



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 08.08.2019

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD).No.10906 of 2019 and
CRL.M.P. (MD)Nos.6858 & 6860 of 2019

S.Seeni Annadurai

... Petitioner/Accused No.2

-Vs-

1. The State rep. by,
The Inspector of Police,
Pattukottai Town Police Station,
Pattukottai,
Thanjavur District.
(Crime No.307 of 2016)

... 1st Respondent/Complainant

2. B.Parivel Karthick

... 2nd Respondent/
Defacto Complainant

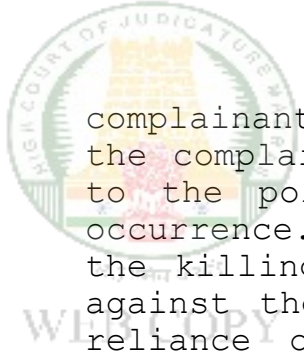
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records in S.C.No.96 of 2019 on the file of the learned II Additional District and Sessions Judge, Pattukottai, Thanjavur District and quash the entire proceedings in so far as the petitioner is concerned.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
for Mr.M.Saravanakumar
For R-1 : Mr.A.Robinson,
Government Advocate (Crl.Side)

O R D E R

The petitioner herein is shown as accused No.2 in S.C.No.96 of 2019 on the file of the learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District. The petitioner is facing charge under Sections 120(b) r/w 302 and 302 r/w 109 of I.P.C. There are totally 24 accused in this case. This Criminal Original petition has been for filed quashing the criminal proceedings in so far as the petitioner is concerned.

2. The learned Senior counsel appearing for the petitioner points out that even though the petitioner was implicated as one of the assailants by the defacto complainant, later the defacto



complainant turned turtle and stated before the police that he gave the complaint in a state of stress and tension. Now even according to the police, the petitioner was not present in the scene of occurrence. Now the case against the petitioner is that he funded the killing of the deceased in support of this charge. The charge against the petitioner is one of abetment. The prosecution places reliance on the statement of one Gnanasekaran and another one Arasukumar. Sum and substance of their statement is that they saw two of the accused, namely, accused Nos.5 and 17 entered the house of the petitioner, 10 days prior to the occurrence. Except this material, there appears to be no other material against the petitioner herein.

3. I find the submissions of the learned Senior counsel quite attractive. But then, the Hon'ble Supreme Court in a recent decision made in C.A.No.1082 of 2019 dated 31.07.2019 (Chilakamarthi Venkateswarlu and others V. State of Andhra Pradesh and others) held as follows:-

"12. The plenary inherent jurisdiction of the Court under Section 482 of Code of Criminal Procedure may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.

13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice.

14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could have sought relief.

15. In exercising jurisdiction under Section 482, it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry



into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in Zandu Pharmaceutical Works Ltd., and Ors. V. Mohd. Sharful Haque and Anr. MANU/SC/0932/2004: (2005) 1 SCC 122.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W.Palanitkar and Ors. V. State of Bihar and Anr. MANU/SC/0672/2001: (2002) 1 SCC 241. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision."

4. Even though the petitioner may have a formidable case, still it would be the function of the learned trial Judge to appreciate the materials placed by the prosecution against the petitioner. It is only in this view of the matter, I decline to quash the criminal proceedings against the petitioner. All the defences and contentions of the petitioner are left open.

5. Taking note of the age of the petitioner, the trial Court will insist on the appearance of the petitioner only on three occasions, namely, i) framing of charge, ii) examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the personal appearance of the petitioner will be dispensed with. Of course, on all other occasions, the petitioner will have to be represented by his counsel.

6. With this observation, the Criminal Appeal stands disposed of. No costs.

Sd/-

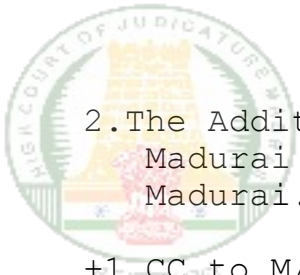
Assistant Registrar

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Sub Assistant Registrar

To

1. The Inspector of Police,
Pattukottai Town Police Station,
Pattukottai,
Thanjavur District.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-81028[F] dated
09/08/2019)

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