

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.Nos.17947 & 17949 of 2020

and

Crl.M.P.Nos.7007, 7008, 7009 & 7010 of 2020

S.Karthik
S/o, Subburaj
No.8/9C, SLV Nagar,
Trichy road, Sulur,
Coimbatore-631 210.

...Petitioner in both the Crl.O.Ps/
A-24

-Vs-

1. State by The Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.

... Respondent / Complainant

2. P.Selvaraj
S/o, Ponnusamy,
Sub Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.

... Respondents in both the Crl.O.Ps
/ Defacto Complainant

Common Prayer: Criminal Original Petitions filed under section 482 of Criminal Procedure Code, to call for the entire records connected with the case in C.C.No.113 of 2012 and C.C.No.112 of 2012, on the file of the Judicial Magistrate No.VI, Coimbatore and quash the case in so far as the petitioners are concerned.

For Petitioner : Mr.C.Rajaguru

For Respondents : Ms.M.Prabhavathi
Additional Public Prosecutor

C O M M O N O R D E R

The Criminal Original Petitions have been laid by the petitioner/A24 seeking to call for the entire records connected with the cases in C.C.No.112 of 2012 and C.C.No.113 of 2012 on the file of the Judicial Magistrate Court No.VI, Coimbatore and quash the same insofar as the petitioner/A24 is concerned and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

2. The final report has been laid in the abovesaid two cases ie., in C.C.No.112 of 2012 and C.C.No.13 of 2012 against the petitioner and 74 others for the offences punishable under sections 2 of Prevention of Insults to National Honour Act, 1971, r/w section 353, 309 r/w section 149 IPC.

3. Briefly stated according to the prosecution, on the date of occurrence involved in the abovesaid two cases, on account of a girl student by name P.Panchu arrayed as 69th accused in the case, being late to the college hostel and the same had been questioned and consequently she had been abused with filthy language by Mrs.Thamaraiselvi (L.W.10), Associate Professor, officiating as the Girl Student's Hostel Warden of the Government Law College, Coimbatore. It is putforth that with reference to the abovesaid incidents, the petitioner along with 74 college students assembled in the college campus demanding the college management to take action against L.W.10 and following the strike conducted with reference to the same, it is putforth that the petitioner along with 74 college students burnt/torched the copy of the Constitution of India and the Indian Flag and for the alleged occurrence, the second respondent had preferred the complaints against the petitioner and 74 others and based on the same, the first respondent had registered the F.I.Rs against the petitioner and 74 others for the offences aforestated. Following the investigation conducted in the matter, according to the prosecution, inasmuch as, the petitioner and others had committed the offences as aforestated, the final reports had come to be lodged against them and the same had been taken cognizance by the Judicial Magistrate No.VI, Coimbatore for the offences punishable under sections 2 of Prevention of Insults to National Honour Act, 1971, r/w section 353, 309 r/w 149 IPC in C.C.No.112 of 2012 and C.C.No.113 of 2012 respectively.

4. Now according to the petitioner/accused, no such occurrence had taken place as alleged by the prosecution and further putforth that no ingredients of the offences levelled against them had been made out or established even prima facie by the prosecution and particularly it is stated that no specific

overt acts had been attributed against the petitioner and other accused with reference to the offences alleged to have been committed by them and further the 161 statements of the witnesses also do not disclose the commission of the offences put forth against the petitioner and others and thereby prayed for the quashing of the criminal cases laid against him.

5. Per contra, it is the contention of the Additional Public Prosecutor that specific offences had been levelled against the petitioner and other accused involved in the crime and with reference to the same, the statements had been recorded and if at all the petitioner has any grievance, he is entitled to face the trial and cross examine the prosecution witnesses during the course of trial and invite the final decision of the Court concerned and therefore contended that no case is made out for quashing the final reports as prayed for by the petitioner.

6. On a reading of the F.I.Rs and the final reports involved in the Criminal Original Petitions, it is evident that no specific overt act had been attributed against the petitioner and other students said to have been involved in the crime. Even the 161 statements relied upon by the prosecution also do not advance the case of the prosecution, particularly, with reference to the offences alleged to have been committed by the petitioner and others, more so, with reference to any overt act attributed against each and every student said to have been involved in the crime. Per contra, it is seen that the bare statements had been made that the accused involved in the crime had joined together and threatened the staff by resorting to agitation/strike. Such omnibus statements itself, per se, may not constitute the offences levelled against each and every individual student, since the criminal trial is contemplated only on the basis of definite allegations of commission of the offences by every individual student.

7. In the identical circumstances, this Court in the decision dated 14.12.2017, rendered in CrI.O.P.No.14296 of 2017 [V.Subramanian Vs. The State through the Inspector of Police, Kannankurichi Police Station, Salem] has quashed the proceedings for the absence of specified overt act against each and every student and the relevant portion of the judgment rendered in the abovesaid case is extracted below:

"5. On a perusal of the complaint as well as the statement of the witnesses under Section 161 (3) Cr.P.C, it is seen that none of the students have been implicated with overt acts for constituting the offences for which they are charged for.

6. It is generally averred that they had joined together and threatened the staff by throwing stones and damaging the college properties. The omnibus statement may not constitute the offences against each and every individual student, since criminal trial is contemplated only on the basis of definite allegations of commission of the offence by every individual student.

7. The learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in Sathish Mehra v. State of N.C.T. Of Delhi and Anr, AIR 2013 SC 506 and relevent paragraph of the said order read as follows:

"19. The view expressed by this court in Century Spinning's case (supra) and in 1.Muniswamy's case (supra) to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a Criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spinning and Munisawamy (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge-sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants, i.e., G.K.Bhat and R.K.Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the

accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No.21/91 to Anita Mehra or in cancelling the FD No.9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge-sheet filed before the Court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongly acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused-appellant G.K.Bhat and R.K.Arora."

8. The learned Additional Public Prosecutor submitted that specific charges have been levelled against the accused based on the statements obtained from witnesses and if at all the petitioners have any grievance, they can cross-examine the witnesses at the time of trial and quashing the charge sheet is not warranted.

9. As seen in the above said decision of the Hon'ble Supreme Court, in the instant also, there is no specific overt act imputed against each and every student, with reference to the offences he is charged for. In the absence of the same, I am unable to comprehend as to how the trial would be proceeded to arrive at a logical conclusion by implicating each and every individual student.

10. Though the petitioners herein are 5 among the 49 students, the overt acts as against all of them are one and the same. None of the accused have been individually implicated and no specific overt acts are attributed against the individual students and hence, this Court is of the view that the petitioners herein who are arrayed as accused 34,35,31,2 and 38 are entitled to succeed in this Criminal Original Petition. "

8. Considering the abovesaid proposition of law levelled in the aforesaid case, and when the same applies on all fours to the facts and circumstances of the present cases involved in the Criminal Original Petitions and in such view of the matter, as rightly putforth by the petitioner's counsel, the petitioner and others having been implicated or arrayed in the cases without any specific overt acts other than general allegations that all joined together in the commission of the alleged crime, as rightly putforth, the petitioner is entitled to obtain the relief sought for in the Criminal Original Petitions and accordingly, the impugned proceedings in C.C.No.112 of 2012 and C.C.No.113 of 2012 on the file of the Judicial Magistrate No.VI, Coimbatore are liable to be quashed insofar as the petitioner is concerned.

9. Accordingly, the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are also closed.

sd/
ASSISTANT REGISTRAR

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SUB-ASSISTANT REGISTRAR

mfa

To

1. The Judicial Magistrate No.VI,
Coimbatore.
2. The Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.
3. The Sub Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.
4. The Public Prosecutor,
High Court, Madras.

+2CC to Mr.C.Rajaguru, Advocate in SR.Nos.36588, 36589

सत्यमेव जयते
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and
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SRA(CO)
cs 19/12/2020

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