

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2890 of 2020
and Crl.MP.Nos.1753 & 1754 of 2020

1.Logasamy
2.Rajasekar
3.Chandrasekaran
4.K.Karthik
5.K.Suresh

... Petitioners

Vs.

The State by
Inspector of Police,
Erode North Police Station,
Erode District
Crime No.80/2018

... Respondent

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case in CC.No.269 of 2019 on the file of the Judicial Magistrate Court No.I, Erode and quash the same as far as the petitioners are concerned.

For Petitioners : Mr.I.C.Vasudevan

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.269 of 2019 on the file of the Judicial Magistrate Court No.I, Erode as far as the petitioners are concerned.

2. It is seen from records that F.I.R. was registered in Crime No.80 of 2018 against the petitioners and others for offences under Sections 8 & 9 of Tamil Nadu Gaming Act, 1930, on the ground that while conducting raid, without obtaining licence, the petitioners 2 to 5 along with others were playing cards styled as Vettattam in the City Recreation Club as per the permission given by its proprietor, namely the first petitioner and thereby committed offence. It is also seen that the complainant is the Inspector of Police, Erode North Police Station, Erode District.

3. It is relevant to rely upon the judgment of the Honourable Supreme Court of India, in Mohan Lal .Vs. The State of Punjab, in Crl.A.No.1880 of 2011 dt.16.08.2018, wherein it is held 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.

12. That investigation in a criminal offence 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."

14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In

the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof. सत्यमेव जयते

26. Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case".

4. In the above case, it is clearly held that the informant and the investigator must not be the same person, and the said judgment is squarely applicable to the case on hand. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

5. In the facts and circumstances of the case, the proceedings in in C.C.No.269 of 2019 on the file of the Judicial Magistrate Court No.1, Erode is quashed as against the petitioners alone, and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS-III-MDU)

/true copy/

Sub Asst. Registrar

lok

To

1. The Judicial Magistrate No.I,
Erode.
2. The Inspector of Police,
Erode North Police Station,
Erode District
3. The Public Prosecutor,
Madras High Court,
Madras.

MRP - 4 copies

सत्यमेव जयते

CRL.O.P.No.2890 of 2020

WEB COPY