

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.27645 of 2019
and
Crl.M.P.Nos.14732 & 14733 of 2019

1.Govindaraj @ MK
2.Babu @ Fakrudeen ... Petitioners/Accused 9 & 10

Vs.

The State represented by
The Station House Officer,
Grand Bazaar Police Station,
Union of Puducherry. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pending on the file of the learned Chief Judicial Magistrate, Puducherry, Union of Puducherry in C.C.No.1088 of 2019 and quash the Criminal proceeding.

For Petitioners:Mr.E.Kannadasan for Mr.M.Machavatharan

For Respondent :Mr.V.Balamurugane Additional Public
Prosecutor(Pondicherry)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1088 of 2019, pending on the file of the learned Chief Judicial Magistrate, Puducherry, for the offences under Sections 468, 420, 109 IPC and Section 5 read with Section 7(3) of Lotteries Regulation Act, 1998, read with Section 34 of IPC, alleging that, on secret information about the selling of Three Digit Lottery at 45 feet road, Pudhcherry, the respondent police has inspected the said premises and found that A-1 viz.,

Velmurugan was standing near the Hero Honda motor cycle and had collected money from some people and gave some written paper to them. On enquiry, it revealed that they were selling Three Digit Lottery on other state viz., Kerala. Therefore, the first accused was arrested and a case has been registered in Crime No. 2 of 2017 for the offence under Sections 468, 420 of IPC. On investigation and after recording the confession of the first accused, other accused persons have implicated and filed final report for the offences under Sections 468, 420, 109 IPC and Section 5 read with Section 7(3) of Lotteries Regulation Act, 1998, read with Section 34 of IPC and the same has been taken cognizance by the Trial Court in C.C.No.1088 of 2019.

2 The learned counsel appearing for the petitioners would submit that except confession statement of the first accused says absolutely no material to connect the petitioner in this Crime. Therefore, the entire proceedings were vitiated and is unsustainable as against the petitioners.

3 The learned Additional Public Prosecutor would submit that the first accused categorically confessed that along with other accused persons, they have running a Three Digit Lottery business and they used to purchase from the other states and sold out in the State of Puducherry. On recording the confession statement of the first accused, the petitioner have been implicated as accused Nos. 9 & 10 in this case.

4 This Court has fully consider the submissions made on either sides and materials available on records.

5 On a perusal of the records, except confession statement of the first accused, there is no other material available to connect the petitioners for the offence under Sections 468, 420, 109 IPC and Section 5 read with Section 7(3) of Lotteries Regulation Act, 1998, read with Section 34 of IPC, though, LW4 and LW5 stated about the purchase of Lottery secrets from the first accused. Insofar as the petitioners are concerned, no other materials have been produced by the prosecution to connect the petitioner in this regard. It is relevant to extract the judgment passed by this Court in CrI.O.P.No.23062 of 2019, dated 28.08.2019, which reads as under:

It is now a settled law that a confession of a co-accused cannot by itself be taken as substantive piece of evidence against another co-accused and at the best, it can be used to lend assurance to Court. The law on the issue has been settled by the Hon'ble Supreme Court in Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue, Intelligence reported in 2018 3 MLJ Criminal 753. It

will also be relevant to rely upon the judgment of the Hon'ble Supreme Court in Dipakbhat Jagdishchandra Patel vs. State of Gujarat in Criminal Appeal No.714 of 2019 dated 24.04.2019. The relevant portions of the judgment is extracted hereunder:

"48. If the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered in deciding whether the charge has to be framed against the appellant or not. It is here that the law laid down by this Court in Suresh Budharmal Kalani Alias Pappu Kalani (supra) becomes applicable.

49. We also notice the following statement in judgment rendered by Bench of seven learned Judges in Haricharan Kurmi v. State of Bihar:

"As a result of the provisions contained in S.30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking

for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt".

50. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no material on the basis of which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against. Accordingly, we allow the appeal and the petition filed under Section 482 of the Cr.P.C. The Order impugned passed by the Sessions Judge framing the charge against the appellant will stand set aside and the appellant will stand discharged".

6 Therefore, the above judgment squarely applies to the case on hand and there is absolutely no material to proceed further as against the petitioners except a confession statement of the co-accused.

7 In view of the above discussion, entire proceedings as against the petitioners are vitiated and it is nothing but clearly an abuse of process of law. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.1088 of 2019 are quashed insofar as the petitioners are concerned. Further, the Trial Court is directed to complete the trial as

against the other accused persons within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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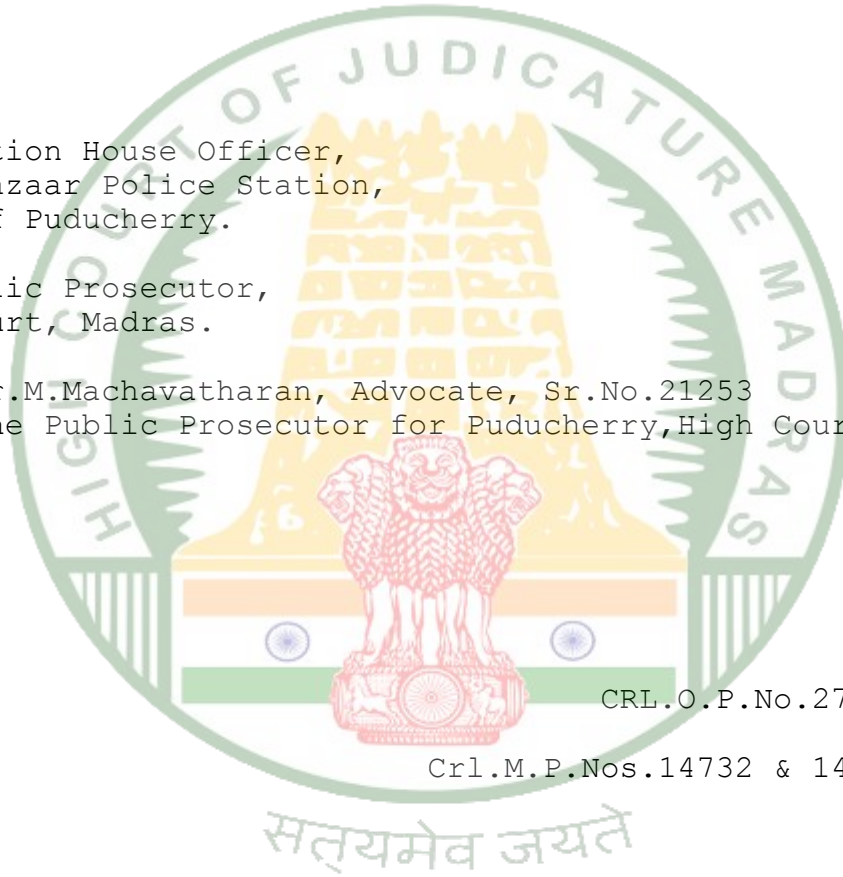
To

1.The Station House Officer,
Grand Bazaar Police Station,
Union of Puducherry.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Machavatharan, Advocate, Sr.No.21253

+1cc to The Public Prosecutor for Puducherry,High Court,Sr 21382



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