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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

CRL.O.P.NO.23098 OF 2017

AND

CRL.M.P.NOS.13432 & 13433 OF 2017

Kandhasamy

... Petitioner/
2nd Accused

.Vs.

1. The Inspector of Police,
North Police Station,
Tiruppur,
Tiruppur District.

... 1st Respondent/
Complainant

2. J.Habeeb
Sub-Inspector of Police,
Tiruppur North Police Station,
Tiruppur.

... 2nd Respondent/
Defacto Complainant

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to final report in P.R.C.No.29 of 2015 (Tiruppur North PS Crime No.852 of 2015) on the file of the Judicial Magistrate No.1, Tiruppur, and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.Doraisamy

For R1 : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)

For R2 : Notice sent - Service awaited

O R D E R

This Criminal Original Petition has been filed to quash the final report in P.R.C.No.29 of 2015 on the file of the Judicial Magistrate No.1, Tiruppur.



2.The case of the prosecution is that, on 01.08.2015 at about 05.30 a.m., due to previous enmity against one Needhirajan, the accused 1 to 5 assembled at Tiruppur New Bus Stand with deadly weapons and were preparing to murder the said Needhirajan and commit dacoity in his house. However, it was thwarted by the 2nd respondent/Sub-Inspector of Police (L.W.1), thereby, the accused have been prosecuted for the offences under Sections 399 and 402 IPC.

3.The petitioner before this Court is A2.

4.The learned Senior Counsel for the petitioner submitted that, L.W.1 is none other than the Sub-Inspector of Police, and except him, no other witness has supported the case of the prosecution. Therefore, it is highly improbable to say that the accused conspired and made preparation to commit dacoity. In support of his submissions, the learned Senior Counsel relied upon the judgment of the Hon'ble Apex Court in the case of Chaturi Yadav and others v. State of Bihar [AIR 1979 SC 1412] and contended that, mere assembling in an isolated place will not constitute the offence under Sections 399 and 402 IPC. Therefore, the learned Senior Counsel submitted that the entire prosecution is nothing but an abuse of process of law and is liable to be quashed.

5.Heard the learned counsel on either side and perused the entire materials available on record.

6.At the outset, I am unable to persuade myself to accept the submissions made by the learned Senior Counsel for the petitioner. The prosecution has recorded the statements of many witnesses. The crux of the prosecution charges is that, due to previous enmity, in order to do away the said Needhirajan and to commit dacoity from this house, the accused assembled in the early morning hours on 01.08.2015, with deadly weapons and some of the accused were caught red-handed. The statements available on record also clearly show that some of the independent witnesses have also given their statements. Whether the assembly of the accused herein falls within the definition of Section 399 IPC and whether the offence is made out or not, has to be decided by the trial Court by appreciation of evidence. This Court, while exercising jurisdiction under Section 482 Cr.P.C. cannot conduct a roving enquiry nor appreciate the evidentiary value of the statements recorded during investigation and decide the matter at this stage itself. It is the domain of the trial Court to appreciate the facts and come to a conclusion as to whether the charges leveled against the accused are proved or not.



7.The judgment relied upon by the learned Senior Counsel, arose on appeal, wherein, the Hon'ble Apex Court, has set aside the conviction. In the said case, the trial has seen its logical end and the Hon'ble Apex Court has re-appreciated the evidence and interfered with the judgment of the High Court. Merely because the Hon'ble Apex Court has set aside the judgment passed by the High Court confirming the conviction and sentences passed by the trial Court for the offences under Sections 399 and 402 IPC, in an appeal, that cannot be a ground to quash the entire prosecution on hand by exercising powers under Section 482 Cr.P.C. at a pre-trial stage itself.

8.However, all the accused are at liberty to raise all their defence before the trial Court. The trial Court shall decide the issues on its own merits, and dispose the case as expeditiously as possible.

9.With the above observations, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mkn

To

1. The Judicial Magistrate No.1,
Tiruppur.
2. The Inspector of Police,
North Police Station,
Tiruppur,
Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.66207

Cr1.O.P.No.23098 of 2017

GPL(CO)
PM/28/12/2021