



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.8990 of 2016

and

Crl MP(MD)No.4437 of 2016

Selvam

... Petitioner /Accused No.2

Vs.

1.State, rep.by

The Inspector of Police,
K.Paramathi Velur Police Station,
Karur District.
(Crime No.139 of 2014)

... Respondent/Complainant

2.Prabhudoss

... Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the impugned charge sheet in C.C No.35 of 2015 on the file of the Judicial Magistrate No.II, Karur and quash the same insofar as the petitioner is concerned.

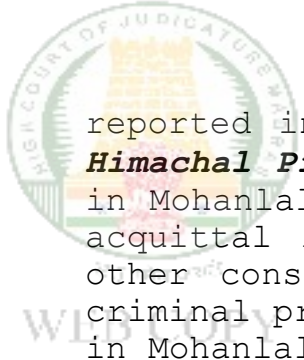
For Petitioner	:	Mr.D.Selvaraj
For Respondent No.1	:	Mr.A.Robinson, Government Advocate (crl.side)

ORDER

The petitioner is facing trial in C.C No.35 of 2015 on the file of the learned Judicial Magistrate No.II, Karur for the offence under Section 9(B) (1) (b) of Explosive Act.

2.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. The petitioner's counsel would point out that Mr.Prabhudoss, Inspector of Police, K.Paramathi Velur Police Station was the complainant. It was he who had registered the FIR and he had taken up the matter for investigation. In fact, he who filed the final report also. Therefore, the petitioner's counsel would contend that the impugned proceedings will have to be quashed in view of the judgment rendered in **(Mohanlal vs. State of Punjab, (2018) 4 MLJ 244)**. His pointed contention is that there has been infraction of the constitutional guarantee of a fair investigation. The Hon'ble Supreme Court has held that a fair investigation necessarily postulates that informant and the investigator must not be same person.

3.The learned Government Counsel (crl.side) submitted that even in the case on hand, even though Mr.Prabhudoss was shown as informant, the fact remains that he got secret information and that is how the case came to be registered. He was also drew my attention to a subsequent decision of the Hon'ble Supreme Court



reported in (2019) Supreme (SC) 143 (Varinder Kumar vs. State of Himachal Pradesh) in which it has been held that the law laid down in Mohanlal case should not be allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. It was specifically held that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohanlal shall continue to be governed by the individual facts of the case. This being a later decision, I am squarely bound by the same. Unless the petitioner makes out a case of prejudice, it is not possible to quash the impugned prosecution on the sole ground pleaded by the petitioner. I therefore leave this point open.

4.The other contentions urged by the petitioner's counsel are rather factual in nature and therefore, they will have to be necessarily established in a regular trial. Leaving open all the contentions and defences of the petitioner, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

5.Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with before the court below. Of course, the petitioner will have to appear when his presence is absolutely necessary and imperative. On all other hearings, he can be represented by his counsel.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes.
To

1.The Judicial Magistrate No.II,
Karur.

2.The Inspector of Police,
K.Paramathi Velur Police Station,
Karur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Cr1 OP(MD)No.8990 of 2016

and

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