



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P(MD)No.9457 of 2019

and

Cr1.M.P. (MD)Nos.6025 and 6026 of 2019

1.S.R.K.Balasubramani

2.Premalatha

... Petitioners / Accused Nos.3 & 4

Vs.

1.State rep. by

The Inspector of Police,

Sempatti Police Station,

Dindigul District.

(Crime No.129 of 2011)

...1st Respondent / Complainant

2.N.Gunasekaran

... 2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in respect of C.C.No.270 of 2012 on the file of the Judicial Magistrate No.I, Dindigul and quash the same.

For Petitioners : Mr.D.Venkatesh

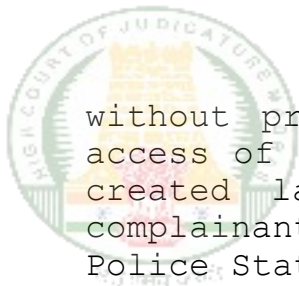
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate(crl.side)

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.270 of 2012, on the file of the Judicial Magistrate No.I, Dindigul, as against the petitioners.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

3. It is seen from records that F.I.R. was registered in Crime No.129 of 2011 against the petitioners for the offences under Sections 143, 341 & 290 of I.P.C., and Section 177 of Motor Vehicles Act, on the ground that the petitioners and other accused gathered at the junction near Sithayyankottai old bus stand in 10 four wheelers for election campaign. The election campaign was conducted



without prior permission. Thereby, they caused hindrance to the access of general public and for vehicle movements. They also have created law and order problem. It is also seen that the complainant in the F.I.R. is the Inspector of Police, Sempatti Police Station, Dindigul District.

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4.The investigation was conducted by the very same Inspector of Police and a final report has also been filed by the very same Inspector of Police.

5.The case is squarely covered by the judgment of the Honourable Supreme Court of India, in **Mohan Lal .Vs. The State of Punjab**, in Crl.A.No.1880 of 2011 dated 16.08.2018. It will be useful to extract the relevant portions of the judgment which is as follows:

"5. We have considered the submissions on behalf of the parties. The primary question for our consideration in the present appeal is, whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person. In such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as NDPS Act, carrying a reverse burden of proof.

11. A fair trial to an accused, a constitutional guarantee under Article 21 of the Constitution, would be a hollow promise if the investigation in a NDPS case were not to be fair or raises serious questions about its fairness apparent on the face of the investigation. In the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. The obligation of proof beyond reasonable doubt will take within its ambit a fair investigation, in absence of which there can be no fair trial. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Investigation in such a case would then become an empty formality and a farce. Such an interpretation therefore naturally has to be avoided.



must be free from objectionable features or infirmities which may legitimately lead to a grievance on part of the accused was noticed in Babubhai vs. State of Gujarat, (2010) 12 SCC 254 as follows:

"32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The investigating officer "is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth".

33. In State of Bihar v. P.P. Sharma this Court has held as under:

"57. ... Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism. ... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.

* * *

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. ...

61. An investigating officer who is not sensitive to the constitutional mandates, may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."



guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

6. Here is a case, where the complainant is the Investigation Officer and also the person, who filed the final report is the same officer. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

7. In the facts and circumstances of the case, the proceedings in C.C.No.270 of 2012 on the file of the Judicial Magistrate No.I, Dindigul, is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

- 1.The Judicial Magistrate No.I,
Dindigul.
- 2.The Inspector of Police,
Sempatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.D.VENKATESH, Advocate Sr. No. 91311

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