.2008, Nagalingam was brushing his teeth and was having bath and at that time, he swooned and fell

on the cement floor and sustained injuries in his mouth and that he also complained of chest pain and therefore, he was rushed to the Prison Hospital, where, he was given first aid.

16 The Executive Magistrate has further examined one Pratap Singh, Jailor, who has stated that on 15.02.2008, around 6.50 a.m., while Nagalingam was brushing his teeth, he fell on the ground and complained of chest pain; he was taken to the Prison Hospital and from there, he was taken by ambulance to Government Hospital, Royapettah; however, he died en route.

17 The aforesaid statements recorded by the Executive Magistrate clearly show that Nagalingam did not have any injuries on his body and that he was given treatment only for withdrawal symptoms on 13.02.2008 and 14.02.2008 and that on 15.02.2008, he had swooned and fallen on the ground and was rushed to the Government Hospital, Royapettah, by which time, he had lost his life. The post-mortem report shows the following injuries:

Dark red abrasions:

1. 2 x 1 cm. over the back of right elbow
2. 6 x 1 cm. over the back of left hand
3. Laceration just below the left side of the lower lip 2 x 0.5 cm. x cavity deep.
4. Within the oral cavity laceration left side of the lower lip 2 x 0.5 cm. x cavity deep.

The aforesaid injuries are abrasions and not contusions.

18 Rafiq Raja, co-prisoner, in his statement, has stated that after brushing his teeth, Nagalingam had his bath and at that time, he fell down on the cement floor and he was bleeding through his mouth. After obtaining the viscera report, final opinion given in the post-mortem certificate is as under:

"Based on the histopathological report, the deceased would appear to have died of chronic intestinal lining disease with evidence of shock."

19 The Executive Magistrate has discussed all the above aspects thoroughly and has also accepted the version of the Prison authorities that Nagalingam swooned and fell on the floor while brushing his teeth on 15.02.2008, however, has attributed the injuries found on his body to the alleged act of the policemen, who arrested him three days earlier. To reiterate, Nagalingam did not die in the police station and his death occurred 3 days after his arrest while he was in the custody of

the Prison authorities. Viscera and post-mortem reports show that the deceased Nagalingam was suffering from chronic intestinal lining disease, perhaps, due to excessive consumption of liquor. The external injuries are fresh abrasions and not contusions. When someone falls on the front side, the possibility of suffering abrasions on the back side of the arms will be there. That apart, on 13.04.2008 and 14.02.2008, Nagalingam was treated for withdrawal symptoms in the Prison hospital and as per the records, Nagalingam was given Sedafan and I.V. fluid for alcohol withdrawal symptoms.

20 Under such circumstances, the reasoning given by the Executive Magistrate for implicating the police for an offence under Section 302 IPC, wishing away the evidence of the co-prisoner, Prison Doctor and post-mortem doctor is indeed unacceptable. The Executive Magistrate has found fault with the Prison authorities for not immediately taking Nagalingam to hospital. When once custody of Nagalingam has been handed over to Prison authorities, to say that the police were responsible for his death three days later, is too big a pill for one to swallow. Even if we were to believe the statement of Vennila and Viduthalai Chezhan, the widow and brother respectively of Nagalingam, that the policemen slapped him while arresting, can that lead to death three days later? Nobody has named any policeman, but, only a general statement that police slapped Nagalingam has been given. With that alone, can all the policemen, including the Inspector of Police, who did not even go for the Prohibition Enforcement drive, be implicated for murder? The answer is an obvious "No".

21 At this juncture, the learned Government Advocate (Crl. Side) submitted that the inquest ought not to have been done by the Executive Magistrate and instead, it should have been done by the Judicial Magistrate under Section 176 (1) Cr.P.C. and therefore, this Court should set aside the entire proceedings and direct the conduct of a fresh enquiry by the Judicial Magistrate.

22 The State had chosen to conduct enquiry by the Executive Magistrate and based on the report of the Executive Magistrate, the State has chosen to prosecute the accused. Such a prosecution is under judicial review by this Court. Just because this Court has opined that there are no prima facie materials even in the report of the Executive Magistrate to prosecute the accused, the State cannot now take a stand that the enquiry was erroneously conducted by the Executive Magistrate and therefore, a fresh enquiry should be conducted by the Judicial Magistrate.

In view of the foregoing discussion, this Court does not

find prima facie materials to prosecute the accused in this case. As a sequel, the prosecution in P.R.C. No.23 of 2015 on the file of the Judicial Magistrate Court, Maduranthakam, Kancheepuram District, is quashed and these Criminal Original Petitions are allowed. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

- 1 The Sub-Divisional Executive Magistrate
Revenue Divisional Officer
Maduranthagam
- 2 The Judicial Magistrate
Maduranthagam
Kancheepuram District
- 3 The Public Prosecutor
Madras High Court
Chennai - 600 104

+12cc to Mr.R.Raja Sekar, Advocate SR.No.26935

Crl.O.P. Nos.12138 of 2016 & 14507 of 2016

KAN(CO)
TR(19/04/2018)

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