

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :03.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26387 of 2014
and
M.P.No.1 of 2014

S.Martin

... Petitioner

Vs.

State Rep. by its
Inspector of Police,
B6 Peelamedu Police Station, (L & O)
Coimbatore.
(Crime No.1 of 2012).

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for records in C.C.No.39 of 2018 pending on the file of the Judicial Magistrate No.VI, Coimbatore, and quash the same as illegal and abuse of process of law. (CC NO.is amended as per order dt 20.11.2018 is Crl.M.P.No.15492 of 2018 in Crl.O.P.No.26387 of 2014)

(Calendar Case number is amended as per order dated 20.11.2018 in Crl.M.P.No.15492 of 2018 in Crl.O.P.No.26387 of 2014)

For Petitioner : Mr.K.G.Senthil Kumar

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.39 of 2018 before the Judicial Magistrate No.VI, Coimbatore.

2. The learned counsel for the petitioner would submit that final report was filed by the respondent police as against nine accused persons for offences under Section 120 (b) IPC and Section 5 r/w 7 of the Lottery Regulation Act 1998. The learned Counsel for the petitioner also brought to the notice of this Court, in this case, the complainant and the Investigating Officer are the same persons and therefore, the entire investigation is vitiated. The learned Counsel also brought to the notice of this Court that the case was split up and insofar as, the other accused persons A2 to A9 are concerned and the Judicial Magistrate No.6, Coimbatore, by a Judgment dated 26.03.2018, acquitted all the accused persons after a full fledged trial. Therefore, the learned Counsel for the petitioner would submit that the proceedings against this petitioner must be quashed.

3. The learned Additional Public Prosecutor appearing on behalf of the respondent would submit that the acquittal of A2 to A9, cannot be taken advantage by this petitioner and the materials that are available on record, clearly establishes a prima facie case against this petitioner. For this purpose, the learned Additional Public Prosecutor brought to the notice of this Court, the statement given by the witnesses before the Investigating Officer.

4. The learned Additional Public Prosecutor would further submit that this petitioner was absconding and the other accused persons faced trial and got an order of acquittal and this petitioner should not be permitted to take advantage of the same. Therefore, this petitioner must be made to face the trial before the Court below and this Court should not interfere with the proceedings against the petitioner at this stage. A counter affidavit has also been filed by the respondent giving the entire details about the case.

5. This Court has carefully considered the statements made on either side.

6. It is seen from the records that the informant and the investigator in this case are the same person. Therefore, the entire investigation is vitiated. The recent Judgment of the Honourable Supreme Court in "Mohan Lal Vs.State of Punjab" reported in "2018 SCC Online SC 974", will clearly apply to the facts of the present case. The relevant portion of the Judgment is extracted here under:

"31. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."

7. It is clear from the above that the fair investigation postulates that the informant and the investigator should not be the same person. In this case, the informant and investigator is the same person and therefore, the investigation itself is vitiated. The facts of the case is squarely covered by the above said Judgment.

8. It is also seen that already A2 to A9 were acquitted by the Court below by Judgment dated 26.03.2018. The benefit of acquittal of A2 to A9 are also to be extended to this petitioner. A useful reference can be made by the Judgment of this Court reported in "2015 1 Madras Weekly Notes (CrI.) 259".

9. In the result, the proceedings in C.C.No.39 of 2018, pending on the file of the Judicial Magistrate No.6, Coimbatore, is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

ub/ay
To

1.The Judicial Magistrate No.VI, Coimbatore

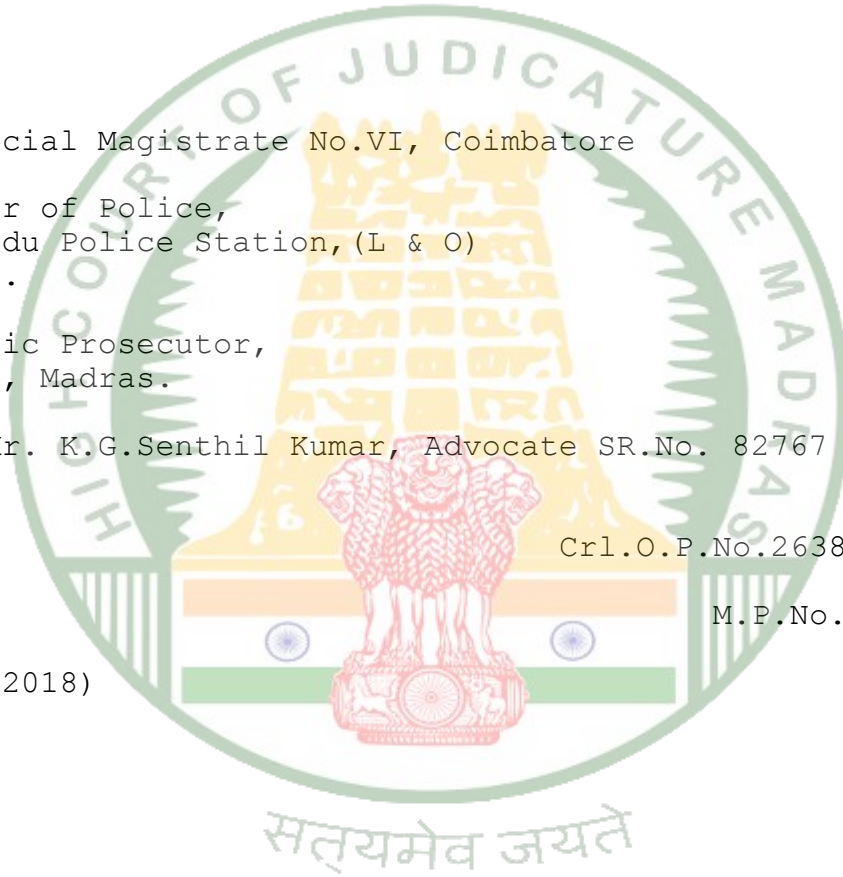
2.Inspector of Police,
B6 Peelamedu Police Station, (L & O)
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr. K.G.Senthil Kumar, Advocate SR.No. 82767

Cr1.O.P.No.26387 of 2014
and
M.P.No.1 of 2014

ASK(13/12/2018)



WEB COPY