



Crl.O.P.No.21292 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.08.2022

PRONOUNCED ON : 08.09.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.21292 of 2016

1. Samson @ Sam
2. J.Amul Joseph
3. John Santha Sheelan
4. Subbu @ Sundaramurthy
5. Gunalan

.. Petitioners/A1 to A5

Vs.

State Rep. By its
Inspector of Police,
P1, Puliyanthoppu Police Station,
Chennai – 600 012.
(Crime No.1128/2015)

.. Respondent/complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in S.C.No.234/2016 (in Cr.No.1128 of 2015 of P1, Puliyanthoppu Police Station dt. 29.10.2015 and Cr.No.251 of 2015 of P3, Vyasarpadi Police Station dated 10.02.2015), on the file of the XV Additional Sessions Judge (FTC No.1), Singaravelan Maligai, Chennai and



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consequently, quash the same as illegal and improper.

For Petitioners : Mr.S.Suresh

For Respondent : Mr.S.Udayakumar
Government Advocate (Crl.Side)

ORDER

The petitioners are Accused Nos.1 to 5 in S.C.No.234 of 2016.

2. The Criminal Original Petitions is filed to call for the records in S.C.No.234/2016 (in Cr.No.1128 of 2015 of P1, Puliyanthopu Police Station dt. 29.10.2015 and Cr.No.251 of 2015 of P3, Vyasarpadi Police Station dated 10.02.2015), on the file of the learned XV Additional Sessions Judge (FTC No.1), Singaravelan Maligai, Chennai and consequently, quash the same as illegal and improper.

3. The facts leading to the filing of the above case, are as follows:

(i) On 25.01.2015, P3-Vyasarpadi Police Station has received an information that one Sridhar S/o.Sundaramurthy of No.172, MM Garden Vyasarpadi, Chennai was admitted in Stanley Hospital, Chennai as in-



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patient for certain injuries sustained by him. One Head Constable Mr.Gunasekaran was detailed, who went and recorded the statement of Mr.Sridhar at Stanley Medical Hospital, Chennai.

(ii) On the same day at 9.30pm, Sridhar went to a liquor shop near by his house, returned home and at 12.30pm in the night, went out for passing urine, fell down from upstairs and sustained injury. His brother Srinivasan took him in an auto to the hospital. Sridhar sustained injury behind the head and on right cheek and was undertaking treatment. Sridhar has further stated that for the occurrence nobody was responsible and no action is required. The statement was attested by his sister-in-laws namely Dhanalakshmi and Gothai Nayagi. Consequently, on 26.01.2015 at 0.1 hrs an entry was made in the General Diary and the matter was closed by P-3, Vyasarpadi Police.

(iii) The said Sridhar died on 09.02.2015 at 9.00pm. A case was then registered in Crime No.251/2015 under Section 174 Cr.P.C., by Vyasarpadi Police and on 16.04.2015, the section was altered from 174



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Cr.P.C., to 147 & 304 (ii) IPC. On 28.04.2015, the charge was altered from 147 & 304 (ii) to 302 IPC. The Vyasarpadi Police then arrested the accused and recovered the properties. Subsequently the Vyasarpadi Police was given to understand that the place of occurrence is within the territorial limit of P1-Puliyanthopu Police Station and therefore, forwarded the entire materials to P1-Puliyanthopu Police who have registered a case in Crime No.1128 of 2015 under Section 174, altered 147 & 304(2) IPC and then altered to 302 IPC and recorded further statements of witness and filed the final report.

4. Based on the above factual position, the learned counsel for the petitioners/accused would contend that an accident has been converted into heinous crime and petitioners are falsely implicated in this case after the change of the government and the act of the investigation agency is opposed to law.

5. The main grievance of the petitioners is that there cannot be a



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second FIR on the receipt of every subsequent information in respect of the same cognizable offence and the present criminal prosecution is based upon inadequate evidence due to political vendetta and malafide attitude of the investigating agency.

6. According to the learned counsel for the petitioners there are two FIRs and two investigation agency and three sets of prosecution witnesses, which all are indication of mallice and hence seeks quashment.

7. Learned Government Advocate (Crl.Side) appearing for the respondent police made submission in support of the final report.

8. After hearing the rival submissions and also after perusing the documents that are enclosed with the final report, my attention was drawn to the statement of Dr.Veeralakhsmi-LW26, which is to the effect that two persons, by name Narendaran and Sridhar were admitted to Government hospital when she was in the emergency ward on 26.01.2015 and both persons were having injury on the head and the injured persons have stated



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before her that they fell from the first floor and sustained injury and they have been admitted for treatment and the Accident Register is No.5532861. My attention is also drawn to the list of documents i.e., Accident Register of the injured Sridhar (subsequently died) and injured Narendran, who had recovered and attention was also drawn to the statement of the Head Constables viz., LW20-Babu and LW23-Gunasekaran, as to the recording of statement from the injured Narendran-LW1 and getting the attestation of his relative, LW7-Mohana, and the statement of the Special Inspector of Police-LW25-Thangaraj with whom the injured Sridhar has stated that no further action needs to be taken in his statement since he fell due to the drunken mood from the first floor and the said statement has been attested by the relatives LW5-Dhanalakshmi and LW6-Kothainayagi and based upon the above statement and also LW29-Dr.Durai, who had given treatment for the LW1 injured and issued the wound certificate.

9. The contention of the learned counsel for the petitioners/accused, based upon the statement of the medical witness LW6-Dr.Veeralakshmi to the effect that after Sridhar and the LW1-Narendran,



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admitted in a hospital at the earliest point of time, the injured Sridhar (subsequently died) have given a statement that he fell on his own mistake from the first floor and the said factum has been recorded by the Doctor. At the time of giving the statement with the medical witness Dr.Veeralakshmi-LW26, he was in a free state of mind and therefore, the statement given by the injured to the doctor at the earliest point of time on his death becomes dying declaration as to the cause of action and if this statement is taken into consideration, the case of the prosecution that these accused/petitioners have attacked with a big steel karandi (briyani karandi) on the head and caused injured on the Sridhar, who subsequently died, stands falsified.

10. The next contention of the learned counsel for the petitioners/accused is that the LW1 at the time of admission into the Government Hospital gave a statement to LW29-Dr. Durai that he fell down from the first floor and he had sustained injury and also he had given a statement to LW23-Gunasekaran and LW20-Babu, Head Constables and LW-25-Thangaraj, the Special Sub Inspector that the injured does not want further enquiry since they slipped down from the first floor and sustained



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injury in the head, which subsequently now turned around as if they only gave ill advice and hence, there is material contradiction between the evidence of LW20 and LW23 with that of LW29 and further stated that based upon the statement given by present LW1-defacto complainant, his earlier statement given to LW29-Dr.Durai at the time of the admission into the Government Hospital as reflected in Accident Register falsifies the subsequent change of the stand of the LW1 to falsely implicate these petitioners/accused and also stated that LW5 and LW6, LW20 and LW23, LW25 and LW26 with LW29, clearly falsifies the case of the prosecution.

11. In order to cover up the earlier statement given by both the injured person (1 person died and one person recovered) to PW26-Dr.Veeralakshmi and PW29-Dr.Durai, they manufactured witness in the nature of auto man as if the auto man had taken the injured persons and during the travel, something is said to have been stated by the injured to the auto man and hence, seeks quashment of the case.

12. The learned Government Advocate (Crl. Side) made a



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submission that the probative value of the respective statement of the witnesses has to be gone into only during the time of the trial and hence, the case does not fall under the scope of Section 482 of Cr.P.C.

13. After perusing the statement of medical witnesses, LW26 and LW29 with their respective Accident Register for the deceased Sridhar and LW1-Narendran and also perusing the statement of the injured during the time of treatment given to LW20 and LW23 which was attested by the LW5-Dhanalakshmi and LW6-Kothainayagi, the sister-in-laws of the deceased, whether there is a material contradiction or not and whether the statement given by the injured person at the time of admission to LW26 on his death, amounts to dying declaration or not, are to be elicited during the cross examination of the said medical witnesses LW26 and LW29 at the time of the trial.

14. The probative value of the LW7, LW8 and LW9 are subject matter of the trial and whether the statements subsequently given under Section 164 Cr.P.C. by LW1 amounts to material contradiction with the



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statement given by the LW1 at the time of the admission into hospital with LW29 could also be gone into only when the LW1 was examined as a witness on behalf of the prosecution and subjected to cross examination by the defence counsel and hence, all the points raised by the learned counsel for the petitioners/accused could be gone into only after recording the evidence before the concerned Sessions Court.

15. Whether the earlier statement of LW1 runs contrary to the 164 statement given by him; whether the attestation of LW5-Dhanalakshmi and LW6-Kothainayagi in the first complaint given by LW1 with LW20 and LW23 police witnesses, amounts to first FIR; whether the version of LW20 and LW23 in the subsequent statement runs as a material contradiction; and whether there is a material contradiction between the medical witness and the LW1 are matter for trial and therefore, since it is a quashment proceedings, I am not expressing any view except to say that all the contentions raised by the petitioners' counsel are matter for trial and cannot be gone into this quashment petition. Further, considering the limited scope of the quashment petition, I am not inclined to exercise the powers



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conferred under Section 482 of Cr.P.C., to quash the charge sheet and consequently, to quash the sessions case

16. In this view of the matter, the Criminal Original Petition is dismissed with liberty to the petitioners/accused to raise the appropriate questions during the cross examination of above named list of witnesses viz., LW1, LW5, LW6, LW20, LW23, LW25, LW26, LW29 and other prosecution witnesses in the manner known to law, if they so be advised.

08.09.2022

Internet : Yes

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RMT.TEEKAA RAMAN,J.,

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To

1. The XV Additional Sessions Judge (FTC No.1),
Singaravelan Maligai, Chennai
2. The Inspector of Police,
P1, Puliyanthoppu Police Station,
Chennai – 600 012.
2. The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
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