

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.23062 of 2019

and

Crl.MP.Nos.12042 & 12043 of 2019

Siva @ Sivakumar

...Petitioner

.Vs.

The State rep.by the
Station House Officer,
Odiansalai Police Station,
Union of Puducherry.

..Respondent

(C.C No. amended as per order in Crl.M.P.No.12465/2019
in Crl.O.P.No.23062 of 2019 dated 28/08/2019)

PRAYER: Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure, to call for the records pending
on the file of the the learned Chief Judicial Magistrate,
Puducherry, Union of Puducherry in C.C.No.709 of 2019 and quash
the criminal proceedings.

For Petitioner : Mr.E.Kannadasan
for Mr.M.Machavathanan

For Respondent : Mr. Bharadha Chakaravarthy
Public Prosecutor (Pondicherry)

ORDER

This petition has been filed seeking to quash the
proceedings in C.C No.709 of 2019, pending on the file of
the Chief Judicial Magistrate, Puducherry.

2. The case of the prosecution is that the respondent
police, during a routine check, saw some persons involved in the
sale of forged lottery tickets as if it is recognized by the
State of Kerala. The concerned persons were arrested and
incriminating materials were also seized. Based on the
confession of the co-accused (A1), this petitioner has been made
as an accused in this case and he is ranked as A5.

3. The investigation culminated in a final report and the petitioner was shown as an accused in the final report.

4. The learned counsel for the petitioner submitted that the petitioner was made as an accused only based on the confession of the co-accused (A1). The learned counsel further submitted that apart from this material, there is no other material available against the petitioner and therefore, the final report itself is unsustainable as against the petitioner and is an abuse of process of court.

5. The learned Public Prosecutor, Puducherry appearing on behalf of the respondent police submitted that the involvement of this petitioner in the crime has been spoken to by the co-accused and based on the same, the petitioner has been made as an accused in this case.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. It is clear that this petitioner has been added as an accused in this case only based on the confession of A1 and there is no other material available against the petitioner.

8. It is now a settled law that a confession of a co-accused cannot by itself be taken as substantive piece of evidence against another co-accused and at the best, it can be used to lend assurance to Court. The law on the issue has been settled by the Hon'ble Supreme Court in Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue, Intelligence reported in 2018 3 MLJ Criminal 753. It will also be relevant to rely upon the judgment of the Hon'ble Supreme Court in Dipakbhat Jagdishchandra Patel vs. State of Gujarat in Criminal Appeal No.714 of 2019 dated 24.04.2019. The relevant portions of the judgment is extracted hereunder:

"48. If the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered in deciding whether the charge has to be framed against the appellant or not. It is here that the law laid down by this Court in Suresh Budharmal Kalani Alias Pappu Kalani (supra) becomes applicable.

49. We also notice the following statement in judgment rendered by Bench of seven learned Judges in Haricharan Kurmi v. State of Bihar:

"As a result of the provisions contained in S.30, Evidence Act, the confession of a co-

accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused 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.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt".

50. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the

petition filed under Section 482 of the Cr.P.C. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged".

8. It is clear from the above that the proceedings as against the petitioner cannot be allowed to proceed further in view of the fact that there is no other material except the confession of the co-accused.

9. In the result, the proceedings in C.C No.709 of 2019, on the file of the Chief Judicial Magistrate, Puducherry is quashed insofar as the petitioner is concerned. Accordingly, This Criminal Original Petition is allowed and the Court below is directed to complete the proceedings with regard to the other accused persons within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Station House Officer,
Odiansalai Police Station,
Union of Puducherry.
2. The Chief Judicial Magistrate,
Puducherry.
3. The Public Prosecutor,
High Court of Madras,
Madras.

+1 cc to Mr.M.Machavatharan, Advocate, S.R.No.74431

Cr1.OP No.23062 of 2019

BS(CO)
SSM(10/09/2019)