



CrI.O.P.(MD) No.19116 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P (MD) No.19116 of 2022

and

CrI.M.P.(MD) No.12919 of 2022

Vasantha

...Petitioner

vs

1.The Inspector of Police,
Pazhugal Police Station,
Kanyakumari District.
Crime No.212 of 2016

2.Mohanan @ Mohan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in S.C.No.17 of 2022 on the file of the learned Additional District Judge, Kuzhithurai, Kanyakumari District and quash the same.

For Petitioner : Mr.K.A.Ramakrishnan
For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the case in S.C.No.17 of 2022 pending on the file of the learned Additional District Judge, Kuzhithurai, Kanyakumari District.

2. The learned Counsel for the Petitioner would submit that the Petitioner is arrayed as A1 in S.C. No.17 of 2022 on the file of the learned Additional District Judge, Kuzhithurai, Kanyakumari District, on the basis of the complaint given by the second Respondent, who is the husband of the Petitioner. In this case, the son of the Petitioner and the second Respondent was studying 7th Standard at the relevant point of time. He is alleged to have committed suicide by consuming medicines/thyroid capsules meant for the Petitioner and subsequently, strangled himself with a dog chain (iron chain). The Son of the Petitioner was taken to the hospital. He succumbed to injuries. The case was registered under Section 174 Cr.P.C. At that time, the second Respondent, who was the complainant, had not raised any suspicion about the motive for the same. Subsequently, after four years, he had filed a petition before this Court for speedy investigation and that was also allowed



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by this Court. Subsequent Investigation Officer has recorded statement of the witnesses under Section 161(3) of Cr.P.C. In the earlier investigation, the statements under Section 161(3) of Cr.P.C recorded from the witnesses did not disclose any motive or suspicion. After Criminal Original Petition was filed for speedy investigation, the Investigation Officer took up the investigation in this case. A new theory was put up stating that the Petitioner was in an illegal relationship with the second accused. On the date of the alleged occurrence, it is the case of the Prosecution that the son of the Petitioner used to return home usually by 05.00 pm. On the fateful day, he returned home earlier. He saw his mother in a compromising position with a stranger. Therefore, the Petitioner herein/mother of the deceased and her paramour had decided to kill the boy. Hearing the commotion neighbours saw the Petitioner rushing out with the boy in an autorickshaw to the hospital. The said person/paramour was following them on his two wheeler. After two days of treatment, he succumbed to injuries in Trivandrum Medical College Hospital.

3. The learned Counsel for the Petitioner invited the attention of this Court to the subsequent statement under Section 161(3) of Cr.P.C recorded



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by the subsequent Investigation Officer where the new theory had crept in.

The very same second Respondent had given fresh statement where he had stated that his wife is having illegal relationship with one Suganan. On the fateful day, both of them killed his son. Also Similar statements were recorded from neighbours around the house who are all hearsay witnesses. It is the contention of the learned Counsel for the Petitioner that the Doctor Sasikala, Professor and Head and Police Surgeon of Government Medical College Hospital, Thiruvananthapuram, in her opinion, after verifying the Post Mortem Report had stated that the marks found on the body of the deceased did not contain marks of the iron chain, it was a soft injury. It would have been a cloth and it was a case of suspected strangulation and the case of self-strangulation is ruled out. If that is so, what it is necessity for the Investigating Officer to recover the iron chain (dog chain). Subsequently, on the opinion of the Doctor , a new theory was put up by the Prosecution as an afterthought. The theory has no legs to stand on its own. By forcing the Petitioner to face the trial is an abuse of process of Court after four years of registration of the First Information Report under Section 174 Cr.P.C. After four years, new theory was put up stating that 50 years old woman had an affair with another person and killed her own son.



Therefore, he seeks to quash the entire proceedings, which is nothing but abuse of process of Court. It is the contention of the learned Counsel for the Petitioner that the so-called paramour is the son-in-law of the Petitioner.

4. The learned Counsel for the Petitioner, in support of his contention, relied on the following rulings:-

“i) In Manoj Sharma Vs. State and others reported in 2008 (4) Crimes 359 (SC)

ii) In State of Karnataka Vs. A.B.Mahesha and others reported in (2018) 9 Supreme Court Cases 612

iii) In Mahendra Pratap Singh Vs. State of Uttar Pradesh reported in (2009) 3 Supreme Court Cases (Cri) 1352.”

5. The learned Additional Public Prosecutor vehemently objected to the line of arguments of the learned Counsel for the Petitioner stating that there are witnesses available to the prosecution's last seen theory. At the time of occurrence, the so-called paramour was present in the place of occurrence. There is evidence that he had only taken the victim to the hospital. What are all submitted by the learned Counsel for the Petitioner cannot be accepted while exercising extraordinary power/inherent powers of



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the High Court under Section 482 of Cr.P.C. This Court cannot go into the assessment of evidence or the possible defence of the accused as a ground to quash the proceedings before the trial Court. What are all argued are to be considered as valuable defence of the accused that is to be tried before the trial Court and not while exercising discretionary powers under Section 482 of Cr.P.C by the High Court. This Court cannot sit as an appellate Court recording the possible defence of the accused or the possibility of a conviction. Further, the learned Additional Public Prosecutor also relied on the guidelines issued by the Hon'ble Supreme Court in the case of ***State of Haryana vs.Ch.Bhajan Lal*** reported in ***(AIR) 1992 SC 604***).

6. It is the further submission of the learned Additional Public Prosecutor that the case of the prosecution is that the Petitioner is the mother of the deceased. The Petitioner had an illicit relationship with the second accused. The Petitioner's son was aged 14 years on the date of death. Usually, he will return from school by 5'o clock. On the date of occurrence, he had returned to home from the school earlier and saw his mother and the paramour in a compromising position. Therefore, both of them discovered that the Petitioner's son had seen her in compromising position with her



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paramour. Therefore, she wanted to hush up the same. Only for that, she had used her medicine on the 14 year old boy, which was used to consume for her illness. Not satisfied with the same, they are alleged to have killed him by choking his neck with the dog chain. The neighbours had seen the Petitioner taking the boy in an Autorickshaw to the hospital and her paramour, who followed her in a two wheeler. There is evidence from the hospital at Trivandrum that the boy was admitted by the paramour and the Petitioner herein. Therefore, as per last seen theory also, both are liable.

7. What had been stated by the learned Counsel for the Petitioner in the arguments cannot be accepted under Section 482 Cr.P.C. It is something to be considered during trial on appreciation of evidence and therefore, the petition lacks merit and it is to be dismissed. The ruling cited by the learned Counsel for the Petitioner is also not acceptable. Also, the learned Additional Public Prosecutor relied upon Section 106 IPC relating to screening the evidence.

8. By way of rejoinder, the learned Counsel for the Petitioner invited the attention of this Court to the ruling of this High Court in the case of



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T.K.Justin Marshal .vs. The Inspector of Police, Vadaseri Police Station,

Kanyakumari District and another in Crl.O.P(MD) No.4474 of 2012

dated 29.06.2018. The relevant paragraph reads as follows:.

“9.Since it is beyond dispute that the entire material available against the petitioner is the confession of the co-accused, this Court is of the view that the prosecution against the petitioner has absolutely no legs to stand on. When the possibility of the contention of the petitioner is not just bleak but zero based on the available materials on record, permitting such a prosecution to continue can only be termed as an abuse of legal process.....”

9. The learned Counsel for the Petitioner would submit that only if the prosecution is able to prove its case, then Section 106 IPC is invoked screening of the evidence. Here, no such circumstances arise. The submission of the learned Counsel for the Petitioner is accepted in the light of the facts and circumstances of the case.

10. The arguments of the learned Counsel for the Petitioner and the learned Additional Public Prosecutor for the first Respondent were already heard on 02.11.2022 and the case was posted today, 17.11.2022 to hear the



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learned Counsel for the second Respondent. Notice was also ordered on the earlier occasion, 02.11.2022, to the second Respondent/defacto complainant and the private notice sent to the second Respondent by the learned Counsel for the Petitioner was returned with an endorsement “no such person in the address”.

11. The learned Counsel for the Petitioner would submit that the address was as in the FIR and the Charge Sheet. Therefore, it was sent to him. Since it returned without service, the objection of the defacto complainant cannot be considered by this Court and based on the prosecution case, this case is liable to be disposed of.

12. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioner is found reasonable and acceptable. As rightly pointed out by the learned Counsel for the Petitioner, the case of the prosecution that the mother of the deceased boy, the Petitioner herein committed murder of her 14 year old son, as he had seen her in a compromising position with her alleged paramour is found unreasonable and unacceptable. As pointed out by the learned Counsel for the Petitioner,



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the prosecution case is full of contradictions. A woman of menopause age is having an illicit relationship and the husband is having no suspicion in her activities, as per the materials placed before this Court by the learned Counsel for the Petitioner from the materials available in the Charge Sheet, statement of the witnesses, statement of the Expert, Doctor and the query raised by the Investigation Officer etc, is found contradictory. The defacto complainant is none other than the husband of the Petitioner. He had given a complaint, based on which the FIR had been registered under Section 174 Cr.P.C. At that time, there was no whisper or suspicion against any one. After 4 years, a new theory had crept in that the wife, aged 50 (age of menopause in woman) is in illicit relationship with paramour, who is younger than her and the statements of the witnesses, neighbours are all hearsay witnesses regarding the illicit relationship, which a Court of law cannot rely. Even accepting the argument of the learned Additional Public Prosecutor, if the Petitioner is forced to face the trial, the prosecution will not be able to establish the case beyond reasonable doubt. As on today, *prima facie* case is not established. Therefore, forcing the accused to face the trial amounts to harassment and abuse of the process of the Court.



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13. In the opinion of the Expert, Head of the Forensic Department, she stated that there is no visible injury on the neck/throat of the deceased having choked with dog chain. If at all, it is a case of suicide/homicide, only a soft cloth might have been used. Therefore, the seizure of dog chain and the theory that the 14 year old son was put to death by the mother of the deceased along with her paramour choking his throat with a dog chain is not established. Either there should be direct evidence or there should be circumstantial evidence. The circumstantial evidence had to be proved through cogent materials available to the Court. Here, *prima facie* case is not made out. The Doctor's opinion is different from the theory of the prosecution case. Therefore, the rulings relied by the learned Counsel for the Petitioner while submitting his arguments is found acceptable in the facts and circumstances of the case.

14. In the ruling of this Court in Crl.O.P.(MD) No.4474 of 2012 ***(T.K.Justin Marshal Vs. The Inspector of Police, Vadaseri Police Station, Kanniyakumari District and other)*** dated 29.06.2018, the learned single Judge of this Court while quashing P.R.C.No.23 of 2011 pending on the file of the learned Judicial Magistrate No.II, Nagercoil, had similarly discussed



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the outcome of the materials available in the Charge Sheet to prove the prosecution case in the Trial Court and had quashed the Charge Sheet in P.R.C.No.23 of 2011. The same ratio is applicable to the facts and circumstances of the case.

15. First of all, the case of the Prosecution that the mother killed her own son cannot at all be accepted. Secondly, the illicit relationship of a lady, who is in the age of menopause crossing 50 years having an illicit relationship and having a paramour is unbelievable. Only to file the Charge Sheet and to get over the case, the attempt of the Police in attacking the morality of a woman for the death of her son is found unacceptable only based on the neighbours' statements, that too, based on hearsay and not direct witnesses. If what had been recorded by the Investigation Officer had been true, it ought to have been stated immediately after registration of the FIR. Here, the case was investigated after 4 years, which cannot at all be accepted in the principles of fair investigation.

16. Therefore, in the light of the above discussion and in the light of the ruling of this Court in Crl.O.P.(MD) No.4474 of 2012 (***T.K.Justin***



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Marshal Vs. The Inspector of Police, Vadaseri Police Station, Kanniyakumari District and other) dated 29.06.2018 and the ruling of the Hon'ble Supreme Court in the case of ***Mahendra Pratap Singh Vs. State of Uttar Pradesh*** reported in ***(2009) 3 Supreme Court Cases (Cri) 1352***, where the ballistic expert's report with regard to the weapon of offence was different from the one seized in the Police Station. The same is the case here also. The Expert's opinion differs. When the Forensic Doctor stated that the child was not killed with a dog chain, there is no impression on the neck for having used the dog chain. It might have been a soft cloth either as suicide or as a murder, then the case of the Prosecution goes.

17. In criminal cases, it is the Prosecution, which has to prove the case against the accused beyond reasonable doubt. The accused is presumed innocent till the prosecution proved the charge beyond reasonable doubt. Here, the materials are not convincing *prima facie*. Therefore, directing the Petitioner to stand the trial is an abuse of the process of the Court, particularly investigation having not completed within the time. As an afterthought created a story that the 50 year old woman having paramour and was seen in a compromising position by the neighbours. What



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prevented the neighbours from stating those facts immediately after the death of the minor boy. Even if the Petitioner is forced to stand trial, the outcome will not be helpful to the Prosecution. *Prima facie* case from the materials had not found cogent and satisfactory ending up in conviction. Therefore, in the light of the ruling of this Court in Crl.O.P.(MD) No.4474 of 2012 (***T.K.Justin Marshal Vs. The Inspector of Police, Vadaseri Police Station, Kanniyakumari District and other***) dated 29.06.2018, this Petition is to be allowed.

18. As already discussed above, the prosecution case had not been supported by the opinion of the Forensic Doctor from Trivandrum Medical College. That itself is against the prosecution case. Apart from that, after 4 years, a theory was made that the mother of the child was seen in a compromising position. If that had been true, what prevented the neighbours, who had given statements now, to give the statement at the earliest point of time. This is an afterthought after 4 years from the date of registration of the FIR. Hence, it is rejected.



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In the result, this Criminal Original Petition is allowed. The case in S.C.No.17 of 2022 pending on the file of the learned Additional District Judge, Kuzhithurai, Kanyakumari District is quashed. Consequently, connected Miscellaneous Petition is closed.

Internet :Yes./No
Index :Yes/No
aav/mm

25.11.2022

To

- 1.The Additional District Judge,
Kuzhithurai,
Kanyakumari District.
- 2.The Inspector of Police,
Pazhugal Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

aav/mm

Order made in
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25.11.2022