



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.10.2018

DELIVERED ON : 24.10.2018

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.519 of 2015

and

M.P(MD)No.1 of 2015 and Crl.M.P(MD)No.6841 of 2018

Sasi Kumar : Petitioner/Petition/Accused No.1
Vs.

State rep. by
The Inspector of Police,
Kallaperambur Police Station,
Thanjavur, Thanjavur District.
(Crime No.100 of 2014). : Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case is filed under Section 397(1) read with Section 401 of the Code of Criminal Procedure, against the order dated 31.07.2015 passed in Cr.M.P.No.330 of 2015 in S.C.No.218 of 2015 on the file of the First Additional District and Sessions Judge (PCR), Thanjavur, Thanjavur District.

For Petitioner : Mr.A.Thiruvadikumar
For Respondent : Mr.A.Robinson,
Government Advocate (Crl. side).

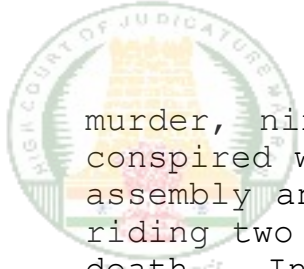
ORDER

This Criminal Revision Case is directed against the order passed by the Trial Court dismissing the petition filed by the first accused/revision petitioner herein to discharge him from S.C.No.218 of 2015.

2.The brief facts are as below:

(i)One Manoharan was done to death due to previous enmity between two communities. His wife Thilagavathy lodged a complaint naming ten persons including the revision petitioner herein. The said complaint was taken for investigation by the respondent police and after due investigation, they filed final report against thirteen accused persons, wherein the revision petitioner herein is shown as first accused.

(ii)The gist of the final report is that due to previous enmity between Ambalakara group and Kallar group, one Ramamoorthy of Kallar group was murdered by Manoharan and others. To take revenge of this



murder, ninth accused Surendran, who is nephew of Ramamoorthy has conspired with the other accused persons and they formed an unlawful assembly and pursuant to the conspiracy, they intercepted Manoharan riding two wheeler and indiscriminately attacked him causing instant death. Investigation has brought to light that before committing murder, the accused persons have met on 29.09.2013 and 01.10.2013 and has hatched conspiracy. As a consequence, on 05.10.2013, Manoharan was done to death.

(iii) The revision petitioner/A.1 has contended that the statement of the co-conspirators cannot be a basis to array the revision petitioner as accused in this case, since he was not in the scene of occurrence and the alleged conduct of the co-accused over phone and consulting A.1 will not constitute conspiracy.

(iv) However, the Trial Court after considering the law laid down by the Hon'ble Supreme Court in Dilawar Balu Kurane v. State of Maharashtra reported in 2002(2) SCC 135, P.Vijayan v. State of Kerala and Another reported in 2010(2) SCC 398 and the guidelines framed by the Hon'ble Supreme Court in R.Anbalagan v. State by Additional Superintendent of Police, CBI, Chennai reported in 2013 (3) MLJ (Crl.) 271, had scrutinized the statements of the witnesses, particularly, L.W.1, L.W.2, L.W.11, L.W.18 and L.W.19 and found that there is a grave suspicion against A.1 and he cannot be discharged.

3. The said order is now impugned on the ground that the revision petitioner is an Advocate by profession and he has been falsely roped in. The statements of witnesses do not disclose the revision petitioner participated in any conspiracy or met any of the accused. A stray sentence of few witnesses cannot be a ground to suspect the revision petitioner.

4. In support of the submission, the learned counsel appearing for the revision petitioner/A.1 would rely upon the Judgment of the Hon'ble Supreme Court in K.R.Purushothaman v. State of Kerala reported in (2006)1 Supreme Court Cases (Cri) 686, wherein it is stated as below:

"From the findings arrived at by the High Court that it was A-3 who was entrusted with the gold by the Devaswom Board, and who was looking after the affairs of making the ornament golaka, simply because accused-appellant had accompanied him to Coimbatore, it cannot be inferred that there was an agreement entered into between them to misappropriate the gold. To constitute a conspiracy, agreement between two or more persons for doing an illegal act, or an act by illegal means, is a sine qua non. Although the agreement among the conspirators can be inferred by necessary implication, the inference can only be drawn on the parameters in the manner of proved facts, in the nature of circumstantial evidence. Whatever be the incriminating circumstance, it must be clearly established



by reliable evidence and they must form the full chain whereby a conclusion about the guilt of the accused can be safely drawn. Even if we hold that at some point of time, the accused-appellant had some knowledge or suspicion about A-3 indulging in fraudulent misappropriation of gold, entrusted to A-3, in the absence of some positive evidence indicating agreement to that effect, conspiracy could not be inferred. On the findings itself arrived at by the High Court, we cannot hold that the accused-appellant was the conspirator to misappropriate the gold, with A-3".

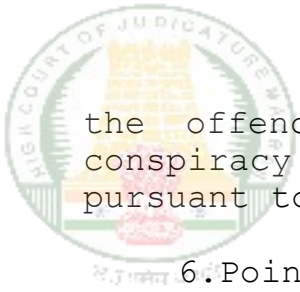
The learned counsel appearing for the revision petitioner/A.1 would also rely upon the Judgment of the Hon'ble Supreme Court in P.Vijayan v. State of Kerala and Another reported in (2010)2 Supreme Court Cases 398, wherein it is stated as below:

"10.Before considering the merits of the claim of both the parties, it is useful to refer Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts".

5.Per contra, the learned Government Advocate (Criminal side) appearing for the State drawing the attention of this Court to the statements of Kulanthaivel (L.W.18), Ravi (L.W.19) and the confession statements of Sadeesh @ Sadeeshkumar (A.12) and Muthu @ Muthuraman (A.13), would submit that there is ample evidence collected through investigation to try the revision petitioner for



the offence. He has actively participated in the scheme of conspiracy to eliminate a member of Ambalakara community group and pursuant to that conspiracy, Manoharan was done to death.

6. Point for consideration:

"Whether the Trial Court is right in dismissing the discharge petition?"

7. The complaint given by the wife of the deceased reveals that Manoharan was done to death by a group of armed men, as a consequence to the earlier enmity between the two communities. The revision petitioner herein has been projected as kingpin of the crime. The prosecution has roped this revision petitioner as prime accused based on the confession statement of two accused persons and the statements of witnesses who heard the revision petitioner discussing with the other accused to eliminate members of Kallar community.

8. If the contents of the previous statement recorded under Section 161(3) Cr.P.C. are found to be proved in the manner known to law, then the revision petitioner herein will be held liable for conspiracy. The Court below has discussed the provision of law, scope and ambit of Sections 120-B and 109 IPC and has rightly dismissed the discharge petition. When the prosecution is able to collect evidence that the revision petitioner herein had participated in the discussion with the other accused before eliminating Manoharan, prima facie indicates that he has been one of the participants in the crime. It is needless to be present in the scene of crime to accuse a person, who has acted as a brain behind the crime. Physical presence in the scene of crime is not a sine qua non. Therefore, when there is prima facie material available with the prosecution, the revision petitioner herein cannot seek for discharge, but to face the trial to prove his innocence. The material available on record would clearly indicate that it is not a suspicion or grave suspicion, but the prima facie material which is available against the revision petitioner. Hence, it requires a full-fledged trial to prove his innocence. Therefore, this Court finds that there is no merit in the criminal revision case and accordingly, the same is liable to be dismissed.

9. As a result, this Criminal Revision Case is dismissed. The order dated 31.07.2015 passed in Cr.M.P.No.330 of 2015 in S.C.No.218 of 2015 by the learned First Additional District and Sessions Judge (PCR), Thanjavur, Thanjavur District is confirmed. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (ADI)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar (CS-III)



To

1.The First Additional District and Sessions Judge (PCR),
Thanjavur, Thanjavur District.

2.The Inspector of Police,
Kallaperambur Police Station,
Thanjavur, Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.A.Thiruvadikumar Advocate in SR.No.91535

ORDER MADE IN
Cr1.R.C (MD) No.519 of 2015
and
M.P (MD) No.1 of 2015 and Cr1.M.P (MD) No.6841 of 2018
24.10.2018

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