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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2022
PRONOUNCED ON : 27.04.2022

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.7818 OF 2016
AND
CRL.M.P.NOS.4072 AND 4073 OF 2016

1.Jayachandran
2.Thangavel
3.Varadharajan
4.Muthusamy
5.Jayapommansamy
6.Udayakumar
7.Chinnaiya
8.Arumugam
9.Rasu ...Petitioners / Accused

Vs.

1.State Rep by
The Inspector of Police
Avinashi Police Station
Thiruppur District. ...1st Respondent
2.Thiru.Dhiliban
Sub-Inspector of Police (Trainee)
Avinashi Police Station
Thiruppur District. ...2nd Respondent / Complainant
3.Ramasami ...3rd Respondent

(R3-Impleaded as per order dated 03.03.2022
in Crl.O.P.No.7818 of 2016)

Prayer :- Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in connection with C.C.No.383 of 2015 on the file of learned Judicial Magistrate, Avinashi, Thiruppur District and quash the same.



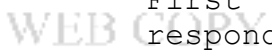
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For Petitioners : Mr.N.S.Sivakumar
For R1 and R2 : Mr.R.Murthi,
Government Advocate (Crl.Side)
For R3 : Mr.N.Manoj Kumar

ORDER

This Criminal Original Petition is filed to call for the records in C.C.No.383 of 2015 on the file of the learned Judicial Magistrate, Avinashi, Thiruppur District and quash the same.

2. The 1st respondent filed a final report against the petitioners/accused for the offences under Sections 120(b), 143, 147, 193 IPC and 4(1) (aa) of the Tamil Nadu Prohibition Act, 1937 and Section 8(c) r/w 20 (b) (ii) (A) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The gist of the said final report is that the 3rd accused is the owner of VIP City and doing real estate business in the said city. The 2nd accused is the partner and Power Agent of the 1st accused. The 1st accused is the driver of the 2nd accused. The 5th accused is the driver of the 3rd accused. The 6th and 7th accused are the Coolies working under the 3rd accused. The 8th accused is an illicit arrack seller known to the 3rd accused. The 9th accused is a seller who sold the arrack to the 8th accused. The 3rd accused plotted out his lands in the name of VIP City for sale. Using his influence, he made arrangements for installation of Electricity Tower Line in the land of Witness/Ramasami. This created an enmity between the 3rd accused and the Witness/Ramasami. Witness/Ramasami filed a public interest litigation and also effected publication in daily newspaper stating that there are no basic amenities available in VIP City. This has resulted in further enmity between the 3rd accused and Witness/Ramasami. All the accused, had a common intention to fix and frame the Witness/Ramasami in a false case. In pursuance of the above conspiracy, on 15.06.2012 at about 6.00 p.m., the accused convened a meeting in VIP City and discussed that because of the action of the Witness/Ramasami, the plots in VIP City could not be sold and therefore, he has to be framed in a case involving, illegal possession of illicit liquor and Ganja. Accused 2 to 4 purchased illicit liquor in 5 cans each containing 50 litres, 2 litres bottle and another 1 litre bottle, totally 53 litres of illicit liquor. 2nd and 3rd accused procured 150 grams of Ganja from 4th accused. They planted the illicit liquor and Ganja in the land of Ramasami. Thus, they fabricated a false case as against him.



4. Learned Counsel for the petitioners submitted that in the First Information Report registered in this case by the 2nd respondent, Witness/Ramasami was shown as an accused for illegal possession of illicit liquor and Ganja. Ganja was recovered from his possession and illicit liquor was also recovered from his Thottam (Garden). After seizing the illicit liquor and Ganja, he was arrested and remanded to the prison. Now, the 1st respondent had taken a complete U-turn in investigation, regarding the possession of liquor and Ganja and filed final report against the petitioners alleging that they conspired together and framed a false case against the witness/Ramasami. It is false to state that in order to prosecute the Ramasami, petitioners have conspired and planted evidence to implicate in this case. Therefore, the case registered against them has to be quashed.

6. Considered the rival submissions and perused the records.

<https://hcservices.ecourts.gov.in/hcservices/>



Inspector of Police to proceed to the scene of occurrence. The First Information Report was registered at about 10.30 hours on 21.06.2012. It reads that the 2nd respondent received an information at about 5.45 a.m from an informant, who secretly stated that the Witness/Ramasami was in possession of Ganja and illicit liquor in his Thottam (Garden). He proceeded to the scene of crime along with the Police Team and the informant and reached the spot at about 6.45 a.m. Witness/Ramasami, S/o.Sennimuthu Gounder was surrounded by the Police Team and was enquired. 2nd respondent introduced himself to witness/Ramasami and informed him that he received an information that Ramasami was in possession of Ganja and he has a right to be searched in the presence of a Judicial Magistrate or a Gazetted Officer.

8. Witness/Ramasami had not availed that offer and informed the 2nd respondent that he can search him and he also admitted that he was in possession of Ganja. The statement was recorded at about 8.00 hours and 6 Ganja Pockets each containing 25 grams Ganja were recovered from him. Witness/Ramasami informed that he bought the said Ganja from an unknown person at Puliyampatti in Erode District. As per his confession statement, witness/Ramasami handed over 5 white coloured plastic cans each containing 10 litres of illicit liquor, 1 No. of 1 litre plastic can and 1 No. of 2 litres plastic can, containing total of 53 litres of illicit liquor and they were seized. The 2nd respondent suspected the liquor as illicit liquor because of the smell. The illicit liquor bottles were recovered. Then, a case was registered in Crime No.626 of 2012 under Section 8(c) r/w 20(b) (ii)(A) of the NDPS Act and Section 4(1)(aa) r/w 4(1-A) of the TNP Act. After that, he was sent to judicial custody.

9. The Mahazar reads that the Ganja was recovered from the possession of the witness/Ramasami and illicit liquor was recovered from the Thottam (Garden) of the Witness/Ramasami on the basis of his confession statement.

10. Thus, the allegations made in the First Information Report and the Mahazar show that the Ganja was recovered from the possession of witness/Ramasami and illicit liquor was recovered from his Thottam (Garden). The investigation revealed that the accused had conspired together for framing this case against Witness/Ramasami. In this regard, the statement of witness/ Senniyappan had been recorded. The statement is on the line that on 20.06.2012 at about 8.00, accused viz., Muthusamy, Jayachandran, Jayapommansamy, Arumugam and others came in a car bearing Registration No. DL 60 7331. They dug a pit in the Thottam (Garden) of witness/Ramasami and kept the white coloured cans and Ganja and closed the pit. They have also discussed about framing of witness/Ramasami. Witness/Chenniyappan had also given similar statement, who had seen the accused viz.,



Muthusamy, Jayachandran and Jayapommansamy near the Thottam (Garden) of witness/Ramasami. He informed about this to the witness/Ramasami. Witness/Duraisamy along with Witness/Ramasami found a plastic can in Ramasami's Thottam (Garden) and on opening it, they found the smell of the Ganja. Witness/Duraisamy instructed Ramasami to throw the water can. Ramasami informed that he would give complaint to the police. Witness/Arunachalam stated about the conspiracy by the accused to frame witness/Ramasami.

11. The further statement of Witness/Arunachalam shows that on 15.06.2012, VIP City owner Varadharajan, Thangavel, Jayachandran, 4 and 5 persons were standing near Ramasami's Thottam (Garden) with a car bearing Registration No. DL 66-7331 at about 6 p.m. At that time, Thangavel was saying that the sale of plots was affected because of Ramasami and they have to do something against the Ramasami. Ramasami has also given a similar further statement.

12. The further statement of Ramasami shows that on 20.06.2012 at about 8.00 p.m., Senniyappan informed to the Ramasami that the accused Varadharajan and others, conspired against him near his land. He visited his land in the morning on 21.06.2012 and found white coloured plastic bag near EB Tower Line pit. Duraisamy came at that time and he told him that the content of the plastic bag may be Ganja. He thought of throwing it or handing over to the police.

13. After Duraisamy left him, the Police apprehended the Witness/Ramasami. On seeing the Police, he got anxious. Police enquired him and he did not know what was his answer. He was arrested and remanded for possessing Ganja and illicit liquor. Then, it is revealed that the accused conspired against him and falsely implicated in this case. Sivakami w/o.Ramasami and Ganeshamoorthy s/o.Ramasami have also given a statement that Ramasami is an innocent.

14. Thus, the statements of the witnesses in this case shows that there are two dramatically opposite cases projected by the prosecution. First case as per the First Information Report was that Witness/Ramasami was found in possession of Ganja and illicit liquor. After investigation, the case of prosecution is that witness/Ramasami was not in illegal possession of Ganja and illicit liquor. The contrabands were planted in his land by accused to frame him in a criminal case for the reason that Witness/Ramasami had been blocking the sale of plots in VIP City by filing public interest litigation and then giving publication with regard to lack of amenities available in VIP City. For the said conduct of the Ramasami, the accused planted Ganja and illicit liquor in his land to frame him in a criminal case. When



Witness/Ramasami took Ganja, he was in a troublesome mood as to what he should do with the Ganja and whether to throw it or hand over it to the Police.

15. The statement of Dhiliban/Sub-Inspector of Police shows that the information with regard to possession of Ganja and illicit liquor was given by 1st accused/Jayachandran. On apprehending Witness/Ramasami, he was found with Ganja and he admitted whatever the questions asked to him. Therefore, the First Information Report was registered against Witness/Ramasami.

16. The Inspector of Police, who conducted investigation in this case filed an affidavit stating that Witness/Ramasami is an innocent person and he was falsely implicated in this case. Only with an intention that an innocent should not be punished and actual perpetrators of the crime should not go unpunished, he conducted a thorough probe in the case and found the truth and filed final report against the accused.

17. On a perusal of the materials made available before this Court and statement of witnesses, it shows that even as per the case of prosecution, there are conflicting view, one at the stage of registration of First Information Report and after completion of investigation as to the possession of Ganja and illicit liquor by Witness/Ramasami and as to whether it was voluntary and he was in conscious possession or whether the contrabands were planted by the accused.

18. Learned counsel for the petitioners relied upon a judgement in S.Ramapandian vs. State rep. by the District Crime Branch, Kancheepuram, reported in 1996 (1) MWN (Cr.) Page No.123 for the proposition that transposition of a witness as an accused by adding Section 109 of IPC, without any permission of the Court for further investigation, is illegal. However in the case before hand, the investigation has not been completed and only during the investigation, the Investigating Officer found that accused was framed and filed the final report against the real accused persons, showing the Ramasami as witness. Therefore, the said judgement is not applicable to the facts and circumstances of the present case on hand.

19. The disputed facts shall have to be thoroughly enquired by the learned Trial Judge to find out the truth. The statement of witnesses, further statement of witnesses and materials clearly make out a case against the accused for framing charges against them under the appropriate provisions of law. Therefore, this Court is of the considered view that the prayer for quashing the proceedings in C.C.No.383 of 2015 on the file of learned Judicial Magistrate, Avinashi, Thiruppur District,



cannot be entertained and in this view of the matter, this petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Avinashi, Thiruppur District.
- 2.(do through) The Chief Judicial Magistrate,
Tiruppur.
- 3.The Inspector of Police
Avinashi Police Station
Thiruppur District.
- 4.The Sub-Inspector of Police (Trainee)
Avinashi Police Station
Thiruppur District.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.S.Sivakumar, Advocate Sr.No.29206

+1cc to Mr.N.Manoj Kumar, Advocate Sr.No.29108

CRL.O.P.No.7818 of 2016

PM(CO)
RVM(12/05/2022)