



Crl.O.P(MD).No.3610 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 28.03.2023

Delivered On : 17.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.3610 of 2020

and

Crl.M.P.(MD)Nos.1947 and 1948 of 2020

Rose Merlin

...Petitioner

Vs

1.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.654 of 2013)

2.Robinson

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in C.C.No.215 of 2015 on the file of the Judicial Magistrate No.I, Kuzhithurai and to quash the same.

For Petitioner

: Mr.K.P.Narayanakumar

For 1st Respondent

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

ORDER

This petition is filed to quash the proceedings in C.C.No.215 of 2015 on



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the file of the learned Judicial Magistrate No.I, Kuzhithurai.

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2.The case against the petitioner is that the second respondent is the owner of the lorry bearing registration No.TN-75-J-9592. Usually the lorry will be parked near Thankappan Petrol Bunk in Karunkal to Marthandam Road. On 12.10.2013 at about 05.00 p.m., the lorry was parked with key and Rs.50,000/- cash in front of Thankappan Petrol Bunk. On 13.10.2013 at about 08.00 a.m., the second respondent found that the lorry was missing. A case was registered on 15.10.2013 and a chargesheet was filed against four persons for an offence punishable under Section 379 of IPC. The petitioner was cited as A4 in C.C.No.215 of 2015.

3.On the side of the petitioner, it is stated that the petitioner is not the wife of the A1. In fact the petitioner is the wife of one Duraiselvan. The first accused is a distant relative of the petitioner. The first accused is having several criminal cases in different stations. The petitioner was working as a Teacher in Thuvrankurichi. On 04.11.2014, on suspicion that A1 may be available at the house of the petitioner, the police trespassed into the house of the petitioner and they took away valuable articles and they illegally detained the petitioner and misbehaved with her. A complaint was placed before Thuvrankurichi Police Station and a case in Crime No.492 of 2015 was



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registered under Sections 147, 360, 342, 506(ii) , 454 and 380 of IPC and to

take vengeance, this complaint was lodged against the petitioner. The respondent police registered another case against her before the Asaripallam Police Station in Crime No.321 of 2014 and the case was taken on file as C.C.No.25 of 2015 and the case was quashed by this Court in Crl.O.P. (MD)No.19231 of 2019. There is no nexus between the petitioner and the case. The witness mentioned in the chargesheet did not mention the name of the petitioner and they did not attribute any overt act against the petitioner. The confession of co accused cannot be taken as a weapon against this petitioner and prayed the case in C.C.No.215 of 2015 against the petitioner to be quashed.

4.The learned counsel for the petitioner would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Surinder Kumar Khanna v. Intelligence Officer*** reported in ***(2018) 3 Supreme Court Cases (Cri) 567***, wherein it is stated as follows:

“The law so laid down has always been followed by this Court except in cases where there is a specific provision in law making such confession of a co accused admissible against another accused.

In the present case it is accepted that apart from the



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aforesaid statements of co accused there is no material suggesting involvement of the appellant in the Crime in question. We are thus left with only one piece of material that is the confessional statements of the co accused as stated above. On the touchstone of law laid down by this Court, such a confession statement of a co accused cannot be itself be taken as a substantive piece of evidence against another co accused and can at best be used or utilised in order to lend assurance to the Court.”

5.On the side of the prosecution, it is stated that four accused were involved in the case. The petitioner is the wife of A1. In the confession statement given by A1, it is clearly mentioned that the petitioner is the wife of A1 and in the confession statement, it was mentioned that it was the petitioner who give an idea to steal the lorry and that she only instigated the petitioner to commit the crime. A1 is having multi number of cases which are similar in nature. The commission of the offence is not possible without the help of the petitioner. The offence is serious in nature.

6.On the side of the petitioner, it is stated that no recovery was made from the petitioner. The name of the petitioner was not mentioned in the 161(3) statements, which were recorded by the respondent Police and prayed the petition to be allowed.



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7.A perusal of the records reveals that there was a complaint against the petitioner before the Asaripallam police in Crime No.321 of 2014, which was taken on file as C.C.No.25 of 2015 before the learned Judicial Magistrate No.II, Nagercoil and that case was quashed by this Court in Crl.O.P.(MD)No. 19231 of 2019. Except the confession statement of the co accused, there is nothing sufficient enough to implead the petitioner in the case. Hence, this Court is inclined to allow this petition.

8.In view of the above discussion, this Criminal Original Petition is **allowed** and the petitioner is discharged of the charges in C.C.No.215 of 2015 on the file of the learned Judicial Magistrate No.I, Kuzhithurai. Consequently, connected miscellaneous petitions are closed.

17.04.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn



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R. THARANI,J.

Mrn

To

- 1.The Judicial Magistrate No.I, Kuzhithurai.
- 2.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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