

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.05.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 24792 of 2014
and MP.No.1 of 2014

Martin

... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
Karumathampatti Police Station,
Coimbatore,
Crime No.79 of 2012

2. Senniappan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.611 of 2013 on the file of the learned Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioner : Mr.P.Kumaresan
for K.G.Senthilkumar

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.
For R2 : Ms.P.Bagyalakshmi

O R D E R

This petition has been filed to quash the proceedings in C.C.No.611 of 2013 on the file of the learned Judicial Magistrate No.II, Coimbatore, thereby taken cognizance for the offences under Sections 120 B r/w 294(b), 341 and 506(ii) of IPC.

2. The learned Counsel appearing for the petitioner would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.79 of 2012 for the offences under Sections 120(b), r/w 294 (b), 341 and 506(ii) of IPC. The second respondent alleged that on 07.03.2012, on the instructions of the petitioner, four persons came to the second respondent's land and threatened him with dire consequences and try to assault him. He further submitted that the petitioner arrayed as A1 and as against the petitioner, the first respondent filed final report under Section 120(b) of IPC, on the basis of the statement of the second respondent recorded under Section 161 of Cr.P.C. The petitioner was charged for the offences under Sections 120(b), r/w 294(b), 341 and 506(ii) of IPC, and

except the statement of the second respondent no other witnesses whispered about the conspiracy of the petitioner along with other accused persons.

2.1. He further submitted that on 07.03.2012, the petitioner was arrested and remanded to judicial custody in respect of other crimes. He further submitted that to attract the offence under Section 120B of IPC, there is absolutely no evidence except the hearsay evidence that the petitioner was involved in the alleged conspiracy to cause criminal intimidation. The hearsay evidence does not constitute an offence under Section 120B r/w 506(ii) of IPC, as the conversation was merely about the second respondent's land and not a conspiracy for the alleged offences.

2.2. He further submitted that the first respondent did not even follow the Prison Rule 541 and falsely implicated the petitioner as an accused as if, on his instructions the other accused persons have committed the crime. He also relied upon the following judgments :-

i) (2008) 10 SCC 394 - Yogesh @ Sachin Jagdish Joshi Vs. State of

Maharashtra

ii) (2011) 2 SCC 532 - Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri

and anr

iii) (2014) 10 SCC 264 - Sangili alias Sanganathan Vs. State of Tamil

Nadu

iv) (2000) 1 SCC 378 - Saju Vs. State of Kerala.
Hence he prayed to quash the criminal proceedings.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant filed counter and submitted that at the time of occurrence, the petitioner was remanded in prison because he is an habitual offender and specifically in the land related matters and threatening, blackmailing the original owners and grabbing the properties belonging to them. The petitioner involved in so many cases and in fact, at the time of occurrence, he was remanded judicial custody in respect of Crime No.27 of 2011 for the offence committed by him under Sections 120(b), 147, 148, 427, 307 & 506(ii) and 409 & 420 of IPC and Section 3 of TNPPDL Act. Only on his instructions, the other accused persons are committed the present offence. Therefore, the present quash petition is liable to be dismissed.

4. The learned Additional Public Prosecutor filed counter of the first respondent and submitted that on the complaint lodged by the second respondent, a case has been registered in Crime No.79 of 2012 for the offences under Sections 120(b), 294(b), 341 and 506(ii) of IPC, in which the petitioner is arrayed as A1. After completion of investigation, the first respondent filed final report and the

same has been taken cognizance in C.C.No.611 of 2013 on the file of the learned Judicial Magistrate No.II, Coimbatore for the offences under Sections 120(b), 294(b), 341 and 506(ii) of IPC. There are evidences to attract the offence under Section 120B of IPC as against the petitioner and all the grounds raised by the petitioner cannot be considered before this Court under Section 482 of Cr.P.C. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr.P.Kumaresan, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Ms.P.Bagyalakshmi, learned counsel appearing for the second respondent.

6. There are four accused in this case, in which the petitioner is arrayed as A1. Admittedly, at the time of occurrence, the petitioner was in prison pursuant to the Crime No. 27 of 2011, registered for the offence under Sections 120 (b), 147, 148, 427, 307 & 506(ii) and 409 & 420 of IPC and Section 3 of TNPPDL Act. It is seen from the statement of the witnesses, there are several materials to connect the petitioner for the charge under Sections 120 B of IPC. That apart, the petitioner is an habitual offender and he is having so many cases related to blackmailing, threatening and grabbing the properties belonging to other owners.

7. The learned counsel appearing for the petitioner relied upon the judged reported in (2011) 2 SCC 532 in the case of Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and anr., which reads as follows :-

"33. The word 'evidence' is used in common parlance in three different senses : (a) as equivalent to relevant (b) as equivalent to proof and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word "evidence" given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as : best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

34.The idea of best evidence is implicit in the Evidence Act. Evidence under the Act, consists of statements made by a witness or contained in a document. If it is a case of oral evidence, the Act requires that only that person who has actually perceived something by that sense, by which it is capable of perception, should make the statement about it and no one else. If it is documentary evidence, the Evidence Act requires that ordinarily the original should be produced, because a copy may contain omissions or mistakes of a deliberate or accidental nature. These principles are expressed in Sections 60 and 64 of the Evidence Act."

8. He also relied upon the judgement reported in (2000) 1 SCC 378 in the case of Saju Vs. State of Kerala., as follows :-

"7. To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not illegal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is merely incidental to that object. To attract the applicability of Section 120B it has to be proved that all the accused had the intention and they had agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. This Court in Yash Pal Mittal v. State of Punjab [AIR 1977 SC 2433] held:

"The offence of criminal conspiracy under S.120A is a distinct offence introduced for the first time in 1913 in Chapt.V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the

conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under S.120A is brought out pilthily by this Court in EG Barsay v. The State of Bombay (1962) 2 SCR 195 at p.229 thus:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S.43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been

committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may be liable".

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy."

8. In a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him. It is settled position of law that act or action of one of the accused cannot be used as evidence against other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other."

The Hon'ble Supreme Court of India held on the different set of facts and circumstances in those judgments. In the case on hand, there are specific allegations as against the petitioner to attract the offence under Section 120B of IPC. Therefore, those judgments relied by the learned counsel for the petitioner are not helpful to the case of the petitioner.

9. In this regard, it is relevant to rely the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

"12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the

Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law."

10. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.675 of 2019 dated 15.04.2019 in the case of Md.Allauddin Khan Vs. The State of Bihar & Ors., as follows:-

"17. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."

The above judgments are squarely applicable to the case on hand. This Court can not go into the discrepancies/contradictions in the statement of the witnesses under Section 482 of Cr.P.C., and the points relating to the appreciation of evidence cannot be considered by this Court. Those points can be considered only during the trial before the trial Court. Therefore, this Court is not inclined to quash the proceedings. However, the petitioner is at liberty to raise all the points before the trial Court during the trial.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.611 of 2013. However, considering the case is of the year 2013, the trial Court is directed to complete the trial proceedings within a period of three months from the date of receipt of copy of this Order.

12. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Judicial Magistrate Court No.II,
Coimbatore.
2. The Inspector of Police,
Karumathampatti Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. K.G.Senthilkumar , Advocate SR.No. 43384

CRL.O.P.No. 24792 of 2014
and MP.No.1 of 2014

A.SK(26/06/2019)

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