

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1055 of 2019

and Crl.M.P.No.14422 of 2019

Shaik Mohamed Sadiq

..Petitioner

Vs

The State

Represented by Inspector of Police

Crime Branch CID

Krishnagiri Unit

Krishnagiri District

Soolagiri Police Station

..Respondent

PRAYER : This Criminal Revision petition is filed u/s.397 r/w.401 Cr.P.C., against the impugned order in Cr.M.P.No.155 of 2019 in S.C.No.38 of 2019 dated 17.09.2019 on the file of Additional District and Sessions Judge, Hosur, rejecting the plea of discharge.

For Petitioner : Mr.Mr.R.Sankarasubbu

For Respondent : Mrs.T.P.Savitha,
Government Advocate (Crl.Side)

ORDER

The respondent police initially registered a case against 12 accused in Shoolagiri Police Station, in Crime No.341/2014 for the offence u/s.379 IPC. After investigation, subsequently, provision of law was altered into Section 341, 347, 364, 395, 302 IPC r/w.396, 397, 201 and 109 of IPC. As per the proceedings of DGP, vide in Rc.No.806/158211/Crime II (2)/2014 dated 13.10.2014, the case was transferred to Krishnagiri CBCID and re-assigned as Krishnagiri CBCID Crime No.3/2014 and subsequently, after completing investigation, filed the chargesheet and subsequently, after committal, the case was taken on file in S.C.No.38/2019 and made over to Additional Sessions Court, Hosur, Krishnagiri District.

2. The petitioner was arrayed as A-11. During the pendency of the case, the petitioner along with A-12 filed petition u/s.227 Cr.P.C., for discharge. The learned Additional Sessions

Judge, Hosur, after enquiry dismissed the said petition. Challenging the said order passed by the learned Additional Sessions Judge, the petitioner/A-11 alone has filed the present petition.

3. As far as the case of the prosecution against this petitioner is concerned, this petitioner and A-12 one John Basha are doing business of stolen properties receiving and selling at Gujili Market in Andhra Pradesh. The petitioner herein is scrap vendor and A-12 John Basha is his driver. He used to receive stolen properties. This petitioner and A-12 John Basha are doing business of stolen properties and selling. A-10 Shafi another scrap dealer at Palanacheru had contacted with A-12 John Basha and asked to do business with coordination with this petitioner, A-12 and A-10. Soon after the occurrence on 19.09.2014, A-1 one Pasavullah called one Safi and over phone and informed about his return with booties. On the same day, A-10 Safi called A-12 John Basha and talked. Thereafter, there was regular phone contact with A-10 Safi A-12 John Basha and A-1 Pasavullah Sriramulu. The CDR particulars clearly shows that the above said three accused viz., A-1, A-10 and A-12 are having regular phone contact and to execute their previous plan, or conspiracy and witness one Venkatagiri stated that the criminal conspiracy hatched by the accused A-1 and A-12 are grave in nature and they have committed an heinous crime in the brutal manner and committed dacoity and there are sufficient incriminating materials against this petitioner and A-12 John Basha and lot of efforts both Tamil Nadu and Andhra Pradesh police to detect the case and collected the material evidences against A-1 to A-12. There are prima facie materials against this petitioner also to proceed further.

4. The case of the petitioner/11th accused is that he is innocent and there is no materials to show that the petitioner is also a member of conspiracy and he agreed to receive the stolen goods for consideration. No transaction has taken place as stolen goods were seized near Nellore, Andhrapradesh. The petitioner has nothing to do with the offence viz., u/s.120B, 302 and 396 IPC. The petitioner has nothing to do with the conspiracy and no witnesses have spoken against this petitioner and no offence is alleged by the prosecution and no offence is made out and there is no prima facie evidence to frame the charge against the petitioner and therefore, he has to be discharged from the case.

5. The learned counsel for the revision petitioner would submit that the petitioner is the resident of Andhrapradesh and no cause of action arisen in Andhra Pradesh and this petitioner knows only Telugu and Urdu and does not know to speak English and Tamil and he is only the driver and he is not doing copper

scrap business and there is no materials to connect this petitioner and there is no meeting of minds and there is no materials to show that he entered into criminal conspiracy with other men either to steal the copper scrap or to murder the deceased and none of the witnesses have spoken about the involvement of this petitioner. Even CDR particularly clearly shows that there is contact between A-1, A-10 and A-12 and this petitioner is no way connected with the said case. Even the confession statement said to have recorded from the petitioner is not admissible in evidence and there is no recovery of incriminating materials from this petitioner. The recovery made from this petitioner does not connect with this case and there is no incriminating material objects recovered from the petitioner.

6. Further he would submit that statement of one Venkatagiri is also not admissible in evidence and there is no incriminating circumstances. Further, Venkatagiri also belong to Andhrapradesh and he does not know Tamil to read and write and he knows only Urdu and Telugu and all the statements recorded in Tamil and he does not know Tamil and even the statement shows that Venkatagiri had given the statement in Telugu and Urdu and the same was translated into Tamil. Further, Venkatagiri filed statement before the trial court and he had no knowledge of Tamil and only obtained signatures and he does not know what is written in the statement. Based on the submission of Venkatagiri, this petitioner cannot be implicated and even the confession statement of A-1 does not speak about the involvement of this petitioner and based on the confession statement given by A-12, this accused cannot be implicated in the criminal case. Further he would submit that based on the confession made by the co-accused, the present petitioner cannot be implicated in this case. Further, the confession said to have made by this petitioner is also not admissible in evidence. There is no incriminating material against this petitioner to connect this case and to prove that there was meeting of minds to enter into conspiracy. Further trial judge failed to consider these aspects and simply dismissed the petitioner. Further he would submit that the procedures set out in Article 21 and 22 of Constitution of India have been violated. Further this petitioner does not know English and Tamil. Most of the documents are either in English or Tamil. The petitioner knows only Telugu and Urdu. Therefore, without submitting the translated copies of documents in the language known to the petitioner, it is clear violation of principles of natural justice and also mandatory provisions of the constitution and therefore, under these circumstances, the order passed by the trial judge is liable to be set aside and the petitioner is to be discharged. The learned counsel for the petitioner also placed reliance on the following decisions:-

(1) 1977(2) SCC - 699 [State of Karnataka Vs. Munusamy and others]

(2) 1979 (3) SCC 4 [Union of India Vs. Feafalla Kumar and others]

(3) 1988 (3) SCC 609 [Kehar Singh and others Vs. State Delhi Administration]

(4) 1996(7)SCC (Crl) 820 [State of Madhyapradesh Somnath Thapa and others]

(5) 1998 (7) SCC 377 [Siresb Budharmal Kalai Vs. State of Madhyapradesh]

(6) CDJ 2019 SC 528 [Dipakbhai Jagadischandras Patel Vs. State of Gujarath]

(7) Criminal Appeal No.174/2013 (Arising out of SLP (Criminal)). No.4883 of 2008 [Rajiv Thapar and others Vs. Madan Lal Kapoor].

7. The learned Government Advocate (Crl.Side) would submit that the petitioner has been arrayed as A-11 in this case and he is doing business in copper scrap and selling in the market and he helped the other accused to steal the copper plates and sell through this petitioner. The petitioner is the vendor of the copper scrap and 12th accused is the driver of this petitioner and both entered into conspiracy with other accused viz., A-1 to A-10 and helped other accused to steal the copper scrap which is transported in the lorries and the confession statements of A-1, A-12 and this petitioner clearly would show that all the accused A-1 to A-12 entered into conspiracy and they waylaid the lorry in the load of copper wires and they intercepted the lorries and murdered the driver and unloaded the copper plates and selling through this petitioner and reached through A-12 and this petitioner is selling this copper scrap and shared money. The confession statement of A-12 clearly shows the guilty intention of this petitioner. This petitioner has also given confession statement and he was in judicial custody and with permission of the court he was investigated and after that he was taken custody of the petitioner. The confession statement was also recording in the presence of the Village Administrative Officer and also Village Assistant and therefore, the question as to whether the confession statement of the petitioner is admissible in evidence or not and based on the confession given by the co-accused, whether this petitioner can be prosecuted or not, can be decided after recording the evidence and at the time of disposal of the case and not at this stage. At this stage of framing of charge, the court has to consider the material with a view to find out if there is sufficient ground for prosecuting

that the accused has committed the offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. The trial court rightly considered the materials and satisfied that there is incriminating materials to proceed the case against this petitioner also. Therefore, the trial court rightly dismissed the petitioner filed u/s.227 Cr.P.C. There is no merit in this case and the same is liable to be dismissed.

8. Heard both sides.

9. Admittedly, the respondent police registered the case against 12 accused. The present petitioner has been arrayed as A-11 in this case. During the pendency of the case, this petitioner along with A-12 jointly filed the petitions u/s.227 Cr.P.C., to discharge them from the case and the main ground taken by the counsel for the petitioner is that the petitioner and A-12 are innocents and they are no way connected with the case and never entered into any conspiracy with other accused and there is no incriminating materials against this petitioner to proceed the case further.

10. Now, the petitioner alone has challenged the order passed by the Additional Sessions Judge. The learned counsel for the petitioner vehemently contended that this petitioner is doing business of scrap and he is the vendor of iron and copper scrap and A-12 is his driver. The learned counsel further contended that CDR analysis clearly shows that there was telephonic conversation between A-1, A-10 and A-12 and not this petitioner. Therefore, this petitioner is no way connected with the case.

11. As already stated, this petitioner and A-12 jointly filed discharge petition stating that they are innocent and no way connected with the case. CDR particulars also shows that during the relevant period, there were frequent conversation between A-1, A-10 and A-12. The statement of A-12 reveals that this petitioner advised A-12 not to contact over phone and if contacted over phone, possibility of tracing out by the investigating agency through call details will reveal their conspiracy. Therefore, he advised not to contact over his phone and not to communicate through phone. Further the confession statement of A-12 shows that all the accused entered into criminal conspiracy and committed offence. The petitioner also given confession statement. Though the confession made before the Police Officer is not admissible in evidence, on what account the confession can be taken and whether based on the confession given by the co-accused, the petitioner/accused can be prosecuted all can be decided after trial and not at this stage. There is no straight answer in the settled proposition

of law by the Honourable Supreme Court in the above citations referred to by the learned counsel for the petitioner. Thus the referred decisions are not applicable to the present case on hand. If the confession made by the co-accused and if the co-accused is not a party to the trial, based on that confession, the other accused cannot be convicted. Whereas, in this case, A-12 also one of the accused. In this case, A-12 is tried jointly along with petitioner, therefore, proposition of law cited by the counsel for the petitioner is not applicable to the case on hand. Further, at the time of framing of charges, court would be justified in framing of charges, if the prosecution has sown the seed in the form of some incriminating material which has got the potential to develop itself into a full-fledged one during trial. At the stage of framing of charge, the court has to consider the material with a view to find out if there is sufficient ground for prosecuting that the accused has committed the offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. Therefore, as per Section 227 Cr.P.C., if the court is satisfied that there is sufficient ground for proceeding against the accused, it can be proceeded with the framing of charges. So in this case also, there is incriminating material against the petitioner to proceed the case. The trial court also satisfied that there are materials to proceed against the petitioner/accused and therefore, the trial court rightly dismissed the petition.

12. It is settled proposition of law that at the stage of framing charge, the court has to look into the final report filed by the investigating officer u/s.173 Cr.P.C., and documents annexed with and not defence whatsoever. The defence taken by the accused cannot be gone into and which can be decided after recording the evidence and not at this stage. As far as furnishing of the documents in the language which is not known to the petitioner is concerned, it cannot be decided u/s.227 Cr.P.C. The petitioner is at liberty to pursue the issue. If at all the petitioner does not know the language in the documents which was furnished to him, he can get advice from his counsel. If both the accused and advocate are not knowing the language, they can very well file petition for translated copy. It is settled proposition of law that every criminal case has to be decided on the basis of the facts and evidence available and not on precedence. Hence, this court finds that there is no violation of mandatory provisions of law and there is no merit in the revision and the revision is liable to be dismissed.

13. In view of the above, this criminal Revision case is dismissed. Consequently, connected Crl.M.P., is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police
Crime Branch CID
Krishnagiri Unit
Krishnagiri District
Soolagiri Police
Station

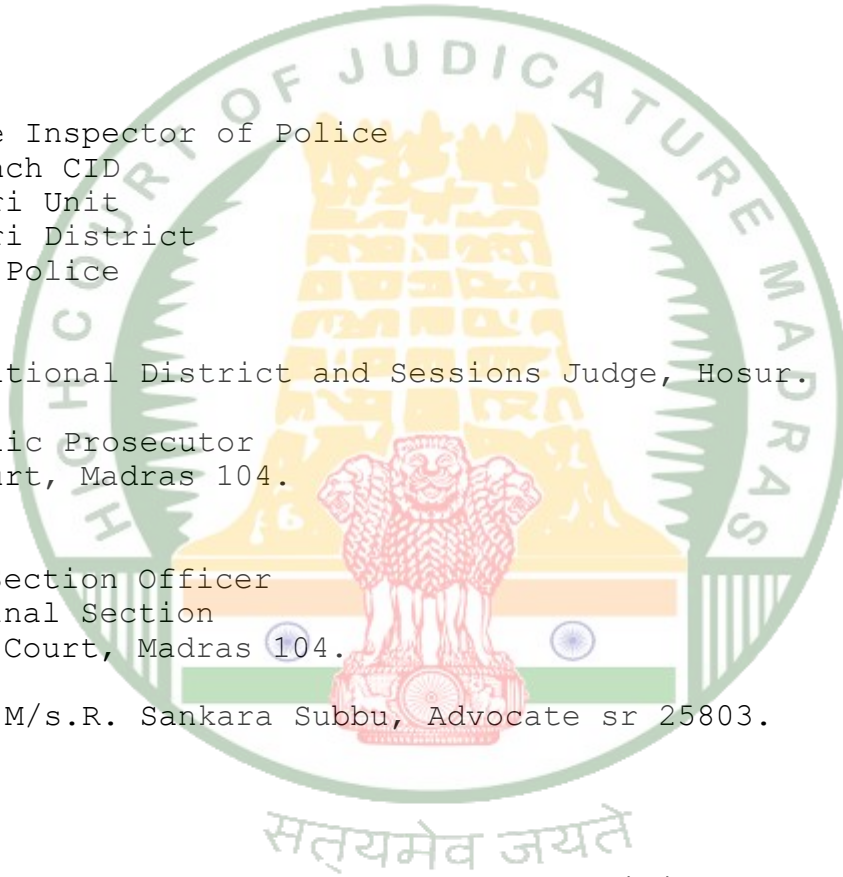
2.The Additional District and Sessions Judge, Hosur.

3.The Public Prosecutor
High Court, Madras 104.

Copy to

The Section Officer
Criminal Section
High Court, Madras 104.

+2 Ccs to M/s.R. Sankara Subbu, Advocate sr 25803.



Crl.Revision Case.1055 of 2019

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