

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2018
PRONOUNCED ON : 28.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.3853 of 2018
and Crl.M.P.Nos.1785, 1786 and 10796 of 2018

V.Karuppaiah

... Petitioner

Vs.

State rep by
The Inspector of Police
Gangavalli Police Station
Gangavalli Taluk
Salem District.

... Respondent

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records pursuant to the charge sheet in PRC No.22 of 2016 on the file of the learned Judicial Magistrate No.II, Attur and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.G.Ponnambala Thiyagarajan
For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records pursuant to the charge sheet in PRC No.22 of 2016 on the file of the learned Judicial Magistrate No.II, Attur and quash the same insofar as the petitioner is concerned.

2. The petitioner is the fourth accused in PRC No.22 of 2016 on the file of the Judicial Magistrate No.II, Attur, for the offences under Sections 147, 148, 342, 302 r/w 34, 326 r/w 149 IPC and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w 149 IPC. Challenging the prosecution, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent-State.

4. It is the case of the prosecution that there are totally 46 accused in this case and the petitioner who has been arrayed as A4, is a Dalit belonging to Hindu Pallan community and the allegation is that the members of the Pallan community formed into an unlawful assembly on 29.05.2015 around 10.30 a.m. and attacked the dalits of Parayan community, in which, one person lost his life, several vehicles were torched and properties damaged. To be more precise, it may be apposite to extract the relevant portion from the final report, which reads as under:

"In the above state of affairs on 29.05.2015 at about 10.30 a.m. near the farm land of Vaiyapuri, North to Poonmalai Konar house on the Naduvalur - Anayampatty road at Chunnambumedu in Ambedkar Nagar within Gangavalli P.S. limits, the accused A1 to A46 and Ramu, who is a juvenile in conflict with law formed themselves into an unlawful assembly with the common object of causing the death of Pallar community people, wrongfully confining and voluntarily causing hurt and on prosecution of their common object the accused committed rioting and while committing rioting, the accused A1, A8, A21, A32, A37 and A38 were armed with wooden logs (cUl;Lf;fl;il) and A44 and A45 were armed with stones (fU';fy;) which are deadly weapons and thereby each of the accused A1, A8, A21, A32, A37, A38, A44 and A45 had committed an offence punishable u/s 148 IPC and each of the accused A2 to A7, A9 to A20, A22 to A31, A33 to A36, A39 to A43 and A46 had committed an offence punishable u/s 147 IPC.

In the course of the same transaction at the same place and time, and in prosecution of the common object, while Karthik (since deceased) who belongs to Pallan community came there in his TVS XL Super bearing Reg.No.TN 30 T 2049, each of the accused A1, A4 to A31 and Ramu, who is juvenile in conflict with law rounded him and wrongfully confined him and prevented him proceeding further and thereby each of the A1, A4 to A31 and Ramu, who is juvenile in conflict with law had committed an offence punishable u/s 342 IPC and the accused A2, A3, A32 to A46 had committed an offence punishable u/s 342 r/w 149 IPC.

In the course of the same transaction at the same time and place in prosecution of the

common object with the intent to cause the death of Karthik, the accused A6, A7, A11, A13, A16, A17, A18, A20, A21, A24, A25, A32 and Ramu, who is a juvenile in conflict with law so saying (me;j gs;s gaiy moj;J bfhy;Y';flh) and beat him with hands and kicked him with legs and both of the Accused A1 and A8 beat Karthik with wooden logs on his head and the Accused A32 to A46 beat Karthik with hands as he fell down with bleeding from nose and ear due to the assault by A1 and A8 with wooden logs and as a result of which the said Karthik died on the way to Govt.M.K.M.C. Hospital, Salem from G.H.Gangavalli on 29.05.2015 between 11.00 a.m. and 02.15.p.m. due to the Head injuries he sustained and thereby the Accused A1 and A8 had committed murder which is an offence punishable u/s 302 IPC and the Accused A6, A7, A11, A13, A16 to A18, A20, A21, A24, A25, A32 to A46 and Ramu, who is a juvenile in conflict with law had committed an offence punishable u/s 302 r/w 34 IPC and the Accused A2 to A5, A9, A10, A12, A14, A15, A19, A22, A26 to A31 had committed an offence punishable u/s 302 r/w 149 IPC."

5. Learned counsel for the petitioner contended that the petitioner is a teacher and he was in School on 29.05.2015 around 10.30 a.m. and was not in the place of occurrence, as alleged by the police. In support of this contention, the learned counsel took this Court through the communication dated 06.07.2015 sent by the Headmaster of the Government High School, Kadambur, to the Investigating Officer, in which, he has stated that the petitioner had attended School on 29.05.2015 from 12 noon onwards. Therefore, the learned counsel contended that even according to the prosecution, the petitioner was not there in the scene of occurrence and hence, the prosecution deserves to be quashed. He also submitted that even as per the charge sheet, the petitioner was only present and there was no overt act attributed to him.

6. Per contra, the learned Additional Public Prosecutor refuted the contentions.

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

8. On a reading of the Section 161(3) Cr.P.C. statements of the injured witnesses, it is seen that they have clearly stated that a large group belonging to Pallan community armed with deadly weapons gathered on 29.05.2015, in which, this petitioner

was present with the common object of attacking the members of the Parayan community, since both communities were claiming right to enjoy the local Ambedkar stadium. For attracting the provisions of unlawful assembly, it is sufficient that five or more members gather together with a common object of committing an offence. In this case, the witnesses have stated that A1, A8, A21, A32, A37, A38, A44 and A45 were also armed with deadly weapons; the petitioner, who was A4 was also part of the unlawful assembly; the unlawful assembly gathered with a common object of attacking the members of the Parayan group, pursuant to which, they indiscriminately attacked and caused injuries to several persons and death of one Karthick.

9. As regards the contention of the petitioner that he was in School, it is seen that the Investigating Officer has himself gathered evidence from the School to find out at what time the petitioner had gone to School. This material has also been placed as part of the relied upon documents under Section 207 Cr.P.C. It is for the trial Court to assess the testimony of the eye witnesses about the presence of the petitioner and weigh their evidence in the light of the evidence of the Headmaster of the School and decide the issue of alibi. In a quash application, the issue of alibi cannot be decided. Thus, when there are overwhelming materials against the petitioner to frame charges, the prosecution cannot be quashed on the grounds raised herein.

In the result, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Gangavalli Police Station
Gangavalli Taluk, Salem District.

2.The Judicial Magistrate No.II, Attur.

3.The Public Prosecutor, High Court, Madras.
+lcc to Mr.G.Ponnambala Thiagarajan, Advocate, S.R.No.58890

Cr1.O.P.No.3853 of 2018

NRL(CO)
GSP(04/09/2018)