



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.914 of 2021

and

Crl.M.P(MD)No.10941 of 2021

Imran

... Revision Petitioner/
Petitioner/Accused No.9

Vs.

State represented by,
The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
(Crime No.382 of 2015).

... Respondents/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records from the trial Court and set aside the order passed by the learned Principal Subordinate Judge at Nagercoil in Crl.M.P.No.633 of 2019 in S.C.No.75 of 2019, dated 16.09.2021 and discharge the revision petitioner/Accused No.9 for the alleged offences punishable under Sections 120(b) and 153(A) of I.P.C.

For Petitioner : Mr.K.Naveentha Raja
for Mr.S.M.A.Jinnah

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

ORDER

This revision has been filed to set aside the order passed in Crl.M.P.No.633 of 2019 in S.C.No.75 of 2019, dated 16.09.2021 on the file of the learned Principal Subordinate Judge at Nagercoil, thereby dismissed the petition seeking to discharge the petitioner.

2. There are totally 10 accused, in which, the petitioner is arraigned as Accused No.9. The defacto complainant lodged a complaint alleging that he is running a Tailoring shop at Colachel and on 03.10.2015, after closing his tailoring shop at 07.30 p.m., he was proceeding to his house in his bike bearing Registration No.TN-75-D-9938 near Uthiriyarvilai Channel Bank, at about 07.45 p.m., two unknown persons kicked his bike, due to which, he fell down in the channel along with his bike. When he came out from the channel, they asked him that still he is alive and the person



sitting behind in the two-wheeler came out with an Aruval and attacked the defacto complainant causing injury on his left leg, thigh, ankle and right palm. When he tried to cut his neck, the defacto complainant defended with his left hand and sustained severe cut injury in his elbow and when he raised alarm, the neighbours came there and rescued the defacto complainant and sent him for treatment. Based on the said complaint, the respondent registered the F.I.R in Crime No.382 of 2015 for the offence Section 307 I.P.C @ 120(b), 153(A) and 307 of I.P.C and filed the final report before the learned Judicial Magistrate, Eraniel. After committal proceedings, the same has been taken on file in S.C.No.75 of 2019 on the file of the learned Principal Subordinate Judge, Nagercoil. In the mean while, the petitioner had preferred a discharge petition before the trial Court under Section 227 of Cr.P.C in Crl.M.P.No.633 of 2019 in S.C.No.75 of 2019 and the same has been dismissed. Against which, the petitioner has preferred the present Criminal Revision Case.

3.The learned counsel appearing for the petitioner would submit that the petitioner is arraigned as Accused No.9 and he has been charged for the offences under Sections 120(b) and 153(A) of I.P.C as against the petitioner. The prosecution mainly relied on the confession of A.1 and A.8, that too during the police custody on 15.10.2015 which is not admissible under Section 25 of the Indian Evidence Act. Except the confession statement of A.1 and A.8, there is no incriminating material available to frame the charge as against the petitioner. The confession statement of the co-accused cannot be the sole circumstance to frame the charge. Since no prima facie material to frame the charge as alleged by the prosecution, the continuation of the prosecution as against the petitioner is nothing but futile exercise. In support of his contention, he relied upon the following Judgments:-

"(i) Suresh Budharmal Kalani @ Pappu Kalani reported in (1998) 7 SCC 377.

(ii) Dipakbai Jagdishchandra Patel Vs. State of Gujarat and another reported in (2019) 16 SCC 547.

(iii) Naini Rajender Reddy Vs. The State of Telangana decided on 03rd September, 2021.

(iv) Babu @ Fakkrudeen Vs. State decided on 06.08.2019.

(v) Murukadas @ Murukan Vs. State of Kerala decided on 12.03.2020.

(vi) Nandan Das Vs. State of Assam decided on

17.03.2021"

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

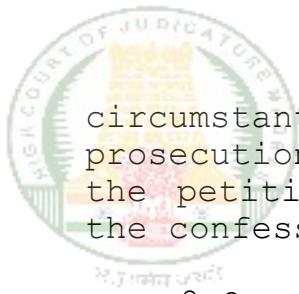


4.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that based on the secret information on 15.10.2015, the respondent intercepted the vehicle bearing Registration No.KL-01-AU-4331 and conducted enquiry. In the enquiry, it was found that he was in possession of Aruval and the same was seized and registered the case in Crime No.382 of 2015 for the offence under Section 307 of I.P.C. The first accused confessed and admitted his guilt. During his confession, he informed about the involvement of other accused persons, who were also involved in the above said crime. He further informed that he is a member of SDBI, INDJ and some of the Fundamentalist Muslim Organization and he is working under one Nazir, Syed Sulaiman Sait and Imran, namely the petitioner herein, who are local leader of an unorganized Mohammedian Association. The petitioner is arraigned as Accused No.9 and during the investigation, after specific overt act against the petitioner, he has been implicated as an accused. He has been implicated as an accused not only by confession by A.1 and A.8, but also based on the other material which show that there was a criminal conspiracy among the accused persons on various dates and places based on which they assaulted the defacto complainant-Murugan. The case of the prosecution is also supported by the eye witnesses L.W.1 to L.W.3 and L.W.7 and L.W.8. Therefore, there is a prima facie against the petitioner as well as other accused persons.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

6.On a perusal of the records revealed that there are totally 10 accused, in which, the petitioner is arraigned as Accused No.9 and he was charged for the offences under Sections 120(b) and 153(A) of I.P.C. Admittedly, the petitioner has been implicated as an accused only on the confession statement of A.1 and A.8. Except the confession statement of A.1 and A.8, there are no other incriminating material available to bring the charge under Section 153(A) of I.P.C to home. Even according to the case of the prosecution, on 15.10.2015, the first accused was arrested with weapon and only on his confession, the other accused persons were implicated as an accused. The confession of co-accused can be used as corroborative piece of evidence, though which is an exception to hear say. The evidence of confession of co-accused can be considered after marshalling the substantive evidence altogether available before the trial Court.

7.In the present case on hand, no other material is available to convert into either oral or documentary evidence as substantive evidence for consideration and in absence of which, there would be no use of corroborative evidence, namely, the confession of A.1 and A.8, if used during trial. There is no direct evidence to prove the



circumstantial evidence, if any. Even according to the case of the prosecution, there is not even single circumstance to indicate that the petitioner has committed conspiracy with other accused except the confession of co-accused.

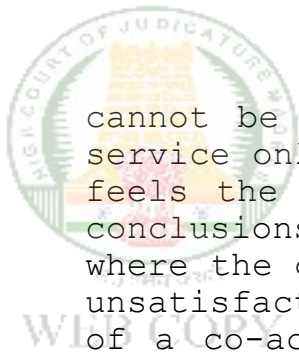
8. On a perusal of the materials produced by the prosecution revealed that it does not *prima facie* establish any physical manifestation on the part of the petitioner in any part of the conspiracy or its execution. Therefore, the confession of A.1 and A.8 placed on record does not make sufficient ground for proceeding against the petitioner. Further on a perusal of the confession of A.1 and A.8 would reveal that they intend to wreak vengeance against the first complainant, which does not amount to constitute offence of conspiracy.

9. The Honourable Supreme Court of India in the case of ***Suresh Budharmal Kalani @ Pappu Kalani*** reported in **(1998) 7 SCC 377**, in which, the Honourable Supreme Court of India citing the Judgment of ***Kashmira Singh Vs. State of Madhya Pradesh*** reported in **1952 SCR 526**, in which the Hon'ble Supreme Court of India held as follows:-

"The proper way to approach a case of this kind is first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept".

10. In the light of the above principle, the confession of A.1 and A.8 cannot be called in aid to frame charges as against the petitioner in the absence of any other material. It also makes it abundantly clear that it is self-exculpatory and hence inadmissible in evidence as 'confession'. Once it is left out of consideration as it should be the confessional statement of the other co-accused, for what they are worth, cannot be made in absence of any other material to connect the petitioner with accusation levelled against him a basis for impugned charges in view of the law down in the above said case.

11. In ***Dipakbai Jagdishchandra Patel Vs. State of Gujarat and another*** reported in **(2019) 16 SCC 547**, in which the Honourable Supreme Court of India held that "the confession of co-accused



cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

12.In the case on hand also, apart from the confessional statement of co-accused, there is no material suggesting involvement of the petitioner in the crime in question.

13.For the aforesaid reasons and having regard to the principles of law laid down by the Honourable Supreme Court of India in the Judgments referred to above and since the petitioner was arrayed as A.9 based solely on the confession of co-accused, which cannot be treated as substantive evidence and in the absence of any substantive material, it would not be appropriate to proceed against the petitioner purely on the confession statement of co-accused. Accordingly, the order passed in Crl.M.P.No.633 of 2019 in S.C.No.75 of 2019, dated 16.09.2021 on the file of the learned Principal Subordinate Judge at Nagercoil is set aside as against the petitioner alone and this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

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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 Principal Subordinate Judge,
Nagercoil.
- 2.The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Crl.R.C (MD) No.914 of 2021
26.04.2022

srk(CO)
TR(25.05.2022) 6P 4C