

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.20795 OF 2020
AND CRL.M.P.NOS.8863 & 8864 OF 2020

Grace Banu

...Petitioner/Accused No.1

Vs.

State rep. by
The Inspector of Police,
J-3, Guindy Police Station,
Guindy,
Chennai.

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records connected with C.C.No.415 of 2019 pending on the file of IXth Metropolitan Magistrate, Saidapet and quash the charge sheet/final report with respect to the Petitioner/Accused No.1.

For Petitioner : Mr.C.Prabhu

For Respondent : Mr.M.Mohammed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed challenging the proceedings pending before the Court below in C.C.No.415 of 2019 pending on the file of IXth Metropolitan Magistrate, Saidapet.

2.The case of the prosecution is that the petitioner was heading a group of persons who were agitating against NEET examination without getting any permission and during the protest, they also intimidated the public servants and prevented the public servants from performing their duty and also attempted to lock the World Trade Organization Complex. Based on this complaint, the respondent registered an FIR in Crime No.2342 of 2017 for offences under Sections 143, 341, 188, 353, 447, 506(i) IPC.

3.On completion of the investigation, a final report has been filed against twelve accused persons and the petitioner has been arrayed as A1.

4.The learned counsel for the petitioner submitted that the materials collected by the respondent police in the course of investigation does not make out any of the offences as stated in the final report. The learned counsel further submitted that in the present case, the informant and the investigator is the same officer and in fact the statements that are available are the statements that were given by the police officers who are working in the very same police station headed by the respondent. The learned counsel therefore, submitted that the entire investigation is vitiated and the proceeding is liable to be quashed on that ground alone.

5.Per Contra, learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the accused persons were involved in a protest without any permission and were causing hindrance to the general public and had also prevented the officers from performing their public duty. That apart the accused persons involved themselves in criminal intimidation and even made an attempt to lock the gate of the World Trade Organization. The learned Additional Public Prosecutor submitted that there are prima facie materials and the petitioner has to necessarily undergo the trial and establish her defence.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.This Court finds force in the submission made by the learned counsel for the petitioner on the ground that the entire investigation is vitiated in view of the informant and the investigator being the same officer. There were conflicting judgments on this issue and ultimately, the law was settled by the Hon'ble Supreme Court of India in the case of Mukesh Singh vs. State (Narcotic Branch of Delhi) reported in 2020 (3) MWN (Cr) 40 (SC). The relevant portions in the judgment is extracted hereunder:

12. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in the cases of Bhagwan Singh v. State of Rajasthan (1976) 1 SCC 15; Megha Singh v. State of Haryana (1996) 11 SCC 709; and State by Inspector of Police, NIB, Tamil Nadu v. Rajangam (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal

are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.

8. It is clear from the above judgment that the mere fact that the informant and the investigator is the same officer cannot by itself vitiate the investigation and would suffer unfairness and the same has to be decided on a case to case basis.

9. In the present case, there is no dispute with regard to the fact that the respondent had registered the FIR and he had recorded the statements of the witnesses and he had laid the final report before the concerned Court. The Statements recorded by the respondent under Section 161 Cr.P.C. were collected from the police officers belonging to the same police station headed by the respondent. There are absolutely no independent witnesses who speak about the overt acts attributed against the petitioner. This factor, in the considered view of this Court, completely vitiates the investigation. If such criminal proceedings are allowed, in every case where a protest takes place, the police by themselves can register the FIR, be a witness for the incident, and also file the final report on the completion of the investigation. Such investigation can never be

fair and the attitude will be only to some how fix the accused persons and make them undergo the ordeal of trial.

10.In view of the above discussion, this Court finds that the entire investigation is vitiated in this case and the continuation of the proceedings against the petitioner will amount to abuse of process of Court and the same requires the interference of this Court under Section 482 Cr.P.C.

11.In the result, proceedings in C.C.No.415 of 2019 on the file of IXth Metropolitan Magistrate, Saidapet is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The IXth Metropolitan Magistrate, Saidapet.
2. The Chief Metropolitan Magistrate, Egmore, Chennai.
3. The Inspector of Police, J-3, Guindy Police Station, Guindy, Chennai.
4. The Public Prosecutor, Madras High Court, Chennai.

सत्यमेव जयते

CrI.O.P.No.20795 of 2020
and CrI.M.P.Nos.8863 & 8864 of 2020

SMI (CO)
KKV/19/03/2021

WEB COPY