

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.No.22119 of 2013 and
Crl.M.P.No.1 of 2013

Premchand

... Petitioner

Vs.

1.State, rep. by Inspector of Police,
Chennai City, Central Crime Branch,
Egmore, Chennai - 600 008.
(Crime No.93 of 2003).

2.Balasubramanian

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the C.C.No.8042 of 2006 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.G.Saravanan for
M/s.Pass Associates

For R1 : M/s.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8042 of 2006 pending on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

2.The petitioner/A4 is facing trail in C.C.No.8042 of 2006 for the offence under Sections 420, 467, 468, 471 r/w 468, 34, 472 & 485 of IPC and Section 474, 485 of IPC on the allegations that the petitioner along with other accused approached the defacto complainant and availed loan for a sum of Rs.2,75,000/- by producing the fake and fabricated RC Book in respect of the vehicle bearing registration No.TN 45 E 3360.

3.The learned counsel for the petitioner would submit that the only material available as against this petitioner is the confession statement of the co-accused viz., A1, who is passed away on 15.08.2018. The learned counsel would further submit that if this confession statement is to be used against this petitioner, the same can be done only in line with Section 30 of the Evidence Act. Excepting the confession of the 1st accused, there is absolutely no other material available against him and hence, the confession of the 1st accused is a very weak piece of evidence and the Court should not start with the confession of the co-accused in a case and it must begin with the other evidence available on records and no useful purpose would be served by subjecting the petitioner to the ordeal of the criminal trial.

4.In order to substantiate his arguments, the learned counsel for the petitioner relied upon the following decisions:-

(i) Guddu Singh @ Vikram Singh Versus The Intelligence Officer, NCB South Zone, Chennai, dated 17.01.2013, in which it has been held as follows:-

"15. It is clear from the above judgments, that the confession of a co-accused is a very weak piece of evidence and the Court should not start with the confession of a co-accused in a case and it must begin with the other evidence available on record, and the Court must then form its opinion with regard to the quality and effect of the said evidence and thereafter, the Court can turn to the confession, in order to receive assurances to the conclusion of guilt. Eventually the accused persons must have been tried jointly."

(ii) C.ThamizhChelvi Versus State rep by, the Inspector of Police, Kancheepuram, dated 27.09.2019, in which it has been held as follows:-

"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 in CrI.O.P.No.23616 of 2018. While that being so, no useful purpose would be served by subjecting the petitioner to the ordeal of the criminal trial, when the final

decision against the petitioner herein is apparently in his favour."

(iii) T.K.Justin Marshal Versus The Inspector of Police, Kanyakumari District, dated 29.06.2018, in which it has been held as follows:-

"9.Since it is beyond dispute that the entire material available against the petitioner is the confession of the co-accused, this Court is of the view that the prosecution against the petitioner has absolutely no legs to stand on. When the possibility of the contention of the petitioner is not just bleak but zero based on the available materials on record, permitting such a prosecution to continue can only be termed as an abuse of legal process. In this view of the matter, this Court has no hesitation to quash the impugned proceedings insofar as the petitioner is concerned."

(iv) Haricharan Kurmi Versus State of Bihar reported in AIR 1964 SUPREME COURT 1184, dated 03.02.1964, in which it has been held as follows:-

"It would be notice that as a result of the provisions contained in S.30, the confession has not doubt to be regarded as amounting to evidence in a general way. Because whatever is considered by the Court is evidence; circumstances which are consider 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 is not evidence as defined by S. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of 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."

5.The learned Additional Public Prosecutor appearing for the 1st respondent would submit that in the present case the petitioner along with the other accused obtained loan from the

defacto complainant by producing the fake and fabricated RC Book in respect of the vehicle bearing registration No.TN 45 E 3360. He would further submit that the statement of LW2 clearly established the active connivance of the role played by the accused persons and if at all, the petitioner is aggrieved, it would be appropriate for him to substantiate his innocence during the course of trial and though the confession of the co-accused is a weak piece of evidence, it has to be decided only during the trial. Hence, he prayed for dismissal of the quash petition.

6.This Court has considered the rival submissions and perused the materials available on record.

7.In the present case, the 1st respondent registered an F.I.R in the year 2003 and filed the charge sheet in the year 2006 and the petitioner filed this quash petition after the lapse of seven years by challenging the said charge sheet. It is seen that though the confession of the co-accused is a very weak piece of evidence, the list of witnesses cited in the charge sheet clearly established the role played by the accused persons. Hence, the points raised by the learned counsel for the petitioner have to be decided only during the trial and not in this quash petition. This Court does not want to interfere with the proceedings and it is left open to the petitioner to raise all the contentions before the Court below in the course of trial.

8.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vv2

To

1.The Additional Chief Metropolitan Magistrate,
Egmore,
Chennai.

WEB COPY

2.The Inspector of Police,
Chennai City, Central Crime Branch,
Egmore, Chennai - 600 008.

3.The Public Prosecutor,
High Court of Madras.

+lcc to M/s. Pass Associates, Advocate, SR.No.6552.

CRL.O.P.No.22119 of 2013

SSD(CO)
CSR: 25.02.2020



WEB COPY