

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.737 of 2018

And

Crl.M.P.No.8528 of 2018

Sankar

... Petitioner

Vs.

The State

Rep by the Inspector of Police,
B-1, Dharmapuri Town Police Station,
Dharmapuri,
Dharmapuri District.
(Crime No.825 of 2009)

... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code seeking to call for the records of the order dated 14.12.2017 in S.C.No.118 of 2014 passed by the learned Additional Sessions and District Judge, Dharmapuri, Dharmapuri in so far as the direction issued to the learned Judicial Magistrate No.I, Dharmapuri to make committal proceedings against the petitioner and set aside the same.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Ms.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This criminal revision has been filed seeking to call for the records relating to the order dated 14.12.2017 made in S.C.No.118 of 2014 passed by the learned Additional Sessions Judge, Dharmapuri, in so far as the direction issued to the learned Judicial Magistrate No.I, Dharmapuri to make committal proceedings against the petitioner and to set aside the same.

2.The case of the petitioner is that initially, a case was registered against the petitioner in Cr.No.825 of 2009 for the offence under Section 307 of IPC. In the said case, the petitioner was arrested and thereafter released on bail on

16.05.2009. Charge sheet was filed against the petitioner before the learned Judicial Magistrate No.I, Dharmapuri in P.R.C.No.14 of 2009 under Sections 307 @ 302 of IPC. Whiles, the accused namely Sankar @ Jaisankar S/o. Marimuthu was arrested in Crime No.1476 of 2009 by Perumapalayam Police and he gave confession statement for the robberies and murder committed by him. Since he gave confession that he murdered the deceased in Crime No.825 of 2009 on 20.04.2009, he was arrested by the respondent police. Thereafter, further investigation under Section 173 (8) of Cr.P.C. was ordered by the learned Judicial Magistrate and amended charge sheet was filed before the learned Judicial Magistrate, Dharmapuri on 02.12.2010. The amended charge sheet was prepared and the name of the petitioner was deleted from the charge sheet, based on the request submitted before the learned Judicial Magistrate No.I on 20.03.2014.

3.It is the further case of the petitioner that thereafter, the case was referred to the Sessions Court for trial. After committal proceedings were over, the case was referred to learned Additional District and Sessions Judge, Dharmapuri for trial in S.C.No.118 of 2014. During trial, the learned Sessions Judge vide order dated 23.06.2015 impleaded the petitioner as A2 in the case under Section 319 of Cr.P.C. Thereafter, the petitioner approached this Court by filing revision in Crl.R.C.No.698 of 2015 and this Court vide order dated 17.11.2016 allowed the revision and set aside the suo motu order passed by the learned Additional District and Sessions Judge, Dharmapuri.

4.It is the further case of the petitioner that no appeal was preferred against the order of this Court dated 17.11.2016 made in Crl.R.C.No.698 of 2015. However, without any notice to the petitioner, the learned Additional Sessions Judge, Dharmapuri, vide order dated 14.12.2017 made in S.C.No.118 of 2014 has directed the learned Judicial Magistrate No.I, Dharmapuri to make committal proceedings against the petitioner within three months. Hence, the petitioner has filed this revision.

5.The learned counsel appearing for the petitioner would submit that this Court vide order dated 17.11.2016 made in Crl.R.C.No.698 of 2015 set aside the suo motu order passed by the learned Additional District and Sessions Judge, Dharmapuri, implicating the petitioner as A2 in the case. When this Court has set aside the order implicating the petitioner as A2 and when it has become final, the learned Additional Sessions Judge, Dharmapuri, has no right to issue further direction to the learned Judicial Magistrate No.I, Dharmapuri, to make committal proceedings against the petitioner, which is totally unwarranted and contrary to the order passed by this Court. Accordingly, he prayed for allowing the revision.

6.The learned Government Advocate (Crl. Side) did not dispute the facts submitted by the learned counsel appearing for the petitioner.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.Admittedly, the petitioner was initially implicated for the offence under Section 307 of IPC and it was altered to one under Section 302 of IPC after the death of the injured. Whiles, the accused namely Sankar @ Jaisankar S/o. Marimuthu was arrested by Perumapalayam Police in another case and based on the confession given by him, he was implicated in Crime No.825 of 2009, wherein, the petitioner was implicated. Thereafter, the law enforcing agency filed amended charge sheet and the name of the petitioner was deleted from the charge sheet.

9.Thereafter, the case was referred to the Sessions Court for trial. After committal proceedings were over, the case was referred to learned Additional District and Sessions Judge, Dharmapuri for trial in S.C.No.118 of 2014. During trial, the learned Sessions Judge vide order dated 23.06.2015 impleaded the petitioner as A2 in the case under Section 319 of Cr.P.C. The said impleadment was challenged before this Court by the petitioner in Crl.R.C.No.698 of 2015 and this Court vide order dated 17.11.2016 allowed the revision and set aside the suo motu order passed by the learned Additional District and Sessions Judge, Dharmapuri, impleading the petitioner as A2 in the case and no appeal was preferred against the said order and it has become final.

10.While such being the position and the petitioner is not a accused, the learned Additional Sessions Judge, Dharmapuri, directing the learned Judicial Magistrate No.I, Dharmapuri, to make committal proceedings against the petitioner i.e., Sankar S/o. Chinnasamy within three months is unwarranted and unsustainable.

11.In view of the above, I am inclined to allow this revision. Accordingly, the portion of the order dated 14.12.2017 made in S.C.No.118 of 2014 passed by the learned Additional Sessions Judge, Dharmapuri, directing the learned Judicial Magistrate No.I, Dharmapuri, to make committal proceedings against the petitioner i.e., Sankar S/o. Chinnasamy within three months is set aside.

12.This criminal revision is allowed. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate I, Dharmapuri.
 2. Do Thro The Chief Judicial Magistrate, Dharmapuri.
 3. The Additional District and Sessions Judge
Dharmapuri.
 4. Do Thro The Principal Sessions Judge, Dharmapuri.
 5. The Inspector of Police,
B-1, Dharmapuri Town Police Station,
Dharmapuri,
Dharmapuri District.
 6. The Public Prosecutor
High Court, Madras 104.
 - 7.The District Collector
Dharmapuri District.
 8. The Director General of Police
Mylapore, Chennai 04.
- +1 CC to Mr.R. Jothimanian, Advocate sr 73129.

Cr1.R.C.No.737 of 2018
And

Cr1.M.P.No.8528 of 2018

VSNI I(CO)
SP(15/11/2018)

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