

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2020
DELIVERED ON : 15.10.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.789 of 2020

The Deputy Superintendent of Police
Special Investigation Division
CB-CID, Chennai .. Petitioner/Complainant

vs.

1 Thirumurugan Gandhi
2 Vaiko
3 M.Tyson
4 Kavingar Validoss
5 Thabasi Kumaran .. Respondents/Accused

Criminal Revision filed under Sections 397 and 401 Cr.P.C. seeking to set aside the order dated 07.02.2020 passed by the Assistant Sessions Judge of Additional Special Court for cases relating to elected Members of Parliament and Member of Legislative Assembly of Tamil Nadu, Chennai in C.M.P. No.25629 of 2019 in C.C. No.74 of 2019.

For petitioner/State: Mr. A.Natarajan
Public Prosecutor
assisted by
Mr. Mohd. Muzammil
Govt. Advocate

सत्यमेव जयते

ORDER

This criminal revision has been filed seeking to set aside the order dated 07.02.2020 passed by the Assistant Judge of Additional Special Court for cases relating to elected Members of Parliament and Member of Legislative Assembly of Tamil Nadu, Chennai (for brevity "the Special Court") in C.M.P. No.25629 of 2019 in C.C. No.74 of 2019.

2 It is the case of the petitioner/State that on 20.05.2018, Thirumugan Gandhi (A.1), Vaiko (A.2), Tyson (A.3)

Page numbers

and their supporters numbering 500 gathered near Kannagi Statue Bus Stand to condole the genocide of Tamils in Eelam, in violation of prohibitory orders that was in force, at that time; therefore, the police registered a case in Zam Bazaar P.S. Cr. No.74 of 2018 on 20.05.2018 for the offences under Sections 143 and 188 IPC and Section 71(xv) and 41 of the Tamil Nadu Police Act, 1888, against the said trio and 500 others.

3 After completing the investigation, the Inspector of Police, Zam Bazaar Police Station filed a final report before the XIII Metropolitan Magistrate Court, Egmore, Chennai, which was taken on file on 02.08.2018 as C.C. No.5780 of 2018 and process was issued to Thirumurugan Gandhi (A.1), Vaiko (A.2), Tyson (A.3), Kavignar Validoss (A.4) and Thabasi Kumaran (A.5).

4 Pursuant to the directions of the Supreme Court to constitute Special Courts for dealing with cases of elected Members of Parliament and Members of Legislative Assembly, the case in C.C. No.5780 of 2018 was transferred from the file of the XIII Metropolitan Magistrate Court, Egmore, Chennai, to the file of the II Metropolitan Magistrate Court, Egmore, Chennai, on 25.03.2019 because, Vaiko (A2) became a Rajya Sabha Member. The II Metropolitan Magistrate, Chennai, furnished copies of documents under Section 207 Cr.P.C. to the accused on 26.09.2019 and charges were framed against them for the offences under Section 143 IPC, Section 41 of the Tamil Nadu Police Act and Section 7(1) of the Criminal Law Amendment Act. All the accused pleaded not guilty.

5 Again, the case was transferred from the file of the II Metropolitan Magistrate Court, Egmore, to the file of the Special Court for MP/MLAs Cases in the Assistant Sessions Court level on 18.11.2019 and was re-numbered as C.C. No.74 of 2019. The case is now ready for examination of witnesses.

6 While this being so, for the inflammatory speeches made by Thirumurugan Gandhi (A.1) on various dates at various places, FIRs were registered against him in the jurisdictional police station concerned, viz., Cr.No.110 of 2018 by R.10 M.G.R. Nagar Police Station, Cr. No.2773 of 2017, Cr.No.2540 of 2017 and Cr. No.143 of 2018 by F3, Nungambakkam Police Station, Cr.No.80 of 2018 by Thiruvengadu Police Station, Cr.No.274 of 2018 by the Central Crime Branch, etc.

7 Thirumurugan Gandhi (A.1) filed quash applications in CrI.O.P. Nos.30026 of 2018, etc. batch¹ under Section 482 seeking

¹ decided on 09.07.2019

quashment of the FIRs registered against him. Pertinent it is to point out that, he had not challenged the prosecution in Zam Bazaar P.S. Cr.No.74 of 2018 which is now pending trial as C.C. No.74 of 2019 on the file of the Special Court, Chennai.

8 The quash petitions were heard by this Court and by a common order dated 09.07.2019, all the quash petitions were dismissed. In paragraph no.13 of the said order, this Court made the following observations:

"13. This Court is of the considered view that there are prima facie materials available against the petitioner and there are absolutely no grounds to interfere with the investigation conducted by the respondent Police at this stage. It is also important for the respondent Police to investigate thoroughly and see if there is a larger net and whether the petitioner is only the face of it."

9 Subsequently, the Director General of Police, pursuant to the letter dated 11.07.2019 addressed by the Public Prosecutor, Madras High Court, seemingly issued in pursuance of the order dated 09.07.2019 passed by this Court, issued proceedings dated 16.07.2019 transferring all the FIRs pending investigation against Thirumurugan Gandhi (A.1) from the file of various police stations, to the file of the Crime Branch-CID, besides directing the CB-CID to follow up the cases against Thirumurugan Gandhi (A.1) that are pending trial in the Courts. It will be apposite to extract the relevant portion of the said proceedings issued by the Director General of Police:

"2 In this regard, the Commissioner of Police, Greater Chennai Police, Chennai, Superintendents of Police, Nagapattinam, Kanniyakumari, Thoothukudi and Thanjavur Districts are requested to direct the concerned officer to hand over the CD files to CB-CID for further investigation of UI cases and follow up action in PT case.

3 The Director General of Police, Crime Branch CID, Chennai, is requested to instruct the concerned officials to receive the C.D. files and connected records and nominate investigating officers to take up further investigation in UI cases and follow up action in PT cases."

(emphasis supplied)

10 This being so, the CB-CID filed an application in C.C. No.74 of 2019 before the Special Court under Section 173(8) Cr.P.C. praying for further investigation. The said petition was taken on file as Crl.M.P. No.25629 of 2019 in C.C. No.74 of 2019. The Special Court heard the prosecution and the accused and by order dated 07.02.2020, dismissed the said petition, aggrieved by which, the CB-CID is before this Court.

11 Heard Mr. A. Natarajan, learned Public Prosecutor appearing for the petitioner/State, assisted by Mr. Mohd. Muzammil, learned Government Advocate.

12 Mr. A. Natarajan assailed the impugned order passed by the Special Court by contending that the Special Court ought not to have heard the accused and rather, should have given permission for the State to conduct further investigation. He further submitted that the observation made by this Court vide order dated 09.07.2019 while dismissing the quash applications of Thirumurugan Gandhi (A.1) is the *raison d'être* for the CB-CID to seek further investigation in the case. In support of his contentions, he placed reliance on the judgments of the Supreme Court in *State of Andhra Pradesh vs. A.S. Peter*², *State of Bihar and another vs. J.A.C. Saldanha and others*³, *Sathishkumar Nyalchand Shah vs. State of Gujarat and others*⁴ and the judgment of this Court in *P. Ravindranath vs. K. Chandragandhi and others*⁵. He also took this Court through the speeches allegedly made by Thirumurugan Gandhi (A.1) to highlight the venom in them.

13 This Court gave its anxious consideration to the submissions made by the learned Public Prosecutor.

14 The power of the police to conduct further investigation even after the final report is filed is no more *res integra* and the judgments of the Supreme Court on this aspect are a legion. Likewise, as rightly contended by Mr.A.Natarajan, the Special Court need not have heard the accused while dealing with the request of the police for further investigation under Section 173(8) Cr.P.C. One of the grounds on which the Special Court has rejected the request of the State for further investigation is that, the final report has been filed by the Inspector of Police, Zam Bazaar Police Station,

² AIR 2008 SC 1052

³ (1980) 1 SCC 554

⁴ (2020) 4 SCC 22

⁵ 2015 (4) MLJ (Crl.) 46

but, the prayer for further investigation has been made by the CB-CID. In the light of the judgment of the Supreme Court in A.S. Peter (supra), this ground may not have legs to stand. Ergo, it is imperative for this Court to independently analyse whether the request for further investigation under Section 173 (8) Cr.P.C. sought by the CB-CID deserves to be acceded to.

15 The observation made by this Court in the order dated 09.07.2019 which has been extracted in paragraph No.8 above, can, by stretch of imagination, be used to justify the request for further investigation, because, in the said order, this Court was dealing with the cases that were pending investigation against Thirumurugan Gandhi (A.1) and while dismissing the quash petitions, this Court made such an observation. The said observation is not a carte blanche for the police to seek further investigation in C.C. No.74 of 2019 pending trial. The Director General of Police was conscious of the fact that nothing much could be done to unearth the international links allegedly operating Thirumurugan Gandhi (A.1) in the cases that are pending trials before the criminal Courts and that is why, he has guardedly directed the CB-CID to follow up the pending trial cases and conduct further investigation only in cases which are under investigation.

16 What is the sum and substance of the allegation in the Zam Bazaar P.S. Cr. No.74 of 2018 which had culminated into C.C. No.74 of 2019? The allegation in the said case is that, Thirumurugan Gandhi (A.1), along with Vaiko, M.P. and others, gathered near the Kannagi Statue Bus Stand on 20.05.2018 to condole the genocide of Eelam Tamils, in violation of prohibitory orders. Be it noted that Thirumurugan Gandhi (A.1) is not the only accused in that case. Apart from him, four other persons have been arrayed as accused and one of them is Vaiko, M.P., a prominent opposition leader. This Court is at loss to understand as to what is there to conduct further investigation in a case, which relates to violation of prohibitory orders. If the State has credible materials in hand to show that the accused had violated the prohibitory orders at the instance of LTTE or ISI, Pakistan or Lashkar-e-Taiba etc., they can straightaway register a fresh FIR under the Unlawful Activities (Prevention) Act, 1967, instead of praying for a further investigation in this nondescript case. No power under the sun can prevent the police from investigating into the affairs of Thirumurugan Gandhi (A.1) and the persons behind him. Even a fresh FIR can be registered against him if the police have the materials to show that he is being operated by forces inimical to India. Even as per the proceedings dated 16.07.2019 issued by the the Director General of Police, there are as many

as 38 cases pending against Thirumurugan Gandhi (A.1). The expansive investigation which the CB-CID wants to do can be done in any of those cases instead of the case in C.C. No.79 of 2019 in Zam Bazaar P.S. Cr.No.74 of 2018 especially when it is ripe for trial and there is a direction by the Supreme Court to complete the cases related to elected Members of Parliament and Members of Legislative Assembly, expeditiously.

17 In such perspective of the matter, the impugned order passed by the Special Court deserves to be confirmed, of course, not on the grounds mentioned therein, but, on different grounds set out above.

In the result, this criminal revision is dismissed as being devoid of merits.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

cad

To

- 1 The Deputy Superintendent of Police
Special Investigation Division
CB-CID, Chennai
- 2 The Assistant Judge of Additional Special Court for MP/MLAs
Chennai 600 001
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104.

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Page numbers