

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.23616 of 2018

and

Crl.M.P.No.13265 of 2018

C.ThamizhChelvi

... Petitioner

Versus

1.State Rep By,
The Inspector of Police,
Palur Police Station,
Chengalpattu,
Kancheepuram District.

2.Kuttidurai

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for all the records and quash all the proceedings in C.C.No.200 of 2018 on the file of the learned Judicial Magistrate No.1, Chengalpet.

For Petitioner	: Mr.P.Kumaresan
For R1	: Ms.V.Sarathadevi
	Government Advocate (Crl.Side)
For R2	: No appearance

O R D E R

The petitioner herein, who is employed as Sub-Inspector of Police, has been arrayed as A3 for the offence under Sections 447, 379 and 511 r/w 120 (b) IPC.

2. The case of the prosecution is that the 1st and 2nd accused had trespassed into the Government land with a criminal intention to steal four teak wood trees after cutting the same into pieces, at the instigation and instruction of the petitioner/A3, in order to facilitate her house construction work, and hence, committed the alleged offences.

3. On the side of prosecution, 9 witnesses were examined. Apart from the complainant's evidence, while the 2nd witness is a formal witness, the 3rd and 4th witnesses are the observation mahazar witnesses. The 5th and 6th witnesses are the confession witnesses. The only material that could be available before the prosecution to establish their case is the confession of the 1st accused. Apart from such confession, there is no other statement to implicate the petitioner/A3 herein for the alleged offences.

4. It is a well settled proposition of law that confession is not a substantial piece of evidence against the accused and the co-accused. However, the Court below has now commenced the proceedings on the strength of the confession statement of the co-accused.

5. In the background of the settled proposition, the learned counsel for the petitioner/ A3 would submit that since the entire case rests on the confession of the co-accused, the same cannot be sustained in law, for which proposition, the learned counsel relied upon the decision of the Hon'ble Supreme Court reported in (2011) 10 SCC 165 in the case of (PANCHO Vs. STATE OF HARYANA).

6. The learned Government Advocate appearing for the first respondent relied upon the confession of A1 and stated that there was a categorical admission that A1 and A2, at the instigation of A3 had cut the teak-wood trees for the purpose of facilitating her own house construction and if at all, the petitioner is aggrieved, it would be appropriate for her to substantiate her innocence during the course of trial.

7. When the prosecution relies upon the confession of A1 against the petitioner/A3, the proper approach would be to consider the other evidences against such an accused and if the said evidence appears to be satisfactory to sustain the charge framed against the said accused, the Court could turn to the confession with a view of assuring itself that the conclusion which it is inclined to draw from the other evidence is right. This proposition has been substantiated in the decision relied on by the learned counsel for the petitioner/A3 in the case of PANCHO's (supra) in the following manner:-

"23. As against A-2, Pancho, the prosecution is relying mainly on the extra-judicial confessional statement of A-1, pratham. The question which needs to be considered is what is the evidentiary value of the retracted confession of a co-accused?

"24. The law on this point is well settled by a cantena of judgments of this Court. We may, however, refer to only two judgments to which our attention is drawn by Mr.Lalit, learned Senior Counsel. In Kashmira Singh v. State of M.P (AIR 1952 SC 159: 1952 Cri LJ 839), referring to the judgment of the Privy Council in Bhuboni Shau v. R. (1948-49) 76 IA 147 : (1949) 50 Cri LJ 872) and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty (ILR (1911) 38 Cal 559), this Court observed that the proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is

believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid."

8. When, admittedly the only material available before the Trial Court is the confession of the co-accused, which is sought to be used against the petitioner/A3 herein, the reliance on the same would be opposed to the well settled proposition as enunciated in various decisions of the Apex Court, including the decision referred to above. While that being so, no useful purpose would be served by subjecting the petitioner to the ordeal of criminal trial, when the final decision against the petitioner herein is apparently in his favour.

9. In the light of the above observations, the charge sheet in the proceedings in C.C.No.200 of 2018 on the file of the learned Judicial Magistrate No.I, Chengelpet, in so far as it relates to the petitioner /A3 is concerned, stands quashed and this Criminal Original petition is allowed accordingly. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sbn/klt
To

- 1.The Inspector of Police,
Palur Police Station,
Chengalpattu,
Kancheepuram District.
- 2.The Public Prosecutor,
High Court,
Madras.
- 3.The Judicial Magistrate, No.I,
Chengalpattu.

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gp (CO)
A.SK(27/11/2019)