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CrI.O.P.No.17930 of 2019
and
CrI.M.P.No.9040 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.11.2022

Pronounced on :15.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.17930 of 2019

and

CrI.M.P.No.9040 of 2019

Ravi

.. Petitioner

/versus/

1.The Inspector of Police,
Molasi Police Station,
Namakkal District.
Crime No.72 of 2015.

2.Paulraj,
Special Sub Inspector of Police,
Molasi Police Station,
Thiruchengodu Taluk,
Namakkal District.

.. Respondents



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Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the Final Report/Charge Sheet in C.C.No.152 of 2016 on the file of Judicial Magistrate, Thiruchengodu in Crime No.72 of 2015 on the file of the first respondent Police and quash the same.

For Petitioner :Mr.R.Balaguruswamy
For Respondent :Mr.N.S.Suganthan,
Govt.Advocate (Crl.Side) for R1

ORDER

The petitioner is the 2nd accused facing trial in C.C.No.152 of 2016 on the file of the Judicial Magistrate, Thiruchengodu for offence under Section 9 (B) (1-b) of the Explosive Substances Act, 1884.

2. The suo motu First Information Report by Mr.Paulraj, the Special Sub-Inspector of Police (SSI), Molasi, came to be registered on 08/07/2015 at 10.30 a.m. which states that based on information that illegal



CrI.O.P.No.17930 of 2019
and
CrI.M.P.No.9040 of 2019

WEB COPY

poaching of fish using explosive is carried on the river side behind the Muniappan Temple, the team of Police led by the Special Sub Inspector went to the spot for patrolling. On seeing the Police team, two persons tried to flee away from the place. The patrol team surrounded them and apprehended. On enquiry, they confessed that they are engaged in poaching of fish using explosive cartridges Celari-11 (SUN 90), ED -10 and OD-3 , without using traditional nets. From them, the explosives were recovered at 09.00 hours under mahazar witnessed by K.Periyasami and K.Kamaraj, both Senior Grade Police Constables from the patrol team.

3. The investigation taken up by the said Special Sub Inspector, who registered the case. On completion of investigation, Final Report filed against these two persons and the same was taken on file by the Judicial Magistrate, Thiruchengodu. The annexure to the Final Report indicates the prosecution has proposed to examine 5 witnesses, which includes the Special Sub Inspector, who is the informant as well the Investigation



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

WEB COPY

Officer, the two Senior Grade-I, Police Constables of the patrol team, who signed the Seizure Mahazar and the two independent witnesses for the preparation of Observation Mahazar.

4. In the petition to quash, it is specifically pleaded that the petitioner is running a Tiffin shop on the road side. The case is foisted against him by the Special Sub Inspector Mr.Paulraj for not giving momool to run the road side tiffin shop. The said Special Sub Inspector, who as informant registered the First Information Report, investigated the case and filed the Final Report. The said act is contrary to the principle of fair trial enshrined in the Constitution of India as one of the fundamental right.

5. The Learned Government Advocate (Crl.Side) relying upon the judgment in *Mukesh Singh –vs- State (Narcotic Branch of New Delhi)* reported in *[(2020)10 SCC 120]* rendered by the Hon'ble Supreme Court consisting of the Hon'ble Five Judges, submitted that earlier the decision of



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

WEB COPY

the Hon'ble Supreme Court in *Mohan Lal –vs- State of Punjab* reported in *[2018(17) SCC 627]* held, in case the investigation is conducted by the police officer, who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal. Contrary to this view, there were line of judgments, wherein the Hon'ble Supreme Court held that the Investigating Officer and the complainant being the same person, does not vitiate the investigation. In view of conflicting views expressed, the correctness of *Mukesh Singh judgment* was doubted by a subsequent Bench of equal strength and therefore, the matter was referred to the Larger Bench consisting of the Hon'ble Three Judges. The Hon'ble Three Judges Bench thought fit the issue is to be settled by the Bench consisting of 5 Judges. Thus, when the matter placed before the Bench consisting of 5 Judges, the Hon'ble Supreme Court tracing the law on this matter, held that there is no bar against the informant police officer to investigate the case. Such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the Investigating Officer. Therefore, on the sole



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

WEB COPY

ground that the informant and the Investigating Officer are one and the same person, the accused is not entitled to acquittal.

6. As far as the issue, whether the Informant can also investigate the case, the decision in *Mohan Lal case* espoused one school of thought which believe that in a criminal prosecution, it will not be in consonance with the principles of justice, fair play and fair investigation, if the informant and the investigating officer were to be the same person. In case involving reverse burden of proof, the onus is on the prosecution to demonstrate on the face of it that the investigation was fair, judicious without no circumstances that may raise doubts about its veracity. If the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers to the police, which may well lead to false implication also. To leave, the matter for being determined on the individual facts of the case, may not only lead to a possible abuse of powers but more importantly will leave the police, the



CrI.O.P.No.17930 of 2019
and
CrI.M.P.No.9040 of 2019

WEB COPY

accused, the lawyer and the Courts in a state of uncertainty and confusion, which has to be avoided. Therefore, fair investigation, which is very foundation of a fair trial, necessarily postulates that the informant and the investigator must not be the same person.

7. Contrarily, the other school of thought espoused through Judgements like *Sunil Kumar Banerjee –vs- St. of West Bengal* reported in *[1980(3) SCC 304]*; *State –vs- Jayapaul* reported in *[(2004)5 SCC 223]*; *S.Jeevanantham -vs- State* reported in *[2004(5) SCC 230]*; *VinodKumar -vs- State of Punjab* reported in *[(2015)3 SCC 220]*; *Vinay Tyagi –vs- Irshad Ali* reported in *[(2013)5 SCC 762]*; and *Surender alias Kala –vs- State of Haryana* reported in *[2016(4) SCC 617]* is that, there cannot be hard and fast rule with regard to the question the Investigating Officer and the informant cannot be the same person. As per Section 154 Cr.P.C, every information relating to the Commission of a cognizable offence, if given in writing, the substance of the complaint to be entered in a book to be kept by



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

WEB COPY

such officer in such form as the State Government may prescribe or if given orally, it has to be reduced into writing and entered in the said book. Section 157 of Cr.P.C envisages, investigation can be undertaken by the Investigating Officer on the basis of his own knowledge of the commission of cognizable offence. Illustration (e) to Section 114 of Indian Evidence Act, 1872 permits Court to raise presumption that official acts have been done regularly performed. Chapter XXXV of the Code of Criminal Procedure, which deals with provisions regarding irregular proceedings, does not say, irregularity in investigation will vitiate the trial. Therefore, there cannot be general preposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated. Only in case, the accused has been able to establish and prove the bias or unfair investigation by the informant-cum-investigator, the accused can take advantage of the plea unfairness and not otherwise.



WEB COPY



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of *Mohan Lal v. State of Punjab (2018) 17 SCC 627* and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.”

9. In the case in hand, the prosecution version is that, explosives



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

WEB COPY

meant for illegally poaching of fish was recovered from the accused persons on 08/07/2015 at about 9.00 am. At the time of seizure, there was no public witnesses available, hence seizure mahazar is witnessed by the Senior Grade-I, Constables, Mr.Periyasamy and Mr.Kamaraj. However, in the Observation Mahazar prepared for the scene of crime, two public witnesses namely, Boopathy and Prakash have signed. This observation mahazar has been prepared at 9.00 am. These two witnesses in their statement recorded under Section 161 Cr.P.C had said that they were present in the scene of occurrence on 08/07/2015, since 8.00 a.m and talking with each other. Therefore, the reason for not conducting the seizure procedure in the presence of public witnesses found to be false.

10. It is also noticed that in the arrest card of both the accused, the time of arrest is not mentioned and left blank. This also strengthens the case of the accused that the case is foisted due to the bias of the Special Sub Inspector who happened to be the informant as well as the investigator.



WEB COPY



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

11. The prosecution in its own records say, public witnesses were present at the time of alleged recovery of explosive, but they were not asked to be witnesses for the said recovery. The glaring omission to recover the explosive in the presence of public witnesses, who were present sufficiently lead to the inference that the Investigating Officer with the help of his own subordinate has foisted the case against the accused persons. Though he claims that he went to the spot, on oral information, he has not reduced it into writing as contemplated under Section 154 of Cr.P.C and registered FIR on the basis of that information, but after arrest and seizure, had come to the police station and registered Suo Motu FIR at 10.30 am. Thus, the case suffers vice of unfairness and bias, which warrants exercise of inherent power to prevent abuse of law. Hence, this Criminal Original Petition is allowed.



WEB COPY



Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

12. In the result, **this Criminal Original Petition is allowed.** The case in C.C.No.152 of 2016 on the file of the Judicial Magistrate, Thiruchengodu stand quahsed. Consequently, connected Miscellaneous Petition is closed.

15.11.2022

Index:yes
speaking order/non speaking order
ari
To :

- 1.The Judicial Magistrate, Thiruchengodu.
- 2.The Inspector of Police,
Molasi Police Station, Namakkal District.
- 3.The Public Prosecutor, High Court, Madras.



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Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

DR.G.JAYACHANDRAN,J.

ari

Delivery Order made in
Crl.O.P.No.17930 of 2019
and
Crl.M.P.No.9040 of 2019

15.11.2022