

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6025 of 2020

and

CrI.M.P.No.3385 of 2020

Venkatesan

...Petitioner

Vs

The State Rep. By
Inspector of Police,
Tiruvannamalai Taluk Police Station,
Tiruvannamalai.
Crime No.320 of 2018

...Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pursuant to the SPL.SC.No.80 of 2019 Principal District and Sessions Court, Tiruvannamalai and quash the same by allowing this Criminal Original Petition

For Petitioner : Mr.M.Mariappan

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

ORDER

This petition has been filed to call for the entire records pursuant to the SPL.SC.No.80 of 2019 Principal District and Sessions Court, Tiruvannamalai and quash the same by allowing this Criminal Original Petition.

2. The case of the prosecution is that the respondent police was monitoring to stop the illegal sand mining at the time on 11.02.2018 at 11.00 a.m the 1st and 2nd accused were illegally taken the sand (3 Unit) in T TN 25 AP 6897 Lorry in Japti Kariyanthal river, after seeing the 2nd accused escaped from the occurrence place and the 1st accused was arrested by the respondent police and he confessed that he is the driver of the T TN 25 AP 6897 Lorry and the 2nd accused is the owner of the said vehicle. The defacto complainant had given false complaint against the accused there after the respondent

police was filed FIR under Sections 379 and 430 IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 in crime No.320 of 2018. Thereafter the respondent police had filed charge sheet and the same was taken on file in C.C.No.232 of 2018 on the file of the Judicial Magistrate No.II, Tiruvannamalai and thereafter it was transferred to the Principal District and Sessions Court, Tiruvannamalai and the same was taken on file in SPL.SC.No.80 of 2019. Hence the petitioner filed this Criminal Original Petition.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

4. It is relevant to rely upon the judgment of the Honourable Supreme Court of India, in Mohan Lal .Vs. The State of Punjab, in CrI.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.

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. In the above case, it is clearly held that the informant and the investigator must not be the same person, and the said judgement 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.

6. In the facts and circumstances of the case, the proceedings in Spl.S.C.No.80 of 2019 on the file of the Principal District and Sessions Court, Tiruvannamalai is quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Court,
Tiruvannamalai.

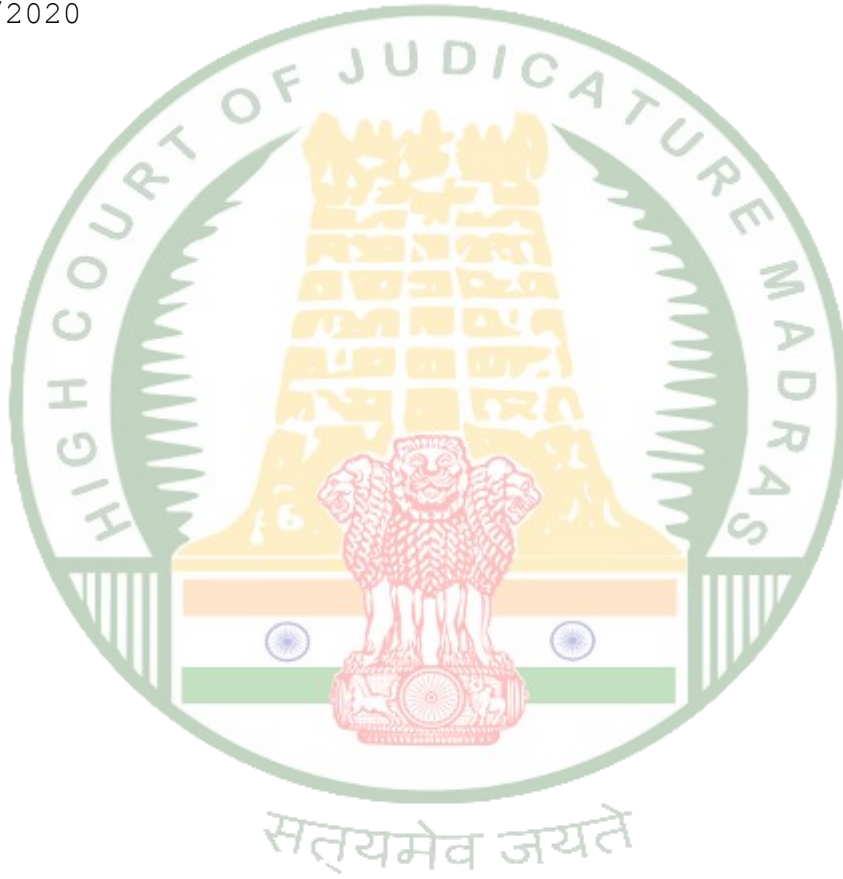
2.The Inspector of Police,
Tiruvannamalai Taluk Police Station,
Tiruvannamalai.

3.The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.N.Chinnaraj, Advocate, S.R.No.23758

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NRL (CO)
KKV/13/08/2020



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