

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2018

PRONOUNCED ON : 09.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.18954 of 2018
and CrI.M.P.Nos.9997 and 9998 of 2018

S.Sri Gowtham @ Gowtham

... Petitioner

Vs.

1.State rep. by
The Inspector of Police (Crime)
S4, Nandambakkam Police Station
Chennai 600 089.

2.N.Manoharan

... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records in S.C.No.97 of 2018 now pending on the file of the learned Assistant Sessions cum Sub Court, Tambaram, Kancheepuram District and quash the same.

For Petitioner : Mr.M.Palanivel
For R1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records in S.C.No.97 of 2018, now pending on the file of the learned Assistant Sessions-cum-Sub Court, Tambaram, Kancheepuram District and quash the same.

2. On the complaint lodged by Manoharan, the Watchman of Hyundai Showroom, the respondent police registered a case in Cr.No.1079 of 2016 on 08.06.2016 under Sections 394, 395 and 397 IPC against unknown accused. It is the case of the de facto complainant that while he was on security duty during the night hours on 03.06.2016 at the motorcar yard of Hyundai Plaza, around five persons, gained entry into the yard, held him at knife point, tied him with a rope, covered him with a mosquito net and took away some cars from the yard. On such complaint, FIR was registered and the police swung into action, arrested some of the accused and recovered the cars. After completing the investigation, the police filed a charge sheet before the Judicial Magistrate, Alandur for the offences under Sections 120-B r/w 394, 395, 397 and 34 IPC against 11 accused. The case has been committed to the Court of Sessions in S.C.No.97 of 2019 and is now pending trial before the

Assistant Sessions-cum-Sub Court, Tambaram, for quashing which, S.Sri Gowtham [A11] is before this Court.

3. Heard Mr.M.Palanivel, learned counsel for the accused and Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the first respondent-State.

4. On a reading of the FIR, 161 Cr.P.C. statements and the charge sheet, it is no doubt true that a macabre crime of dacoity has been committed by the accused. However, there is absolutely no material whatsoever against the petitioner herein. This Court plodded through the 161 Cr.P.C. statement of the witnesses, including the confession statement of the accused in order to fish out any incriminating material against the petitioner [A11]. The name of this petitioner figures in the police confession of Arunkumar [A1], which is, of course inadmissible, in view of the bar under Section 25 of the Evidence Act. However, this Court perused the confession statement in order to find out if there are any incriminating materials against the petitioner.

5. Arunkumar [A1] has stated that he holds B.Sc. (Computer Science) from Loyola College; he was working as Manager in a Software Company; he quit the job and became a car broker; through his friend Selvakumar, working in SSLF Real Estates, he got to know Gowtham and Suresh, employees of SSLF Real Estates and became their friends; he was in dire need of money and while talking about his problems to Gowtham and Suresh, he himself came up with the idea of lifting cars from Hyundai car yard and they told him that they will help him to sell the cars. This police confession of Arunkumar [A1] has been recorded in the presence of two witnesses, viz., N.Baskar and Abdul Rafi.

6. In Section 161(3) Cr.P.C. statements of Baskar and Abdul Rafi, they have stated that during interrogation by the police, Arunkumar [A1] gave a confession statement, in which, apart from stating other things, he said that he shared his intention of lifting cars from Hyundai car yard and Gowtham and Suresh told him that they will help him in the disposal of the cars. These are the only materials to implicate the petitioner herein in the conspiracy to commit the offence of dacoity. It is not the case of the prosecution that Gowtham and Suresh did any overt act pursuant to the conspiracy. Of course, sharing of the idea to commit an offence and proving it, would, by itself, attract punishment under Section 120-B IPC. However, in order to show that Gowtham was part of the conspiracy, we have only the police confession of Arunkumar [A1] and the statements of Baskar and Abdul Rafi, who have stated what Arunkumar [A1] is said to have told the police. It is not the case of the prosecution that Arunkumar [A1] has given an extra judicial confession to Baskar and Abdul Rafi. At the risk of repetition, Baskar and Abdul Rafi are witnesses to the confession statement of Arunkumar [A1] that was

recorded by the police and they were also shown as witnesses in the Section 27 recovery pursuant to the disclosure made by Arunkumar [A1]. No material object or fact has been discovered on the confession statement of Gowtham. Thus, in the absence of a scintilla of legal evidence as against Gowtham, this petition deserves to be allowed.

Accordingly this petition is allowed and the prosecution as against Gowtham alone in S.C.No.97 of 2018 on the file of the Assistant Sessions-cum-Sub Court, Tambaram is quashed. It is made clear that quashment of the proceedings qua petitioner cannot be construed as an immunity from prosecution. If during trial, materials incriminating the petitioner surface, he can be arraigned as accused by invoking Section 319 Cr.P.C. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Sessions cum Subordinate Judge,
Tambaram, Kancheepuram District.
- 2.The Inspector of Police (Crime)
S4, Nandambakkam Police Station
Chennai 600 089.
- 3.The Public Prosecutor
High Court, Madras.

+1 cc to Mr.M.Palanivel, Advocate SR.No.54712

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order in
Cr1.O.P.No.18954 of 2018

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SMI/20.08.2018