



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WEB COPY

Crl.O.P.(MD)No.3472 of 2019

and

Crl.MP (MD)Nos.1971 and 1972 of 2019

G.Mayakannan

: Petitioner/Accused No.2

Vs.

1.The Inspector of Police,
Old Ayakudi Police Station,
Palani Taluk,
Dindigul District.
(Crime No.31 of 2017)

: Respondent/De-facto complainant

2.Mr.Praveen Kumar
Police Officer,
Gr-1 PC-974,
Ayakudi Police Station,
Palani Sub Division,
Dindigul District,
Dindigul.

: Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in PRC No.22 of 2018 on the file of the Judicial Magistrate, Palani, in Crime No.31 of 2017, dated 22.02.2017 on the file of the 1st respondent police and quash the same.

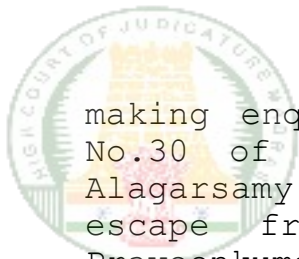
For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition is filed by the petitioner seeking quashment of the charge sheet in PRC No.22 of 2018 pending on the file of the Judicial Magistrate, Palani.

2.The case of the prosecution in brief:-

On 22.02.2017 at about 05.00 am in front of A1's house, the Sub Inspector of Police, Ayyavu, Special Sub Inspector of Police Mariyappan, Grade-I PC, Senthil Kumar, Sivaganesh, Praveenkumar were



making enquiry about the occurrence in connection with the Crime No.30 of 2017. When they enquired the accused persons namely Alagarsamy and Mayakannan, at that time the accused persons tried to escape from that place. So the Grade-I Police Constable Praveenkumar tried to catch them, At that time, A1 abused him in filthy language and also assaulted him with an aruval and caused injury on his left forehead. A2 by receiving aruval from A1, assaulted Preveen Kumar on his head and put him down and he was also criminally intimidated the police team. A case in Crime No.31 of 2017 was registered for the offences under sections 294(b), 353, 332, 307 and 506(2) IPC, on 22.02.2017. During the course of investigation, materials were collected and statement of witnesses have been recorded and finally, final report has been filed against two accused persons, which was also taken cognizance in PRC No.22 of 2018 on the file of the Judicial Magistrate, Palani.

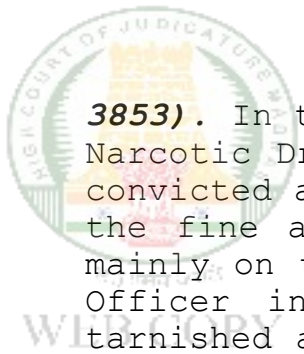
3. Seeking quashment of the final report, this petition came to be filed mainly on the ground that the Informant and the Investigating Officer belong to the very same police station and false case has been foisted against the petitioners, since the police people were against compromising the offence in Crime No.30 of 2017, which was registered under sections 341, 147, 294(b), 323, 354, 506(i) IPC and section 4 of Women Harassment Act.

4. Heard both sides.

5. It is not denied that the case in Crime No.30 of 2017 was registered against these petitioners for the offence under sections 341, 147, 294(b), 323, 354, 506(i) IPC and Section 4 of Women Harassment Act, 2002. According to the learned counsel appearing for the petitioners, the above said offence was compromised between the complainant and the accused persons, but it was not accepted by the police and they tried to prevent the accused and the complainant from making the compromise. Some trouble arose during the course of compromise talk, to wreak vengeance this case has been foisted.

6. The case in CC No.30 of 2017 has been quashed by this Court in Crl.OP(MD)No.10462 of 2017, dated 09.08.2017, since the joint compromise memo filed before this court. The date of occurrence in the above said occurrence is 21.02.2017. Now according to the FIR, the present occurrence took place, when the police team making investigation on 22.02.2017 and FIR was also registered on 22.02.2017. So it appears that on the date of hearing Crl.OP(MD) No.10462 of 2017, this FIR was also registered. In fact, all probabilities, the petitioners ought to have informed this court about the registration of this FIR also. But it appears that no such fact has been put forth before this Court.

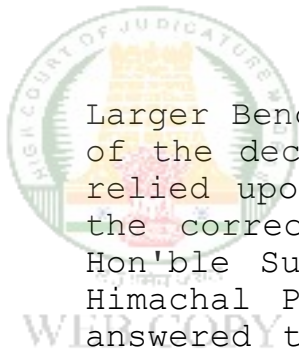
7. Whatever it may be, now the learned counsel appearing for the petitioners heavily relied upon the judgment of the Hon'ble Supreme Court in the case of **Mohan Lal Vs. The State of Punjab (AIR 2018 SC**



3853). In that case, the accused was charged under section 18 of the Narcotic Drugs and Psychotropic Substance Act, 1985 and he was also convicted and sentenced to undergo 10 years imprisonment, apart from the fine amount. That conviction and sentence has been challenged mainly on the ground that the first informant was the Investigating Officer in that matter. On that ground, the investigation is tarnished as illegal since bias is apparent on the face of records. On the part of the Investigating Officer, the question before the Hon'ble Supreme Court is that whether the utility rule to the effect that the informant, police officer should not be the Investigating Officer. The Hon'ble Supreme Court has observed that there is no such utility rule, but when the offences under section NDPS Act are alleged, the important duty upon the accused persons is to prove his innocence against the presumption clause and then in the interest of fair investigation and enquiry, the informant ought not have and should not be by the same person. It has been held that possibility of bias or a per-determined concluding must be excluded. So according to the learned counsel for the petitioners, if the informant is from the very same police station, there is every likelihood of bias on the part of the Investigating Officer and so the entire investigating process is vitiated.

8.A reading of the First Information Report as well as the final report shows that two of the police officials sustained injuries and they have been taken to the hospital and they were treated by the Doctors. During the course of investigation, the statement of the Doctors have been recorded and the Wound Certificate has also been collected. So the contention on the part of the petitioners that only a simple scuffle took place between the parties in Crime No.30 of 2017 cannot be accepted at all. Whether it was scuffle or intentional assault is a matter for trial. But it is seen that the offence under section 307 IPC is totally misconceived and absolutely it is not attracted. So the court, while framing the charges may take into account this specific point and the petitioners can canvass the same at the time of trial. But however, I am unable to accept the argument that has been advanced by the learned counsel appearing for the petitioners to the effect that there was absolute bias on the part of the Investigating Officer, since the informant belongs to the very same police station. The judgment of the Hon'ble Supreme Court rendered in **Mohan Lal's case** cannot be accepted too far to cover this nature of the offence also and if such a sort of direction is allowed to be canvassed and accepted, then it would amount to inference with the statutory power of the Investigating Agency.

9.Moreover, from the records, I find absolutely no bias on the part of the Investigating Officer and if the petitioners entertain doubt that the Investigating Officer was influenced by the work of the informant in the very same police station, they can make all their defence during the course of trial. Moreover, in the recent judgment of Hon'ble Supreme Court, which was reference to the



Larger Bench, when a doubt was raised with regard to the correctness of the decision in Mohan Lal's case (Judgement has been cited and relied upon by the learned counsel appearing for the petitioners), the correctness of the Mohan Lal's case was reconsidered by the Hon'ble Supreme Court in the case of Varinder Kumar Vs. State of Himachal Pradesh [(2020)3 SCC 321]. The Hon'ble Supreme Court has answered the reference in the conclusion portion of the judgment which reads thus:-

*"18.The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it uni-directional exercise. A proper administration of the criminal justice delivery system, therefore requires balancing the rights of the Accused and the prosecution, so that the law laid down in **Mohan Lal** (supra) is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in **Mohan Lal** (supra) shall continue to be governed by the individual facts of the case."*

10.So the Hon'ble Supreme Court Constitution Bench has overruled the decision, that has been rendered in Mohan Lal's case, and held that there is no such utility rule, which depending upon the facts and circumstances of each case.

11.Now coming back to the facts and circumstances of this case, as I mentioned earlier, on the face of it, I find absolutely no bias that two of the police officers have been said to have been assaulted by the petitioners. So the trial court ought to have taken in its logical conclusion. Absolutely, I find no merit in this petition and accordingly, this petition deserves dismissal.

12.In fine, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

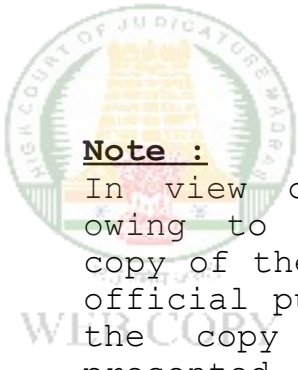
Assistant Registrar(AS)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

- 1.The Judicial Magistrate,
Palani.
- 2.The Inspector of Police,
Old Ayakudi Police Station,
Palani Taluk,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**CrI.OP (MD)No.3472 of 2019
23.11.2021**

NSN(CO)
TR(17.12.2021) 5P 4C