

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2021

Coram

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.28701 of 2019

and Crl.M.P.No.15294 of 2019

1. T.Pandi

2. R.S.Parthasarathi

...Petitioners

Versus

The Station House Officer,
Virinchipuram Police Station,
Virinchipuram, Vellore District.
Crime No.227 of 2018

....Respondent

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records pertaining to Judgment in SC.No.105 of 2019 dated 30.09.2019 on the file of the Additional District court (FTC) at Vellore and be pleased to Expunge the adverse remarks made as against the petitioners in paragraphs 46 to 52 of the Judgment in S.C.No.105 of 2019 dated 30.09.2019 on the file of the Additional District court (FTC) at Vellore.

For Petitioners

:

Mr.Himavath

For Respondent

:

For Mr.M.Subash Pandiyan

Mr.C.Raghavan

Government Advocate

(Crl. Side)

ORDER

This petition has been filed seeking to expunge the adverse remarks made against the petitioner at paragraph Nos.46 to 52 of the judgment that was rendered in SC.No.105 of 2019, dated 30.09.2019 by the Additional District Court (FTC) at Vellore.

2. The first petitioner, who was the Station House Officer received an information on 06.07.2018 from CMC, Vellore regarding a crime and the consequent injury sustained by the deceased and two others. The first petitioner went to the hospital and took the statement of the complainant, who was one of the injured person in this case. Based on the statement, the first petitioner registered an FIR in Crime No.227 of 2019 dated 06.07.2018 for the offences under Section 302, 323 & 324 of IPC against two named accused persons.

3. The second respondent took up the investigation from where it was left by the first petitioner and on conclusion of investigation, a final report was laid after obtaining the opinion of the Deputy Director of Prosecution.

Based on the final report, charges were framed by the concerned Court and the accused persons underwent trial .

4. The trial Court based on the facts and circumstances of the case and on appreciation of evidence, proceeded to convict the first accused for the offences under Section 304(ii) and 326 of IPC and the second accused was acquitted from all the charges.

5. The trial Court on the verge of completion of the judgment proceeded to make certain adverse remarks against both the petitioners from paragraph Nos.46 to 52 of the judgment. Aggrieved by the same, the present petition has been filed before this Court.

6. Heard Mr.M.Himayanth, learned counsel for the petitioners and Mr.C.Raghavan, learned Government Advocate (Crl. Side), appearing on behalf of the respondent.

7. In the present case, the first petitioner had registered the FIR based

on the statement given by one of the injured person and the first petitioner was examined as PW21. The second petitioner had conducted the investigation and had recorded the statement of the witnesses and the final report was laid before the Court below only after getting the opinion of the Deputy Director of Prosecution. This opinion was in fact marked as a document Ex.P27. The second petitioner was examined as PW25 in this case.

8. The Court below has proceeded to make certain adverse remarks against the petitioners only based on the acquittal of the second accused in this case. While the Court below acquitted A2 from all the charges, the Court had merely said that there are no materials to sustain the charges against the second accused. However, the Court below has chosen to make adverse remarks against the petitioners to the extent that directions were given to take action against the petitioners by the Human Rights Commission, State Legal Service Authority and also by the Superintendent of Police.

9. It is now well settled law that if any acquittal is as a result of a defective investigation, a finding can be recorded to that effect and departmental action can be directed against the concerned investigation officer. Useful reference can be made to the judgment of the Hon'ble Supreme Court in *State of Gujarat Vs. Krishna bhai reported in 2014 (5) SCC 108*.

10. In the present case, there were two accused persons and the Court below has found that the materials that were collected against A1 was sufficient to convict him for offences under Section 304(ii) and 326 of IPC. The second accused was acquitted on the ground that there were no sufficient materials against him. An investigation cannot be effective as against one accused person and ineffective as against another, since the materials collected by the Investigating Officer is common for both the accused persons. Therefore, this case cannot be brought under the category of defective investigation.

11. If the trial Court had found that there are certain compelling reasons to order for further enquiry or action against the petitioners, the petitioners should have been given an opportunity of being heard before the disparaging remarks were made against the petitioners. The law on this issue is well settled and useful reference can be made to the judgment of the Hon'ble Supreme Court in ***State Of West Bengal And Others vs Babu Chakraborty*** reported in ***2004 (12) SCC 201***. The Hon'ble Supreme Court, after taking into consideration, all the earlier judgments had categorically held that any Court should afford an opportunity of hearing an Investigating Officer before any harsh or disparaging remarks are made in the judgment. The only exception that was carved out was in cases where such harsh and disparaging remarks is really necessary to arrive at a decision.

12. In the present case, the remarks that have been made by the trial Court had nothing to do with the decision that was arrived at in this case. After arriving at a decision, the trial Court proceeded to pass extremely disparaging remarks against the petitioners without giving them an opportunity. This procedure adopted by the trial Court runs contrary to the

settled position of law and therefore, the same requires the interference of this Court.

13. In the result, the disparaging/adverse remarks made against the petitioners in paragraphs 46 to 52 of the judgment rendered in SC.No.105 of 2019 by the Additional District Court (FTC) Vellore, is hereby expunged and this Criminal Original Petition accordingly allowed. Consequently, connected miscellaneous petition is closed.

04.03.2021

Index : Yes/No
Speaking Order (or) Non-Speaking Order
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To

1. The Station House Officer,
Virinchipuram Police Station,
Virinchipuram, Vellore District.

2. The Additional District Court (FTC) at Vellore

3. The Public Prosecutor,
High Court of Madras.

N.ANAND VENKATESH, J.,

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