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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.26049 of 2019

and

Crl.M.P.Nos.13872 & 13873 of 2019

Settu @ Kavanur Settu @ Muniappan .. Petitioner

Vs.

1.The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram District.

2.Elumalai .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in PRC No.28 of 2000 pending before the Judicial Magistrate No.1, Villupuram, Villupuram District and quash the same.

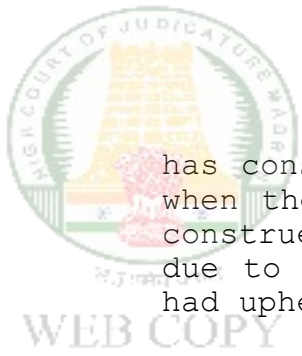
For Petitioner : Mr.J.Karuppiyah for
Mr.D.Vairamoorthy

For Respondents : Mr.C.Iyyappraj for R1
Additional Public Prosecutor

ORDER

For an offence that is sought to have taken place in the year 1999, the charge sheet has been filed on 27.03.2000, which was taken on file in PRC.No.28 of 2000. It is stated that the committal proceeding is yet to be commenced.

2. Apparently, 19 years have been lapsed from the date of filling of the charge sheet without any adequate progress. The Hon'ble Supreme Court in the case of A.R.Antulay Vs. R.S.Nayak & Another reported in 1988 AIR 1531 has held that unexplained delay in the trial infringes the rights of the parties to a speedy trial. In the case of Santosh De Vs. Archana Guha and others reported in AIR 1994 SC 1229, the Hon'ble Supreme Court



has considered the decision of A.R.Antulay (supra) and held that when the delay is not attributable to the accused, it has to be construed that speedy trial has been denied to the accused and due to the unexplained delay therein, the Hon'ble Supreme Court had upheld the order quashing the criminal trial.

3. In the instant case also, it is not the case of the prosecution that the delay of 19 years had occurred on account of the accused. While that being so, it can be only be held, in the light of the above decisions, that such an inordinate delay of 19 years of pending the criminal proceedings would amount to denial of a speedy trial, which has been recognized to be a constitutional right.

4. There is yet another aspect to the case which has been pointed out by the learned counsel, that the petitioner herein, who has been arrayed as 8th accused, has been implicated for an offence under Section 395 IPC r/w 36 E Tamil Nadu Foreigners Act, based on the confession statement of the co-accused. A perusal of the charge sheet does not reveal that there were other independent materials to implicate the petitioner herein as an accused. Apart from the confession statement of the co-accused, it is also not the case of the prosecution that the recovery was made, pursuant to the confession statement of the co-accused.

5. The Hon'ble Supreme Court in the case of Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another reported in CrI.Appeal No.714 of 2019 (@ SLP (Criminal) NO.5415 of 2017) has held that such an implication of a person as an accused on the basis of the statement of the co-accused is impermissible. The relevant portion of the judgment reads as follows:

"49. We also notice the following statement in judgment rendered by Bench of Seven learned Judges in Haricharan Kurmi Vs. 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



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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 other 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."

6. In view of the aforesaid reasonings and in the light of the decision of the Hon'ble Supreme Court of India, the petitioner would be entitled to succeed even on this ground that he cannot be implicated on the basis of the statement of the co-accused, without any recovery being made.



7. In the light of the above observations, the proceedings in PRC No.28 of 2000 pending on the file of the Judicial Magistrate No.1, Villupuram, Villupuram District, is quashed. The Criminal Original Petition stands allowed accordingly. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Inspector of Police,
Villupuram Taluk Police Station,
Villupuram District.

2.The Judicial Magistrate No.1,
Villupuram, Villupuram District.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.D.Vairamoorthy Advocate sr 99573

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