

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2017

Date of Verdict : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.26219 of 2016

and

Crl.M.P.Nos.13041 & 13042 of 2016

M.Sampath

...Petitioner

V.

State rep. by
The Deputy Superintendent of Police,
CBCID, Salem.
[Cr.No.222/2010 in
Mallur Police Station]

...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to quash all the proceedings in S.C.No.185 of 2011 on the file of the learned II Additional Sessions Judge, Salem insofar as the petitioner/A6 is concerned.

For Petitioner : Mr.P.Ezhilnilavan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

The petitioner namely, M.Sampath has been arrayed as the sixth accused in the charge sheet for the offences under Sections 449 & 302 IPC (6 counts) r/w. Section 120(B) and 109 of IPC for conspiracy and instigating the murder of six persons belonging to the family of one Kuppuraj.

2.The case of the prosecution is that the deceased Kuppuraj owned and possessed valuable immovable property measuring 7.02 acres situated at Dhasanaickenpatti in the south border of Salem city. Out of 7.02 acres of land, 1.52 acres is an ancestral joint family property and the remaining 5.50 acres of land is the self acquired properties of Kuppuraj and his wife

Chandra. In the year 2003, when the first accused Sivaguru underwent a kidney transplantation surgery, his deceased father claimed to have spent nearly a sum of Rs.10 lakhs for his surgery. Pursuant to the surgery, when the first accused Sivaguru demanded allotment of 1/3rd share in the said properties, the deceased Kuppuraj refused to comply with the demand on the ground that he has spent sufficient money for his surgery. The conflict among the family members and the first accused arose from this point of time. Though deceased Kuppuraj had denied Sivaguru's claim over the properties, the first accused and third accused entered into an unregistered sale deed with the seventh accused/Senthil Kumar to sell 1/3rd undivided share of the properties. Consequently, the deceased Kuppuraj executed two registered settlement deeds both dated 28.07.2004 in favour of one Rathinam and minor Karthick for a total extent of 5.20 acres. This developed ill feelings between the family of the first accused and Kuppuraj-Rathinam family, owing to which, four FIRs came to be lodged against the family members of the first accused apart from two civil suits between the parties. The power of attorney executed by the first accused on 09.08.2007 in favour of the fifth accused was cancelled on 01.07.2008. Another power of attorney was executed in favour of the petitioner herein/A6 on 07.07.2008, pursuant to which, he entered into the sale agreement with the eighth accused/Sekar. The power of attorney in favour of the sixth accused was also cancelled on 14.05.2010. It is the case of the prosecution that all the documents were created by the first accused along with his family members arrayed as accused 2 to 4 (A2 to A4) in order to grab the lands from Kuppuraj in connivance with the other accused. Frustrated over his inability to obtain the original documents relating to the properties from the deceased Kuppuraj, the first accused, with his family members/A2 to A4 and in connivance with the accused 5 to 8 decided to kill the entire family members of Kuppuraj, pursuant to which, the first accused along with his minor son Gokulnath trespassed into the house of the Kuppuraj with deadly weapons on 12.08.2010 at 8.30 p.m. and murdered Kuppuraj, his wife, his son Rathinam and his wife and two daughters. An FIR dated 13.08.2010 in Cr.222 of 2010 came to be registered before the Mallur Police Station, which culminated into framing of charges taken on file in S.C.No.185 of 2011 before the learned II Additional District and Sessions Judge, Salem.

3.Heard Mr.P.Ezhilnilavan, learned counsel for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the respondent.

4.The petitioner herein, who has been arrayed as the sixth accused challenges the charges on the grounds that there was no conspiracy on his part in the crime and that there is no proximity to the occurrence.

5.The learned counsel for the petitioner submitted that none of the 142 witnesses cited in the charge sheet indicate any incriminating overt acts against the petitioner and hence the materials relied upon by the prosecution will not amount to an act of conspiracy to commit the crime and therefore, the proceedings against the petitioner is liable to be quashed. The learned counsel further submitted that according to the case of the prosecution, the eighth accused instigated the first accused to do away with his parents as told by the fifth accused. At that time, the accused 6 and 7 had said that probably that was the only way to get the original documents and this conversion, according to the prosecution, took place on 12.08.2010. Hence the learned counsel submitted that there is no proximity to the occurrence which is said to have taken place on Friday in the month of June 2010 as the date of occurrence was on 12.08.2010. In support of his contention, the learned counsel relied upon various judgments of the Hon'ble Apex Court. It is the further case that the fifth accused, whose overt acts as per the case of the prosecution was more severe in nature and that this Court by an order dated 24.01.2014 passed in CrI.R.C.No.325 of 2013, had discharged the fifth accused from the charges levelled against him and as such, the petitioner herein would also be entitled to be relieved from the charges.

6.The learned Additional Public Prosecutor submitted that it is utter falsehood to state that no offence is made out against the petitioner herein/A6. He would submit that it is not correct that the statements of the witnesses are inadequate and insufficient to prove the charge of conspiracy against the petitioner. Privacy and Secrecy are the main character of conspiracy and when there is no direct evidence, proof can be inferred from the surrounding circumstances and sequence of events. The statements of the witnesses namely, LW 22, LW 50, LW51, LW 96 to LW 101 are sufficient to enlighten the concept of conspiracy against the petitioner herein/A6. The learned Additional Public Prosecutor further submitted that the discharge of the fifth accused has no legal impact on the case of the petitioner herein since there are several reliable materials against the petitioner herein to prove the charges against the petitioner and hence, he sought for dismissal of the case.

7.I have given careful consideration to the submissions made by the respective counsels.

8.Among the 142 witnesses cited in the charge sheet, LW.22, 50,51, 96, 97, 98 have spoken about the involvement of the petitioner herein/A6. As per the statement of LW.22/V.Narayanan, he had gone to the house of Suresh Kumar in the month of July 2010 around 5.00 p.m., where Sivaguru and Mala

were present there. Along with them co-employee of Suresh Kumar namely, Zakir, Senthil Kumar, Advocate Sampath/ the petitioner herein (A6) and Sekar were standing in the veranda and talking. At that time, Sivaguru had informed Suresh kumar to give him atleast Rs.10 lakhs for purchasing an auto and promised that he would not claim any further money, to which, Suresh Kumar had informed Sivaguru that you are not capable of giving back the money and also till such time your father and his brother are alive, you cannot get back the original title deeds of the properties. Hence he had told Sivaguru to get the original documents at any costs and he would take care of the consequences or otherwise, to close them. As per the statement of LW.22, the overt act attributed to the petitioner/A6 is that he was present in the veranda, when the fifth accused is claimed to have spoken the above words.

9. So far as the statement of LW 50, N.Sundaram is concerned, he had stated that the petitioner herein had drafted the power deed on Friday in the month of July 2008. According to him, Sivaguru, Advocate Sampath (petitioner herein), Sekar, Senthil Kumar used to go to his office once every month and on a Friday, in the month of July at about 5.30 p.m., Sivaguru, Sampath (petitioner herein), Sekar and Senthil Kumar had come to his office. At that time, Sampath (petitioner herein) had informed Sivaguru that Suresh Kumar was very angry with him since he had neither handed over the original title deeds nor returned the advance amount of Rupees three lakhs. In response, Sivaguru had told him that his father and brother Rathinam have disagreed to all his offers. At that time, Sekar had told Sivaguru that as stated by Suresh Kumar, he can never bring back the original deeds as long as his father and brother were alive and therefore, as per his advice, if his father and brother are done to death, the problem will get solved. At that point of time, the petitioner herein/A6 as well as Senthil Kumar had reiterated that if they did not agree, this would be the proper way. Hence, as per the statement of LW.50, the overt act of the petitioner herein/A6 is that he had reiterated the statement of Sekar which was earlier spoken by Suresh Kumar.

10. The witnesses LW.51, 96, 97 and 98 speak about the registration of the sale agreement on 05.02.2007 as document No.652/2007 as well as the sale agreement dated 20.04.2004, 10.10.2005 and 05.04.2006. The only overt act against the petitioner herein/A6 is that he had facilitated the registration of the sale agreement in document No.652/2007 dated 05.02.2007.

11. Apart from the aforesaid witnesses, none of the other witnesses have spoken about or referred to the petitioner herein/A6 in their statements recorded under Section 161(3) Cr.P.C. On an overall reading of the statements of the above six witnesses, only LW.22 & LW.50 had spoken about the possible

involvement of the petitioner in the crime. According to LW.22, the petitioner was present when Suresh Kumar/A5 advised the first accused/Sivaguru to ask for the parent documents from the deceased or otherwise finish him. Likewise, as per the statement of LW.50, the eighth accused/Sekar had told the first accused to do away his father and brother Rathinam as advised by the fifth accused/Suresh Kumar and the petitioner herein had said at that point of time that was the only solution. As such, it is seen that the words to do away with the first accused's father and brother was spoken by the fifth accused/Suresh Kumar, the petitioner herein had now been charged for the offence under Sections 120(B) and 109 IPC for conspiracy and instigating the murder in view of the aforesaid overt acts.

12. When the fifth accused had approached this Court seeking for his discharge from the charges, this Court by an order dated 24.01.2014 in CrI.R.C.No.325 of 2013 [K.Suresh Kumar V. State rep. by the Deputy Superintendent of Police Organised Crime Unit, Crime Branch CID, Salem City] passed a detailed order and by relying upon the statements of the witnesses implicating the fifth accused for the offences, had discharged the fifth accused from the charges levelled against him. While discharging, the learned Judge of this Court, had in detail, discussed the legal position with regard to the offences of abetment and had also relied upon various judgments of the Hon'ble Apex Court while passing orders. The said order has become final. It would be appropriate to refer to the findings of the aforesaid order which reads as follows:

"9. As far as the present petitioner is concerned, the incriminating materials made available against him are Section 161 Cr.P.C statement of some of the witnesses and confession statement of A2, A4 and A8. The fact that there were serious property dispute between A1/Son and his family members on one hand and deceased Kuppuraj/father and his family members including the family his other two sons, is not in dispute. There are earlier civil and criminal proceedings initiated against each other and the civil suits are pending against each other in respect of the property in question. As already referred to, the materials available at this stage to prove the involvement of the petitioner in the commission of the occurrence are Section 161 Cr.P.C statement of the witnesses and confession statement of other co-accused. As far as Section 161 Cr.P.C statement of the witnesses is concerned, the witnesses who speak about the manner of

involvement of A5 in the dispute of father and son are LW14 Vijayalakshmi, LW15 Uma Maheswari, LW16 Sridhar 8 LW19 Jayanthi LW20 Rekha, LW21 Karthik LW22 Narayanan LW23 Senthil Murugan LW25 Rajini, LW26 Raja, LW28 Iyer, LW29 Palani @ Palanisamy LW35 Saravanan, LW39 C.Udhayakumar, LW40 Suresh, LW41 Ramesh @ Ramesh Kumar, LW44 Dhanapal, LW49 Nathiya, LW50 Sundaram, LW58 Sridharan, LW59 Anitha, LW60 Kalavathi, LW61 Jaishree Clara, LW62 Jakiriya Immanuel, LW80 Srinivasan, LW81 Ramesh, LW86 Madheswaran, LW87 T.R.Shanmugam LW90 S.R.Sivalingam, LW96 Balasubramanian LW97 Mani and LW98 Karikalan and LW99 Chandrasekaran LW100 Madhanlal Chawla, LW101 Murugesan and LW105 Sridhar. Out of the above referred witnesses, except LW22 Narayanan and LW50 Sundaram others do refer to the name of the petitioner Suresh Kumar only in the context of execution of sale agreement in respect of 1/3rd share of the property and execution of general power of attorney by Sivaguru and the so called attempts made by Suresh Kumar in creating trouble into possession and enjoyment of the land in question and in causing interference of other family members of Kuppuraj who are in possession of the property in question. All the witnesses as referred to above do only mention about the dispute between A1 and his father and his act of threatening against his father and his family members, at the instigation of the petitioner/A5 and others. The sale agreement executed by A1 as referred to in the evidence of witnesses in favour of one Senthilkumar was on 24.5.2003 and general power of attorney in favour of Suresh Kumar/A5 was executed on 9.8.2007, which are 9 much before the date of occurrence on 12.08.2010. The power of attorney executed in favour of A5 by A1 was in force for nearly one year and the same was cancelled on 1.7.2008 and the same was executed in favour of A6 on 7.7.2008 and it is A6, who executed another sale agreement in favour of A7 Sekar. The act of attempt to trespass into the property in question and the act of interference by the petitioner herein into the family members' possession and

enjoyment of the property by plucking coconut from trees was allegedly occurred during 2007. Even then, the petitioner herein did not admittedly attempt to trespass into the property and attempt to pluck coconut, the witnesses only refer to the presence of other men, who are according to the witnesses, associates of the petitioner Suresh Kumar.

10.It is nobody's case that the petitioner Suresh Kumar, except obtaining power of attorney, had in any manner involved and participated in any other illegal act during the subsistence of and before or after the cancellation of general power of attorney. The statement of most of the witnesses referring to the name of the petitioner Suresh Kumar as aiding and instigating A1 Sivaguru is not based on direct knowledge but based on hearsay i.e, through statement of third party and on presumption. Even otherwise, it only refers to the civil dispute between the parties and about the occurrence allegedly taken place during 2007, in the course of which, 10 the accused allegedly sent group of men to pluck coconut from trees standing in the property in question. As rightly argued by the learned counsel for the petitioner, the statement of the witnesses as above referred to, do not in any manner mention anything about any act of conspiracy and abetment on the part of A5 with A1 Sivaguru in committing the murder of his father and his family members during October 2010. In this connection, the following decisions are cited on the side of the petitioner: (i) (1939) MWN page 17 (Privy Council) (Pakala Narayana Swami v. The King Emperor) and (ii) 1974 CrLJ 1200 (V-80 C 380) (Onkar v. State of Madhya Pradesh) Division Bench of Madhya Pradesh High Court.

11.In the first case in (1939) MWN page 17 (cited above), the Privy Council, while dealing with the admissibility of the statement under Section 32(1) of the Evidence Act, has categorically observed that the circumstances must be circumstances of the transaction; general

expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. In the second case in 1974 CrL.LJ 1200 (V 80 C 380) (cited supra), the Division Bench of Madhya Pradesh under identical circumstances, observed that the expression "circumstances of the transaction" means only such facts or series of facts, which have a direct or organic relation to the occurrence. The circumstances must have come proximate relation to the actual 11 occurrence. Circumstantial evidence of the transaction is to be distinguished from the circumstances of the transaction itself. The statements made by the deceased long before the incident which may suggest motive for the crime, are inadmissible in evidence. In the same judgment, the Division Bench of Madhya Pradesh High court, while dealing with the motive aspect, was of the view that motive however strong cannot form the basis of conviction and where the evidence of crime is not satisfactory, even a strong motive cannot furnish the lacuna in such evidence. The Division Bench of Madhya Pradesh High court while dealing with circumstantial evidence has also observed that although a suspicion about the accused's complicity in the murder arises on discovery of the incriminating articles belonging to the deceased on information furnished by the accused, it would be unsafe to draw an inference of guilt on the charge of murder in the absence of any other evidence, connecting the accused with murder. That being the legal position, there is, as rightly pointed out by the learned counsel for the petitioner, absolutely no material to prima facie connect the petitioner with the alleged act of aiding and abetment herein in facilitating the commission of the offence by A1 in the manner as spoken by the prosecution.

12. The remaining statements of the witnesses to be looked into herein are the statements of LW22 Narayanan and LW50 Sundaram. The statement of LW22 would

proceed as if he had been to the house 12 of the petitioner herein at 5pm during July 2010, where he found A1 Sivaguru, A2 Mala and A7 Sentilkumar and A6 Sampath and Vedikaranputhur Sekar and all of them had been talking to petitioner/A5 Suresh Kumar in the Varanda and at that time, A1 Sivaguru requested A5 to pay him Rs.10 lakhs to purchase an auto for his livelihood out of value of the land, which is the subject matter of power of attorney to which Suresh Kumar replied that he will not part with any amount and Sivaguru may not be able to obtain the original document in respect of the property in question, from his father Kuppuraj and Rathinam so long as his father is alive and A1 Sivaguru told A5 that he will go any extent to get the document and A5 promised to take care of A1. As far as the statement of LW50 Sundaram is concerned, it proceeded as if A1, A6 and A8/who is his uncle and A7 had been to his office at 5.30pm on one Friday during July 2010 and A6 Sampath told A1 Sivaguru that as A1 did not hand over the document in respect of the land and did not repay Rs.3 lakhs Suresh Kumar was very much annoyed and at that time, A8 Sekar told A1/Sivaguru to do away with his father and brother Rathinam as advised by Suresh Kumar and the same was affirmed by A7/ Senthil kumar and A6 Sampath and the witness warned them not to have such discussion in the office. Though the learned Public prosecutor, by relying upon their statements, seriously argued that the statements of these witnesses are sufficient enough to prima facie make out act of conspiracy and abetment of the petitioner/A5 in 13 instigating A1 to commit the murder of his family members, this Court is not inclined to accept such argument advanced on the side of the respondent for the following reasons.

13.Before appreciating the statement of the witnesses as above referred to, it is but relevant to go into the question as to what constitutes an act of conspiracy and abetment. In this connection, the learned counsel for the petitioner cited

the following authorities: (i) (2010) 3 SCC (Cri) 801 (S.Arul Raja v. State of Tamil Nadu) (ii) (2011) 3 SCC (Cri) 550 (John Pandian v. State represented by Inspector of Police, Tamil Nadu) and (iii) AIR 1975 SC 175 (Shri Ram v. The State of U.P.). In the first decision in (2010) 3 SCC (Cri) 801 (cited supra), the Hon'ble Apex Court has in para 20 following the earlier decision of the Hon'ble Supreme Court reported in (1999) 3 SCC 54 (Vijayan v. State of Kerala) held that in order to constitute the offence under Section 120B, it is but necessary to establish that there was an agreement between the parties for doing an unlawful act. The Hon'ble Apex Court in para 27 extracted para 583 of another decision in (1999) 5 SCC 253 (State v. Nalini), wherein it is held that "...offence of criminal conspiracy is an exception to the general law where intend alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The 14 question for consideration in that case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy, when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed". Following the same view, it is held in para 28 that "a meeting a minds to form a criminal conspiracy has to be proved by placing substantive evidence and the respondent has not adduced any evidence which underlines the same".

14. In the second authority in (2011) 3 SCC (Cri) 550 (cited supra), it is held that "conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of

committing an illegal act or an act, which is not illegal, by illegal means..." In para 96 of the same judgment, the Hon'ble Apex court was of the view that ...merely because there are some discoveries they do not in any manner connect the accused and there is no presumption that merely because the accused has some things in his possession, which he fails to explain, ... in our opinion, this evidence would fall short to hold that he was a member of the conspiracy". It is held in para 101 therein that the established law is that every such circumstance, which is relied upon by the prosecution for establishing conspiracy, must be proved to have nexus with that conspiracy. The Hon'ble Apex Court in para 108 of the same judgment has extracted the definition of conspiracy in Halsbury's Laws of England, as per which, the essence of the offence of conspiracy is fact of combination of minds by agreement. The Hon'ble Supreme Court in para 110 extracted para 271 of the authority in (1988) 3 SCC 609 (Kehar Singh v. State (Delhi Administration)), wherein, it is observed that the gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge or even discussion, of the plan is not per se, enough. In Para 113, it is held that ... there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of the offence and where the factum of conspiracy is sought to be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. The Hon'ble Apex court in para 114 referred to para 38 of the decision in (2004) 11 SCC 585 (Esher Singh v. State of A.P.), wherein it is observed that "a few bits here and a few bit there on which the prosecution relies cannot be held to be adequate for connecting the

accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the 16 objet of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy". It is also held in para 45 of the authority in Esher Singh case, that ...it is not necessary that each conspirator must know all the details of the Scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (i) agreement (ii) between two or more persons by whom the agreement is effected and (iii) a criminal object, which may be either the ultimate aim of the agreement or may constitute the means, or one of the means by which that aim is to be accomplished. The Hon'ble Supreme Court in para 116 referred to the authority in (2005) 12 SCC 631 (K.R.Purushothaman v. State of Kerala), wherein it is reiterated that all conspirators need not take active part in the commission of each and every conspiratorial act, but mere knowledge, even discussion of the plan would not constitute conspiracy.

15. In the third case in AIR 1975 SC 175 (Shri Ram v. The State of U.P.) (cited supra), the Hon'ble Apex Court held that in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the 17 requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the

alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107.

16.As such, as rightly argued by the learned counsel for the petitioner, even assuming the statement of LW22 and LW50 to be true, the same do not make out any case against A5 for any act of conspiracy and abetment as laid down in the authorities cited above. It is only at the stage of wish or advice and it is not the statement of the witnesses that it subsequently culminated into agreement between each other to carry out the object of committing the unlawful act or crime. In the absence of one such statement, the statement of above two witnesses do not raise any suspicion much less grave suspicion against the petitioner. In this context, another authority cited on the side of the petitioner is (2009) 1 SCC (Cri) 51 (Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra), wherein, it is held that the basic ingredients of the offence of criminal conspiracy are: (i)an agreement between two or more persons; (ii)the agreement must relate to doing or causing to be done either (a)an illegal act; or (b)an act which is not illegal in itself but is done by illegal means, which is sine qua non of the criminal conspiracy, but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is further held therein that the test to determine a prima facie case depends upon the facts of each case and in this regard, it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to

suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. That being the settled law, in my considered view, one such legally permissible evidence is not produced before the court and the materials made available herein could not raise any suspicion much less rise grave suspicion. On this score alone, the accused is entitled to be discharged.

17. Next comes the confession statement of the co-accused. The only co-accused, who spoke about the participation of A5 are (i) A2/Mala, wife of A1/Sivaguru, (ii) A4 Rajini and (iii) A8 Sekar. While A1 Sivaguru has in his confession statement did not refer to Suresh Kumar, A2, A4 and A8 would make similar statement like that of LW22 and LW50. All the reasoning stated against the admissibility of such statement are applicable to the statement so made by the co-accused for want of any material to make out the agreement of minds of A5 on one hand and A1 and A2 on other hand. In addition to the same, the confession statement of the co-accused are legally impermissible in the absence of any corroborative evidence. The admission of the co-accused without any other material to corroborate the same, cannot form the basis to make out any case against the accused. The learned counsel for the petitioner, in support of such contention, against sufficiency or otherwise of confession statement and post arrest statement of the accused, relied on the following authorities: (i) 1964 (2) Cri.L.J. 344 (Vol. 69 C.N.105) (Haricharan Kurmi and another v. State of Bihar), (ii) 2012 Cri.L.J. 832 (Pancho v. State of Haryana) (iii) 1947 MWN (Cri) 45 (Pulukuri Kottaya and others v. the King Emperor), (iv) AIR 1966 SC 119 (Aghnoo Nagesia v. State of Bihar) (v) 1976 SCC (Cri) 199 (Mohmed Inayatullah v. the State of Maharashtra) and (vi) (2011) 1 SCC

(Cri) 955 (Lohit Kaushal v. State of Haryana). In all these cases, the extent of admissibility of confession made to the police, is usefully 20 reiterated. As far as the post arrest statement of the accused before the police is concerned, it can be, as held by the Hon'ble Apex Court, used to limited extent under Section 27, that too not against the petitioner, but against the co-accused who made such statement. It is held therein that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.... Any information which serves to connect the object discovered with the offence charged is not admissible under Section 27. No confession made to a police officer shall be proved as against a person accused of an offence. In 1976 SCC (Cri) 199, the Hon'ble Apex Court is of the view that ...only "so much of the information" as relates distinctly to the fact, thereby discovered is admissible and the rest of the information has to be excluded. In 1964 (2) Cri.LJ 344 (Vol.69 CN 105) (Haricharan Kurmi and another v. State of Bihar) the Constitution Bench of the Hon'ble Apex Court while dealing with similar statement against co-accused person, held that the court cannot start with the confession of a coaccused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That being the law laid down by the Hon'ble Apex Court, the confession statement of co-accused cannot at all at any stage of the 21 proceedings be solely independently relied on by the prosecution to make out any case against the co-accused. Thus, for want of materials to prove the acceptance and agreement of plan initiated on the part of A1 at the instigation of the petitioner/A5 and for other legal restriction on the admissibility of statements under Section

161 Cr.P.C, and for want of any other corroborative evidence no serious reliance can be attached to confession statement of co-accused for the purpose of proof of complexity of the 5th accused in the act of conspiracy and abetment.

18. At this juncture, the learned Public Prosecutor would by citing other authorities, argue that (i) relevant considerations at the stage of framing of charge is the material on record and if on the basis of the same, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction, the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence and at the time of framing of the charges, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true at that stage [(2007) 5 SCC 403 (Soma Chakravarty v. State through CBI)]. (ii) In order to discharge or frame charges against the accused, the court has to sift evidence on record only for limited purpose of ascertaining whether a prima facie case is made out against the 22 accused. At that stage, the court is not required to undertake an elaborate enquiry in sifting and weighing the material to arrive at the conclusion that it will not lead to conviction (1997) 4 SCC 393 (State of Maharashtra v. Priya Sharan Maharaj and others). (iii) The materials on record must satisfy the mind of the court framing the charge that the commission of offence by the accused in question was probable (1996) 4 SCC 659 (State of Maharashtra and others v. Somnath Thapa and others). (iv) The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure

to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused (1977) 4 SCC 39 (State of Bihar v. Ramesh Singh); and (v) At the stage of framing of charge under Section 228 or while considering discharge petition filed under section 227, it is not for 23 Magistrate or Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof etc (2010) 9 SCC 368 (Sajjan Kumar v. Central Bureau of Investigation).

19. On the other hand, the learned counsel for the petitioner by relying on the following authorities reiterated the tests and considerations to be applied, while disposing the discharge petition: (i) AIR 1977 SC 1489 (State of Karnataka v. L. Muniswamy and others) (ii) 1977 SCC (Cri) 533 (State of Bihar v. Ramesh Singh) (iii) 1979 SCC (Cri) 609 (Union of India v. Prafulla Kumar Samal and another), (iv) 1986 CrL LJ 1922 (R.S. Nayak v. A.R. Antulay and another) (v) (2008) 1 SCC (Cri) 507 (Onkar Nath Mishra and others v. State (NCT of Delhi) and another) (vi) (2009) 1 SCC (Cri) 51 (Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra) (vii) (2007) 1 MLJ (CrL) 100 (State rep. by Dy. Superintendent of Police, Vigilance and Anti Corruption, Cuddalore Detachment v. K. Ponmudi & others) (viii) (2010) 1 SCC (Cri) 1488 (P. Vijayan v. State of Kerala and another) (ix) (2010) 3 SCC (Cri) 367 (Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (x) (2011) 3 MLJ (CrL) 317 (Jayarama Reddiar v. Station House Officer, Gingee Police Station) and (xi) (2011) 1 MLJ (CrL) 345 (Sigamani and another v. State represented by Deputy Superintendent of Police, CBCID, CC Wing, Coimbatore).

20.The 3 Judges larger bench of the Hon'ble Apex Court in AIR 1977 SC 1489 held that for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court possesses, comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible.

21.The Hon'ble Supreme Court in 1979 SCC (Cri) 609 held that in exercising the jurisdiction under Section 227, the Special Judge, which under the present code is a senior and experienced court, cannot act merely as a post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on..... While considering the question of framing charges under this Section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

22. In (2009) 1 SCC (Cri) 51 and (2010) 1 SCC (Cri) 1488, the Hon'ble Apex Court observed that by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. 25

23.It is held in (2008) 1 SCC (Cri) 507 that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence.

24. In (2010) 1 SCC (Cri) 1488, it is held by the Hon'ble Apex court that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the document produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C, if not, he will discharge the accused. This provision was introduced in Cr.P.C to avoid wastage of public time, when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.

25. In (2010) 3 SCC (Cri) 367, it is held that at the stage of framing of charge, the court is required to evaluate material and documents on record to find out if facts emerging therefrom taken at their face value, disclose existence of all ingredients constituting the alleged offence and for this limited purpose, the court may sift the evidence and the court has to consider material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at definite conclusion. Presume means if on the basis of materials on record, court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists.

26. Following the decisions of the Hon'ble Supreme Court, the learned brother judge of this court in (2011) 3 MLJ (Cr1) 317 held that a mere suspicion is not enough at the stage of framing charge against the accused and such suspicion should be very strong suspicion founded upon materials available on record to form

a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged.

27. The another learned brother Judge of our High Court in (2011) 1 MLJ (Cr1) 345 observed that the criminal proceedings against an accused will not be sustainable in the absence of any prima facie material against him to show the knowledge or involvement of him in the commission of the offence.

28. Thus, if the facts involved in the present case and the materials available herein are evaluated in the light of the legal principles as laid down in the authorities cited above, it would disclose that there is no ground made out to presume the probable involvement of the accused in the commission of the offence to proceed to frame charges against the accused herein. What is disclosed from the statements of the witnesses is the civil nature of the dispute between the parties and involvement of the petitioner in the civil dispute of the parties that too during 2007. The statements of all the witnesses are only about the involvement of the petitioner/A5 on the basis of hearsay evidence and the statements of two of the witnesses i.e., LW22 and LW50 and the co-accused are not sufficient enough to make out any agreement between the parties and intention of the petitioner/A5 in aiding and abetting A1 to commit the crime charged. As a matter of fact, the trial court has simply reproduced the evidence and arrived at a finding that prima facie case was made out and it is done so by the trial court, without duly analysing the evidence available before the same, in the light of the principles and tests for discharge, to find out as to whether any ground is made out to presume the involvement of the accused and the failure of the trial court to do so has resulted in serious irregularity and same vitiates the entire order of the trial court and the same warrants interference by this court."

13.The aforesaid order is self explanatory. While discussing the legal position for constituting the offences of 'Criminal Conspiracy' and 'Abetment', the learned Judge had found that there was absolutely no material prima facie to connect the petitioner (A5) with the alleged act of aiding as abetment in facilitating the commission of offence by the first accused in the manner as spoken by the prosecution.

14.While the fifth accused has been absolved of all the charges, I am unable to comprehend as to how the petitioner herein/A6 could be proceeded with. In all the incidents where LW- 22 and LW-50 had spoken about the possible involvement of the petitioner herein in the alleged act of aiding and abetting the first accused, as per the prosecution, it was the fifth accused, who had the key role to play in the statements of the witnesses and since this Court had rendered a finding that there was no material to prima facie to connect the fifth accused with the alleged acts, it would automatically follow that the sixth accused should also be absolved from the charges levelled against him. The learned counsel for the petitioner relied on the judgment in Shri Ram V. The State of U.P. reported in AIR 1975 SC 175 and submitted that intentional aiding is the essential ingredients for constituting the offence under Section 107 IPC. Likewise, the learned counsel also relied upon the judgment in 1974 Cri. L.J. 1200 [Onkar v. State of Madhya Pradesh] and submitted that the circumstances must have come proximate relation to the actual occurrence. In the judgment in State Of Tamil Nadu Through Superintendent of Police, CBI/SIT vs Nalini and 25 Others reported in 1999 (5) SCC 253, it has been held that for constituting an offence of criminal conspiracy, there should not be an intention alone but there has to be an agreement to carry out the object of the intention. In the judgment in S.Arul Raja V. State of Tamil Nadu reported in 2010 (3) SCC (Cri) 801, entertaining an intention however 'horrendous' it may be, may not be sufficient to constitute an offence of conspiracy. Likewise, in the judgment in Esher Singh V. State of A.P. reported in 2004 (11) SCC 585, it is observed that a few bits herein and few bits therein which the prosecution relies could not be relied with the commission of the crime of criminal conspiracy.

15.While discharging the fifth accused, the learned Judge of this Court in the judgment rendered in CrI.R.C.No.325 of 2013 had extensively discussed and rendered findings on all the aforesaid judgments cited by the learned counsel for the petitioner. I have already extracted the findings rendered by the learned Single Judge and I am also in concurrence with the views of the learned Single Judge. Hence in view of the fact that the petitioner herein had relied upon the same judgments which were cited before this Court in the case of the fifth accused, it may not be necessary to once again reiterate the

findings of the Hon'ble Apex Court in all the aforesaid judgments.

16.In view of the above observations and findings, the Criminal Original Petition stands allowed and consequently, the proceedings in S.C.No.185 of 2011 on the file of the learned II District and Sessions Judge, Salem insofar as the petitioner herein/A6 is concerned, stands quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP

To

1. The II Additional District & Sessions Court,
Salem.
2. The Deputy Superintendent of Police,
CBCID, Salem.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Ezhilnilavan, Advocate sr.no.40274

Cr1.O.P.No.26219 of 2016
and

Cr1.M.P.Nos.13041 & 13042 of 2016

nr 12/07/2018

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