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CrI.O.P.No.15928 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.15928 of 2023

and

CrI.M.P.No.10079 of 2023

G.Thamodharan

.. Petitioner

Vs.

The State rep by its
The Sub Inspector of Police,
Puduchatram Police Station,
Namakkal District.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records connected with the Charge Sheet in STC.No.287 of 2023 pending on the file of the Judicial Magistrate No.II, Namakkal and quash the same and transfer the investigation to the some other investigation agency.

For Petitioner : Mr.S.Varanesh

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

This petition has been filed seeking to quash the proceedings in STC No.287 of 2023, pending on the file of the learned Judicial Magistrate No.II, Namakkal.

2. The petitioner is the defacto complainant in Crime No.11 of 2023 and he gave the complaint as against five accused persons. Likewise, a counter complaint was also given against the petitioner and the same was investigated in Crime No.10 of 2023. Ultimately, the final report has been filed in both the cases and insofar as the complaint given by the petitioner, it has been taken on file in STC No.287 of 2023 as against three accused persons. Insofar as the complaint given against the petitioner, the same has been taken on file and it is pending in STC No.288 of 2023.

3. The grievance of the petitioner is that the complaint was given as against five accused persons and whereas



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the final report was filed only as against three accused persons and no notice was given to the petitioner while dropping two accused persons in the final report.

4. In the considered view of this Court, the proceedings in STC Nos.287 and 288 of 2023 must be taken up together by the Court below. If during the course of enquiry/trial, materials crop up as against two accused persons whose names have been left out in the final report, the Court below can always exercise its jurisdiction under Section 319 of Cr.PC to add them as accused persons. It will suffice if such a clarity is given and it will sufficiently take care of the grievance expressed by the petitioner.

5. In the light of the above discussion, the proceedings in STC No.287 and 288 of 2023 shall be heard together by the learned Judicial Magistrate II, Namakkal, in line with the judgement of the Apex Court in ***[Nathilal and others Vs. State of Uttarpradesh and another]*** reported in **1990 SCC Crl.638** followed by this Court



in **[Ganesan Vs. The State Rep. by the Inspector of Police, Kodambakkam Police station, Chennai]** reported in **2011 5 CTC 747** at Paragraph Nos.32 and 33 and the same shall be completed as expeditiously as possible.

32. The said Judgment of the Hon'ble Supreme Court relates to counter cases. The Hon'ble Supreme Court has held that both the cases, which are counter cases relating to the same occurrence, should be tried by the same judge in the following manner:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the Judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the Judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate Judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into.



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Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the Judgments must be pronounced by the same learned Judge one after the other.”

33. From the above, it is crystal clear that fair trial as guaranteed under Article 21 of the Constitution of India should be afforded to. In simple terms, the evidence, both oral and documentary, let in one case is not evidence in the other case and, therefore, the same cannot be considered for any purpose in the other case. Similarly, as laid down by the Hon'ble Supreme Court, there cannot be a common Judgment delivered in two or more cases. Even in respect of cross cases arising out of a single occurrence in respect of each case there has to be a separate Judgment. But, unfortunately, in the case on hand, the Trial Court has not followed the said procedure. As I have already stated, the Trial Court has recorded the evidence in one case and substituted the same in the other case. This procedure is illegal. Thereafter, the Trial Court has



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delivered a common Judgment considering the evidence in common in respect of the other cases also. Rendering of a common Judgment that too considering the evidences in common itself is illegal. For these reasons, I have no hesitation to hold that the common Judgment delivered in all the four cases is vitiated. In these circumstances, this Court cannot again consider the evidence in common and render a common Judgment solely because all these Appeals are against the common Judgment, as the same would become another illegality. Therefore, these Appeals are disposed of on considering the evidence, if any, available on record in C.C. No. 9 of 2000 alone.

6. This Criminal Original petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is closed.

18.07.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
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To

1. The Sub Inspector of Police,
Puduchatram Police Station,
Namakkal District.
2. The Judicial Magistrate No.II, Namakkal.
3. The Public Prosecutor, High Court, Madras



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N.ANAND VENKATESH, J

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