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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.O.P.NO.759 OF 2019

AND

CRL.M.P.NO.499 OF 2019

Vijay

... Petitioner

Vs.

1. The State rep. by the
Deputy Superintendent of Police,
Tindivanam Sub-Division,
Villupuram District.

2. The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
(Crime No.272/2013)

3. Praveen Kumar

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in S.C.No.97 of 2016 on the file of learned Session Judge, (Special Judge for SC/ST cases) Villupuram, Villupuram District and quash the same as against this petitioner.

For Petitioner : Mr.K.Balu

For Respondents: Mrs.G.V.Kasthuri
Additional Public Prosecutor for R1 & R2
No appearance for R3

O R D E R

This Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records and quash the proceedings as against the accused in S.C.No.97 of 2016 on the file of learned Session Judge, (Special Judge for SC/ST cases) Villupuram, Villupuram District.



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2. The petitioner is arrayed as A.14 in S.C.No.97 of 2016 (Crime No.272 of 2013). The case has been filed on the complaint given by one Praveen Kumar, by alleging that there was some public clash in which properties have been damaged. This petitioner along with other accused is said to have assaulted and abused the victims by calling their caste name.

3. The learned counsel for the petitioner submitted that the petitioner who was shown as 14th accused in the case, was not in India on the date of occurrence i.e. on 25.04.2013. It is submitted that the petitioner had a work permit for the period between 21.09.2012 to 30.08.2013 for doing work at Singapore. He further submitted that the relevant passport entries of the petitioner would show that the petitioner had left India to Singapore on 09.09.2012 and came back to India only on 04.07.2013. By making such submissions, it is prayed that there is no prima facie materials available to rope this petitioner in this case. He has also cited the decision reported in the case of Mohd. Akram Siddiqui Vs. State of Bihar and another reported in (2019) 13 SCC 350, in support of his above contention.

4. The learned Additional Public Prosecutor submitted that the defence of alibi is a matter of fact and that has to be proved only before the trial Court and no petition to quash the proceedings can be entertained. It is further submitted that the petitioner had renewed his passport on 16.05.2013, which falls just after 19 days of the occurrence and hence, there is every possibility for the petitioner to be available in India at the time of occurrence. There is no second opinion that the power to quash the proceedings can be exercised by the Courts sparingly and only in some exceptional circumstances.

5. It is further submitted by the learned Additional Public Prosecutor that the defence like alibi can be proved only before the trial Court by producing any evidence in that regard. In fact, the learned Additional Public Prosecutor cited the decision reported in the case of Rajendra Singh Vs. State of U.P. and another reported in (2007) 7 SCC 378, in support of the above said contention.

6. In the said case, the High Court of U.P has accepted the plea of alibi made by the accused during the proceedings under Section 482 Cr.P.C and quashed the proceedings. The materials relied on by the High Court to arrive at such conclusion are the statement made by the witnesses under Section 161 Cr.P.C. The Hon'ble Supreme Court held that the statements of witnesses under Section 161 of Cr.P.C are inadmissible evidence and it is wrong on the part of the High Court to rely them in order to come to the conclusion that the petitioner was not available in the place of occurrence. The relevant portion of the judgement is extracted hereunder:



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"Having considered the submissions made by learned counsel for the parties, we are of the opinion that the statements of the witnesses under Section 161 Cr.P.C being wholly inadmissible in evidence could not at all be taken into consideration. The High Court relied upon wholly inadmissible evidence to set aside the order passed by the learned Sessions Judge. That apart, no finding on a plea of alibi can be recorded by the High Court for the first time in a petition under Section 482 Cr.P.C. As mentioned above, the burden to prove the plea of alibi lay upon the accused which he could do by leading evidence in the trial and not by filing some affidavits or statements purported to have been recorded under Section 161 Cr.P.C. The whole procedure adopted by the High Court is clearly illegal and cannot be sustained."

7. In this case the petitioner does not rely on the statements of witnesses. He has produced his original passport in order to prove before the Court that the petitioner had left the Country on 09.09.2012 and he continued to stay at Singapore till 04.07.2013. The endorsements in his passports would also show the same. However, he had renewed the passport on 16.05.2013 and in view of the same, his earlier passport was closed. It is to be noted that the renewal of the passport was done by the High Commission of India at Singapore. The signature with stamp made at the front page of the renewed passport itself would show that the petitioner had renewed his passport while he was staying in Singapore itself.

8. It is correct that the defence of alibi or any other defence based on bundle of facts should be proved only before the trial Court. But it is not wrong for the High Court to look into certain public documents, the veracity of which is not disputed. The passport produced in this case is one such document and hence, the endorsements on the passport cannot be self-styled ones.

9. The above point has been made clear in the above judgement reported in (2019) 13 SCC 350 [Mohd. Akram Siddiqui Vs. State of Bihar and another]. The relevant paragraphs of the said judgement are extracted hereunder:



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5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung Vs. Essem Chemical Industries 1; State of Haryana & Ors. Vs Bhajan Lal & Ors.² and Harshendra Kumar D. Vs. Rebatilata Koley Etc.³ to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be 1 2011(15) SCC 207 2 1992 Supp.(1) SC 335 3 (2011) 3 SCC 351 considered.

6. In the present case we have looked into the passport documents and immigration papers which have been brought on record before this Court by the accused-appellant. The said papers do indicate that on the date in question i.e. 27.08.2005 the accused-appellant was not in India. At no point of time either before the High Court or before this Court any dispute has been raised with regard to the said fact. The complainant had not made the appellant a party in the earlier complaint. In the subsequent FIR the grievance of the complainant is in respect of the incident alleged to have been taken place on 27.08.2005."

10. In the case in hand also it is established from the entries of the passport of the petitioner that he was not available in India on 25.04.2013, when the occurrence is said to have taken place.

11. In the case cited by the learned Special Public Prosecutor, it is seen that the High Court of U.P., had accepted the plea of alibi on the basis of 161 statements of witnesses. Hence, the Hon'ble Supreme Court reversed the said judgement of the High Court by holding that the High Court cannot accept the plea of alibi on the basis of fundamentally inadmissible evidence. But in this case, an undisputed public document like passport of the petitioner is produced to show that the petitioner was not available in India on the date of occurrence.

12. In this kind of case, it is unreasonable to compel the petitioner to undergo the rigorous process of trial. If the



petitioner is compelled to undergo the rigorous process of trial, then it will pave way for anyone to book a case against a person who was not available in India during an occurrence and harass him by dragging to criminal proceedings.

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13. Since the presence of the petitioner in India itself is ruled out through the entries of his passport and his Singapore work permit, no prima facie case can be made out against the petitioner. There may be instances where the accused might have been available in the town but not in the place of occurrence. There may even be some other instances where the accused would not have been available in the town but he was available in India. In those occasions, the accused has got no other option except to prove his absence only by producing relevant materials during the trial. But in cases where the accused is not available in India, the said fact can only be proved by the relevant documents like passports. When such documents are produced and its genuineness is not disputed, the Courts need not inhibit to take them into consideration for quashing the proceedings. If the very presence of the accused in India is not established, then there cannot be any prima facie material to make out a case against him.

14. Since the petitioner has proved through a public document that he is not available in India during the occurrence, the proceedings pending with the second respondent is liable to be quashed.

In the result, this Criminal Original Petition stands allowed and the proceedings pending on the file of learned Session Judge, (Special Judge for SC/ST cases), Villupuram District in S.C.No.97 of 2016 is quashed. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

Pns



To:

1. The Deputy Superintendent of Police,
Tindivanam Sub Division, Villupuram District.

2. The Inspector of Police,
Marakkanam Police Station,
Villupuram District.

3. The Session Judge,
(Special Judge for SC/ST cases) Villupuram.

4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.K.Balu, Advocate, S.R.No.55160

Crl.O.P.No.759 of 2019
and Crl.M.P.No.499 of 2019

AD(CO)
CS/30/11/2021
KM(21/12/2021)