

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2511 of 2020
and
CRL.M.P.Nos.1530 and 1531 of 2020

M.Sakthivel

...Petitioner/Accused No.13

Vs.

The State Represented by
Inspector of Police,
Grand Bazaar Police Station,
Pondichery.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the C.C.No.1088 of 2019, on the file of the Chief Judicial Magistrate Court, Pondicherry and to quash the same.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the C.C.No.1088 of 2019, on the file of the Chief Judicial Magistrate Court, Pondicherry and to quash the same.

2. There are totally 14 accused, in which the petitioner is arrayed as 13th accused. The petitioner and others have been charged for the offence under Sections 468, 420 of IPC, under Section 5 r/w.7(3) of Lottery Regulation Act, 1998 and under Section 66-A of Information Technology Act, 2000 and it is alleged that the petitioner along with the other accused persons have sold banned lottery tickets through online by taking the last three digits account in the winners list in the Kerala lottery having six digits and sold numbers to accused No.2 Kumar and Saravanan through a cell phone message and thereby cheated the buyers of lottery tickets.

3. Admittedly, the petitioner's name is not found anywhere in the FIR and at the time of filing the charge sheet, he has been impleaded as an accused in this case.

4. The petitioner is running a shop in a near by place of occurrence and on the basis of confession statement made by the co-accused he has been impleaded in this case.

5. On perusal of records it is seen that no one spoke about the involvement of the petitioner in this case. Except the confession statement of the co-accused, no other materials have been produced by the prosecution to attract the offences under sections 468, 420 of IPC, under Section 5 r/w.7(3) of Lottery Regulation Act, 1998 and under Section 66-A of Information Technology Act, 2000. Therefore, no offence has been made out as against the petitioner.

6. It is also seen from the confession statement of the co-accused that the petitioner is one of the agent of lottery tickets. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.714 of 2019 dated 24.04.2019 in the case of Dipakbhai Jagdishchandra Patel vs. State of Gujarat and anr, as follows:-

"49.
... Thus, the confession of a coaccused 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.PC. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged."

7. It is seen that only on the basis of the co-accused statement the petitioner has been impleaded in this case and no other statement has been recorded from any other witnesses through the prosecution. Accordingly the Criminal Original Petition is allowed. Therefore, the entire proceedings cannot be sustained as against the petitioner alone and it is liable to quashed as against the petitioner. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tta

To

1.The Chief Judicial Magistrate
Pondicherry

2.Inspector of Police,
Grand Bazaar Police Station,
Pondichery.

+1cc to M/s.Public Prosecutor, Pondy, Advocate, S.R.No.18964

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.19189

CRL.O.P.No.2511 of 2020

BS (CO)
RN(26/06/2020)