



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5366 of 2020

Salman Sharif

... Petitioner

Vs.

1. The State represented by,
Inspector of Police,
All Women Police Station,
Washermanpet.

2. H.Haseena

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the FIR in Crime No. 3 of 2019 dated 19.02.2019 punishable under Section 498(A) of IPC.

For Petitioner : Ms.A.Ajimath Begam

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Mr.B.Karthikeyan

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.3 of 2019 dated 19.02.2019 on the file of the first respondent for an offence under Section 498(A) of IPC as against the petitioner.

2. It is seen from records that F.I.R. was registered in Crime No.3 of 2019 against the petitioner for the offence under Section 498(A) of IPC. It is also seen that the complainant in the F.I.R. is the Sub Inspector of Police, All Women Police Station, Washermanpet.



3. As per the manual of the Tamil Nadu prohibition Act, 1937, below the rank of Inspector of Police not to register and investigate a case.

4. 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 dt.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.

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:



WEB COPY

"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."



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".

5. Here is a case where the complainant is the Investigation Officer. Therefore, the entire investigation becomes vitiated as held by the Honourable Supreme Court in the judgment referred supra.

6. In the facts and circumstances of the case, the proceedings in F.I.R. in Crime No.3 of 2019, dated 19.02.2019 on the file of the first respondent police for the offence under Section 498(A) of IPC is quashed and accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Inspector of Police,
All Women Police Station,
Washermanpet.
2. The Public Prosecutor,
Madras High Court,
Madras.

CRL.O.P.No.5366 of 2020

LN(CO)
CS/14/07/2020