



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 13.08.2018
ORDERS PRONOUNCED ON : 16.08.2018

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.(MD)No.2834 of 2018
and
Cr1.MP(MD)Nos.1290 and 1291 of 2018

P.Kallapiran

...petitioner / Accused No.6

Vs

The State Represented by
The Inspector of Police,
Alwarkuruchi Police Station,
Tirunelveli District.
(Crime No.02 of 2010)

... respondent /complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to set aside the charges framed against the petitioner in the case in S.C.No. 48 of 2011 by the learned IV Additional Sessions Judge, Tirunelveli.

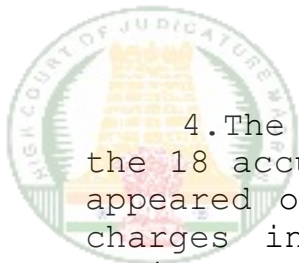
For Petitioner : Mr.R.Anand
For respondents : Mr.Bhagawathi,
Government Advocate

ORDER

This petition has been filed under Section 482 of Criminal Procedure Code, challenging the charges framed against the petitioner in SC No.48 of 2011 by the learned IV Additional District and Sessions Judge, Tirunelveli.

2.The brief facts of the case of the prosecution is that on 07.01.2010 at around 2.40 pm, in the Ambasamudram - Tenkasi High Road, the Sub Inspector of Police, namely, Vetrivel was brutally hacked to death with deadly weapons and also country bombs were thrown at him. A case was registered in Crime No.2 of 2010, for the offences under Sections 120(B), 147, 148 and 307 IPC and Sections 3(a) and 4(a) of the Indian Explosives Substance Act, 1908. The said Vetrivel died on the same day and hence Section 302 IPC was also included in the altered FIR. After completion of the investigation, a final report was filed in PRC No.16 of 2010 against 18 accused persons. The petitioner in this Criminal Original Petition was arrayed as A-6 therein.

3.The case was committed to the Court of Sessions in SC No.48 of 2011 and the same is pending on the file of the learned District and Sessions Judge, Tirunelveli. After the committal, the Sessions Court proceeded to frame charges against the accused persons under Section 228 of CrPC.



4.The learned Counsel for the petitioner would submit that all the 18 accused persons were summoned by the trial Court and they all appeared on 08.12.2016. On that day, the trial Court had read the charges in an omnibus manner, without explaining the charges as against each of the accused persons and signatures were obtained from the accused persons in a typed format. The learned Counsel would submit that the procedure adopted by the Sessions Court is totally opposed to the provision of Section 228 (2) of CrPC.

5.The learned Counsel for the petitioner further submitted that the charges must be framed against each of the accused persons and each of the accused persons must be explained about the charges framed against them and must be questioned about the charge and independent answers must be taken from the accused persons. Whereas in the present case, this procedure was not followed by the trial Court.

6.Per Contra, learned Government Advocate would submit that the present petition has been filed only with a view to drag on the proceedings. Earlier, petitions were filed for reinvestigation and also for transfer of investigation and all those petitions came to be dismissed by this Court. The learned Government Advocate further submitted that charges framed in SC No.48 of 2011 was read and explained to all the accused persons and they have also responded to the questions put forth to them and therefore, no prejudice will be caused to the accused persons, in the manner in which charges have been framed by the trial Court.

7.The learned Counsel submitted that there is no procedural lapse on the part of the trial Court as alleged by the petitioner.

8.This Court has carefully considered the submissions made on either side and has also gone through the materials placed before this Court.

9.This Court is thoroughly disappointed with the manner, in which the charges have been framed by the trial Court. The trial Court Judges are regularly educated and sharpened in the art of framing charges by conducting regular contact classes in the Judicial Academy. Framing of charges is one of the most important areas, in which the trial Court Judges are regularly instructed, in order to ensure that they do not commit mistakes at the time of framing charges. In spite of a lot of efforts being put in, in the Judicial Academy, some of the Judges do not seem to have improved their standards and continue to commit the same mistakes as they were doing in the past. The present case is one, which falls in this category.

10.Section 228(2) of CrPC reads as follows:

" 228.Framing of charge:

(1)

(a)

... ..

(b)



(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

WEB COPY

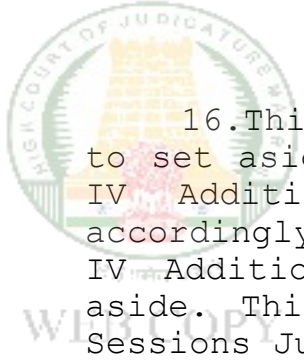
11. A cursory reading of the above provision makes it very clear that it is mandatory to read out the charge framed to the accused and explain it to him and thereafter, he shall be asked whether he pleads guilty to the charge or whether he claims to be tried. Mere reading of the charge is not sufficient and it should be explained sufficiently to enable the accused to understand the nature of the charge, to which the accused is called upon to plead. Framing of charges is primarily a judicial function and guidance is clearly available under Section 211 of CrPC.

12. In the instant case, the learned Sessions Judge has read out the charges framed against the accused persons in an omnibus fashion to all the accused persons and thereafter, has chosen to get signatures together below each charge. In fact, in all his questions about a particular charge, the question is general in nature posed to all the accused persons and there is nothing to show that the charges were explained to each of the accused person.

13. The very purpose of framing charges against an accused person is to tell the accused person as precisely and concisely as possible of the matter, with which he is charged and must convey to him with sufficient clearness and certainty, what the prosecution intends to prove against him, of which he will have to be clear himself.

14. Sections 211 to 214 of CrPC gives clear and explicit directions as to how a charge should be drawn up. This is a matter of which, the Judge should bestow the most careful attention.

15. There are 18 accused persons in this case. Questions have been posed on each of the charges to all the accused persons in an omnibus manner without independently reading the charge and explaining it, to each of the accused persons and asking him whether he pleads guilty of the charge or claims to be tried. In other words, the learned Sessions Judge ought to have framed the charges on each of the accused persons and ought to have read and explained to each of the accused persons the charges against them and questioned the concerned person regarding the charges framed against him. If the Sessions Judge had followed this procedure, there would have been more clarity in the charges framed against each of the accused persons and it would have been easy for the prosecution to proceed with the trial and establish the charges framed against them. In the same manner, it would have been easy for each of the accused persons to clearly understand the charge against them, which they are supposed to defend. Unfortunately, the Sessions Judge failed to understand the scope of Section 228(2) of CrPC and has committed a gross irregularity in framing charges.



16. This Court is, therefore, left with no other option except to set aside the charges framed in SC No.48 of 2011 by the learned IV Additional District and Sessions Judge, Tirunelveli and accordingly, the charges framed in SC No.48 of 2011 by the learned IV Additional District and Sessions Judge, Tirunelveli are set aside. This Court directs the learned IV Additional District and Sessions Judge, to frame charges against each of the accused persons strictly in accordance with Section 228 of CrPC. This exercise shall be completed by the learned Sessions Judge, within a period of four weeks from the date of receipt of copy of this order.

17. The Sessions Case is of the year 2011 and unfortunately, it is in the stage of framing charges. Therefore, necessary directions will have to be issued for the completion of trial in this case.

18. The following directions are given to the learned IV Additional District and Sessions Judge, Tirunelveli:

(a) the learned IV Additional District and Sessions Judge is directed to frame charges against each of the accused persons strictly in accordance with Section 228 of CrPC, within a period of four weeks from the date of receipt of copy of this order.

(b) the learned IV Additional District and Sessions Judge shall issue summons to the witnesses and fix a date for their appearance and shall ensure that Section 309 (i) CrPC and the guidelines issued by the Hon'ble Supreme Court in Vinod Kumar Vs State of Punjab, reported in 2015 (3) SCC 220, is strictly followed and shall also ensure that the witnesses are cross examined on the date, when they are examined in chief.

(c) if any of the accused persons resorts to any dilatory tactics in unnecessarily prolonging the proceedings, it is open to the learned IV Additional District and Sessions Judge, Tirunelveli to act in accordance with the directions given by the Hon'ble Supreme Court in The State Of Uttar Pradesh Vs Shambhu Nath Singh And Ors, reported in JT 2001 (4) SC 319; and,

(d) The learned IV Additional District and Sessions Judge is directed to complete the trial, within a period of four months from the date of framing of charges as directed in clause (a).

19. The criminal original petition is disposed of with the above directions. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The IV Additional District and Sessions Judge,
Tirunelveli.



2. The Inspector of Police,
Alwarkuruchi Police Station,
Tirunelveli District.

COPY TO:

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Anand, Advocate SR.No. 78913

order made in
Crl.O.P.(MD)No.2834 of 2018
&
Crl.MP(MD)Nos.1290
and 1291 of 2018
16.08.2018

dsk

JM/SKN RSK/SAR 4/31.08.2018/5P/5C