

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2019

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1208 of 2017
and Crl.M.P.No.11566 of 2017

R.Kumar @ Senthil Kumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Crime Branch, C.I.D.,
Thiruvannamalai,
Thiruvannamalai District.

... Respondent

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 28.07.2017 in Crl.M.P.No.4885 of 2015 in S.C.No.71 of 2015 on the file of the Principal District and Sessions Judge, Thiruvannamalai.

For Petitioner	: Mr.M.Palanivel
For Respondent	: Mrs.P.Kritika Kamal, Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been filed to set aside the order dated 28.07.2017 passed by the Principal District and Sessions Judge, Thiruvannamalai in Crl.M.P.No.4885 of 2015 in S.C.No.71 of 2015.

2.It is the case of the prosecution that A1 to A5 and the deceased Chandrasekar were selling fake and duplicate nagamani stones as original to various persons; they sold one such duplicate stone to a person in Chennai between 19.12.2010 and one week prior to 14.01.2011; the buyer realised that he had purchased a fake stone and therefore, he started pestering Chandrasekar to return the money; in turn, Chandrasekar started demanding the return of money from A1 to A5; the accused were not inclined to return the money and therefore, they hatched a conspiracy to eliminate Chandrasekar because, they

feared that Chandrasekar will expose them to the police; pursuant to the conspiracy, it is alleged that A1 to A4 wrongfully restrained Chandrasekar on 14.01.2011 around 21.00 hours in the vacant land of A2; they tied his hands and legs and strangulated him with a rope.

2.1. On these allegations, final report was filed in P.R.C.No.18 of 2013 before the Judicial Magistrate No.I, Tiruvannamalai and the case was committed to the Court of Session, Tiruvannamalai in S.C.No.71 of 2015 for trial. As alluded to above, five persons viz. Muthukumaran (A1), Sakthivel (A2), Kumar @ Senthilkumar (A3), Mani @ Subramani (A4) and Thoppulan (A5) were charged for the offence under Section 120B read with 302 IPC. A1 to A4 were charged under Section 302 IPC and A1 to A5 under Section 302 IPC and A1 to A5 under Section 302 IPC read with 201 IPC.

3. Thoppulan (A5) filed Crl.O.P.No.2418 of 2014 for quashing the prosecution as against him and the learned Single Judge of this Court, by order dated 21.07.2014, quashed the prosecution qua Thoppulan (A5). Kumar @ Senthilkumar (A3), the petitioner herein filed Crl.M.P.No.4885 of 2015 in S.C.No.71 of 2015 under Section 227 Cr.P.C. for discharging him from the prosecution, which has been dismissed by the trial Court by the impugned order dated 28.07.2017, aggrieved by which, this revision petition has been filed under Section 397 read with 401 Cr.P.C.

4. Heard Mr.M.Palanivel, learned counsel for the petitioner/A3 and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

5. Mr.Palanivel, learned counsel submitted that there is absolutely no material to implicate Kumar @ Senthilkumar (A3) in the offence and his position is same as that of Thoppulan (A5), whose case was quashed by this Court in Crl.O.P.No.2418 of 2014.

6. Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

7. This Court gave its anxious consideration to the rival submissions.

8. This Court carefully perused the order dated 21.07.2014 in CrI.O.P.No.2418 of 2014. On facts, it is seen that Thoppulan (A5) was charged for being a conspirator along with A1 to A4 for eliminating the deceased Chandrasekar and this Court found that there was no credible material as against him to charge conspiracy. However, as regards the petitioner herein, he was not only a party to the conspiracy but, also played an active role along with A1, A2 and A4, in wrongfully restraining the deceased, tying him up and strangulating him. It is seen that Muthukumaran (A1) has given an extra judicial confession to the Village Administrative Officer, wherein, he has implicated the petitioner herein.

9. Mr.Palanivel, learned counsel contended that the extra judicial confession could at the most be relevant under Section 30 of the Indian Evidence Act, 1872 and cannot be treated as a substantive piece of evidence against the petitioner. Learned Government Advocate (CrI. Side) brought to the notice of this Court that after arrest of the petitioner, fake nagamani stones were recovered from him, pursuant to the disclosure statement given by him. Mr.Palanivel, learned counsel contended that the police have not been able to identify the person in Chennai, who was allegedly cheated by the accused of Rs.25 lakhs.

10. In the opinion of this Court, just because the police was not able to identify the person, who was allegedly cheated by the accused, cannot be a good reason to exonerate the petitioner herein from the prosecution. It is trite that, even a strong suspicion is enough to frame a charge following the judgment of the Supreme Court in Akbar Hussain Vs. State of Jammu and Kashmir and Another [(2018) 16 SCC 85]. That apart, when there is a reasonable ground that two or more persons conspired to commit an offence, the provision of Section 10 of the Indian Evidence Act, 1872 will stand attracted under which, the evidence as against one accused can be held relevant as against the other. In such view of the matter, it cannot be stated that there are no prima facie materials against the petitioner to frame charge.

In the result, this petition is dismissed being devoid of merits. The trial Court is directed to frame charges against the accused and proceed with the trial

expeditiously without in any manner being influenced by what is stated above. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Thiruvannamalai.

2.The Inspector of Police,
Crime Branch, C.I.D.,
Thiruvannamalai,
Thiruvannamalai District.

3.The Public Prosecutor,
High Court, Madras.

4.The Deputy Registrar,
Criminal Section, High Court
(The records, if any, shall be sent back to the trial
Court forthwith.)

+1cc to Mr.M.Palanivel , Advocate SR.No. 72875
Crl.R.C.No.1208 of 2017

A.SK(14/10/2019)

