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CRL.OP.(MD)No.12137 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.12137 of 2022

and

CRL.M.P.(MD).No.7668 & 7669 of 2022

Sagayam

: Petitioner/Accused No.1

Vs.

State Rep. By

1. The Inspector of Police,
Paramakudi Taluk Police Station,
Paramakudi,
Ramanathapuram District.

In Crime No.225/2021.

: 1st Respondent/Complainant

2. Vincentraja

: 2nd Respondent/
De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the charge sheet in PRC No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi and quash the same.

For Petitioner

: Mr.M.Subash Babu

For Respondents

: Mr.R.Siva Kumar

Government Advocate for R1

: Mr.D.Senthil for R2

ORDER



CRL.OP.(MD)No.12137 of 2022

This Criminal Original Petition has been filed to quash the charge sheet in PRC No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi.

2.The brief facts, which are necessary for disposal of this Criminal Original Petition, are as follows:

2.1.The Petitioner/Sagayam had extended a loan of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the second Respondent/De-facto Complainant. The second Respondent/De-facto Complainant is a Contractor for the past 20 years. Also, he is holding the post of District Secretary in MGR Youth Wing in AIADMK political party. The second Respondent/De-facto Complainant was having a tar plant in Melakavanur Village. The Petitioner is stated to have sought repayment of money borrowed from him by the second Respondent/De-facto Complainant. The second Respondent/De-facto Complainant had sought time for repayment. The Petitioner was repeatedly seeking repayment of the amount. Therefore, there were some animosity between them regarding the amount borrowed by the second Respondent/De-facto Complainant and not having repaid the same.

2.2.On 13.06.2021 the Watchman employed by the second



CRL.OP.(MD)No.12137 of 2022

Respondent/De-facto Complainant, as Security for the tar plant at Melakavanur Village, was on leave from 13.06.2021 onwards. Therefore, the second Respondent/De-facto Complainant stayed in the guest house in the tar plant at Melakavanur Village on 14.06.2021. By around 3.25 a.m. the second Respondent/De-facto Complainant heard a loud thud. Hearing the loud thud, he was woken up from sleep and he was scared to come out of his room in the guest house. He switched on the CCTV footage and found that his TATA NEXON Car bearing Registration No. TN 45 BQ 0006 which was parked in front of the guest house, caught fire. He had observed some movement, hence, he did not come out of the guest house. He had lodged a police complaint with the first Respondent. Based on which, the case in Crime No.225 of 2021 was registered. In the course of the investigation, two persons were arrested. One of the arrested persons had alleged to have stated in his confession statement that the Petitioner had induced him to commit the crime, as the second Respondent/De-facto Complainant who had borrowed Rs.50,00,000/- (Rupees Fifty Lakhs only) for his business from the Petitioner had not repaid it. Based on the confession of the said arrested person, the name of the Petitioner had been arrayed as Accused in the charge sheet filed in the case in Crime No.225 of 2021. As per the confession statement, the arrested Accused had claimed



CRL.OP.(MD)No.12137 of 2022

that one Manikandan had engaged them viz., Ananthan and Kaleeswaran to set fire to the car of the second Respondent/De-facto Complainant. Based on which, the name of the Petitioner had been included in the charge sheet. Therefore, the name of the Petitioner had been included only to settle a score of the Petitioner for having sought the loan obtained from the Petitioner by the second Respondent/De-facto Complainant for an incident of fire which had taken place in his guest house. The Petitioner's name had been arrayed as though the Accused arrested by the police had confessed to the crime implicating the name of the Petitioner through one Manikandan having engaged the arrested persons viz., Ananthan and Kaleeswaran. Also, the name of the Petitioner had been included only with a *mala fide* intention. Therefore, the Petitioner seeks to quash the charge sheet against the Petitioner in P.R.C.No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi.

3. The learned Counsel for the Petitioner would submit that the Petitioner is arrayed as first accused, as per the Charge Sheet in PRC No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi. The learned Counsel for the Petitioner invited the attention of this Court to the statement of the De-facto complainant/the informant recorded under



CRL.OP.(MD)No.12137 of 2022

Section 161 Cr.P.C., which is enclosed along with this petition, wherein it is observed that on the date of occurrence, between 02.00 to 03.00 clock, he heard a loud thud. He was scared from coming out of his room. He had observed the CCTV footage through his mobile phone. He observed his Car burned. Due to scare, he is unable to come out of his room in the wee hours. Subsequently, the police had recorded the statement from the informant, wherein he stated that he had heard the discussion of few persons discussing about the involvement of few people from his area.

4. The learned Counsel for the Petitioner had invited the attention of this Court to the 161 statement of the witnesses recorded. He would further submit that the confession statements will not help the Court as there is no recovery based on the confession. Even otherwise, it is the submission of the learned Counsel for the Petitioner that if at all, all the statements as recorded by the Investigation Officer are recorded as deposition before the trial Court, still the trial Court cannot convict the accused. There are no material incriminating the Petitioner in any of the statement of the witnesses.

5. It is the further contention of the learned Counsel for the Petitioner



CRL.OP.(MD)No.12137 of 2022

that in the FIR itself, it proceeds as though the persons, who are inimical towards him due to his affluence and economic growth, had targeted his Car due to enmity. He had not mentioned the names of the suspects. In the Charge Sheet, it has been stated that the De-facto complainant had borrowed a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) from the Petitioner and he had not repaid the same. Therefore, the Petitioner herein to wreak vengeance on the De-facto complainant had arranged the other accused to set fire to the Car of the De-facto complainant. In none of the 161 statements, there is any incriminating material to link the Petitioner with the other accused.

6. Further, the learned Counsel for the Petitioner relied on the ruling of the Hon'ble Supreme Court in *Appeal (Crl.) No.744 of 2006 (Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra) dated 28.04.2008* and the case in *Criminal Appeal No.1571 of 2021 (Parveen @ Sonu Vs. The State of Haryana) dated 07.12.2021*, wherein the Hon'ble Supreme Court had discussed regarding the charge under Section 120-B IPC, which is squarely applicable to the facts of the present case. Therefore, he seeks to quash the Charge Sheet in P.R.C.No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi.



CRL.OP.(MD)No.12137 of 2022

WEB COPY

7. The learned Additional Public Prosecutor for the first Respondent vehemently opposed the line of arguments of the learned Counsel for the Petitioner. The learned Additional Public Prosecutor invited the attention of this Court to the submission of the learned Counsel for the Petitioner that even if the case is taken up for trial, the very same witnesses are examined and their deposition is recorded, the trial Court cannot convict the accused/the Petitioner herein. That cannot be a ground to quash the Charge Sheet invoking powers under Section 482 Cr.P.C. by this Court.

8. The learned Additional Public Prosecutor relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Satish Kumar Jatav Vs. The State of Uttar Pradesh and others reported in 2022 LiveLaw (SC) 488***. The ground that no useful purpose will be served by prolonging the proceedings of the case cannot be a ground to quash the criminal proceedings when prima facie case is made out. He would also rely on the reported ruling of the Hon'ble Supreme Court in the case of ***Rajeev Kourav Vs. Baisahab and others reported in (2020) 3 Supreme Court Cases 317***. In the light of the above rulings, the learned Additional Public Prosecutor sought to dismiss this Petition as not maintainable. He would further submit



CRL.OP.(MD)No.12137 of 2022

that what are all argued by the learned Counsel for the Petitioner is to be considered only at the time of trial on assessment of the evidence and not by this Court exercising extraordinary powers under Section 482 Cr.P.C.

9. The learned Counsel for the second Respondent/De facto Complainant submitted his arguments and also before commencing arguments, he furnished typed set of papers, which was filed by the Petitioner herein, while filing an Anticipatory Bail application in Crl.O.P. (MD).No.7515 of 2022. The learned Counsel for the second Respondent/De-facto Complainant relied on the Complaint filed by the Petitioner against the second Respondent, which was enquired by the District Crime Branch, Ramnad.

10. The learned Counsel for the second Respondent also invited the attention of this Court to the enquiry findings and report. He also invited the attention of this Court to the confession made to the Investigation Officer by A2. The learned Counsel for the second Respondent/De-facto Complainant placed reliance on the particular portion, wherein, A2 stated that A1 had transferred the money to the account of A2.



CRL.OP.(MD)No.12137 of 2022

11. The learned Counsel for the second Respondent/De-facto

Complainant submitted that the Petitioner herein is motivated to exploit the relationship of A2 to set a fire to the car of the second Respondent/De-facto Complainant. Based on that confession of A2 alone, the suspicion against the Petitioner had become strong and the Investigation Officer had proceeded accordingly. Further he invited the attention of this Court to the further statement of the witnesses to buttress his claim. Therefore, it is the contention of the learned Counsel for the second Respondent/De-facto Complainant that there are sufficient material *prima facie* to incriminate the Petitioner in the alleged offence. Therefore, it is not a fit case for quashing the charge sheet and it is not maintainable. Hence, prays for dismissal of this Petition.

12. Point for Consideration:

***Whether the charge sheet laid against the
Petitioner in PRC.No.13 of 2022 is to be quashed?***

13. On consideration of the submission of the learned Counsel for the Petitioner, it is found that the De-facto Complainant had borrowed Rs. 50,00,000/- (Rupees Fifty Lakhs only) from the Petitioner and had not



CRL.OP.(MD)No.12137 of 2022

repaid the amount. Therefore, there had been misunderstanding and dispute between them. Merely on the basis of such misunderstanding, he had lodged the Complaint for burning of his Car in suspicious circumstances during the intervening night on 21.06.2021. Only on hearing the explosion, he had seen CCTV footage from his guest house that his Car bearing Registration No. TN 45 BQ 0006 TATA NEXON was in flames. Only then, he saw his CCTV Footage that the Car parked outside was in flames, he was scared to come out of his guest house. He had immediately contacted his well-wishers viz., Ponnaiya S/o. Arulnath, Santhiyagu S/o. John, Boss S/o. Govinthan and Saravanan S/o. Arumugam. By the time, friends and colleagues came to the place, the Car was fully burnt. Later on, he lodged the Complaint with the Paramakudi Taluk Police Station. He had not stated suspicion against any persons as Accused. Only in the course of the investigation, the Police had recorded statement from one Kaleeswaran and Anand who are alleged to have burnt the Car which was received as an information through one Manikandan and they are alleged to have burnt the Car on the basis of the dispute between the Petitioner and the Respondent/Complainant regarding the borrowal of the Complainant of Rs. 50,00,000/- (Rupees Fifty Lakhs only) from the Petitioner and non-repayment of the same. It is only a hearsay evidence. As per the reported



CRL.OP.(MD)No.12137 of 2022

ruling cited by the learned Counsel for the Petitioner in the Hon'ble Supreme Court in Appeal (Crl.) No.744 of 2006 (***Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra***) dated 28.04.2008 and the case in Criminal Appeal No.1571 of 2021 (***Parveen @ Sonu Vs. The State of Haryana***) dated 07.12.2021, mere suspicion will not take the place of evidence or proof.

14. Also, the Police had obtained the confession statement from Anand and Kaaleeswaran. Even, the confession statement of the Accused viz., Anand and Kaaleeswaran cannot be acted upon by the Court. Based on such confession statement, this Petitioner cannot be implicated in the Criminal case.

15. Based on the judgment of the Hon'ble Supreme Court in ***Criminal Appeal No.1571 of 2021 (Parveen @ Sonu Vs. The State of Haryana)*** dated 07.12.2021 relied by the learned counsel for the Petitioner, mere suspicion cannot be treated as sufficient material to implicate a person as Accused.

16. As per the ruling of the Hon'ble Supreme Court reported in ***CDJ***



CRL.OP.(MD)No.12137 of 2022

2019 SC 1560 in the case of **Mohammed Fasrin Vs. State Rep. By the**

Intelligence Officer, the confession of the co-Accused cannot be used to implicate a person.

17. The learned Counsel for the Petitioner relied on the reported ruling of the Hon'ble Supreme Court in the **Appeal (Crl.) 744 of 2008 (Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra)**, the relevant portion reads as follows:

“23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the Accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the Accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.”

18. The ruling cited by the learned Government Advocate (Crl. Side) reported in **(2020) 3 SCC 317** in the case of **Rajeev Kourav Vs. Baisahab and Others**, the relevant portion reads as follows:

“High Court cannot embark upon the appreciation of evidence while considering the Petition filed under Section 482 of Cr.P.C., for quashing criminal proceedings – If a prima facie case is made out disclosing the ingredients of the offence alleged against the Accused, the Court cannot quash a criminal proceedings.”



CRL.OP.(MD)No.12137 of 2022

19. Also, if the same ratio is applied in this case, the ingredients of the offence is not attracted from the materials available before the trial Court which was made available in the typed set filed by the learned Counsel for the Petitioner. As submitted by the learned Counsel for the Petitioner, the confession statement of the so-called Accused had been put to use to incriminate the Petitioner. Based on the mere apprehension that there was a dispute between the De-facto Complainant and the Petitioner regarding the repayment of the loan obtained by the Complainant from the Petitioner herein, that suspicion cannot be used against the Petitioner to incriminate him in a criminal case. Here, the case is a burning of a Car in the intervening night.

20. There are several news reports about the Motor Vehicles catching fire on its own. Till date the reasons are not known. Motor Vehicles burn on their own even when the Motor Vehicles are on the move. While so, the Car Tata Nexon burnt in the intervening night and there are no witnesses. The mere apprehension expressed by the Petitioner based on the hearsay evidence of the two individuals. The two individuals had stated that they have burnt the Car. The video footage does not mention about the identity of the said person for burning the Car in the intervening night. The



CRL.OP.(MD)No.12137 of 2022

Complainant cannot implicate the Accused as though he committed the offence.

21. Some years back, the official Car of the Hon'ble Judge of this High Court burnt out in Sivagangai. The CBCID Police, who investigated the case, was unable to find out the reason from the investigation of burning of the Car. They had interviewed the Engineers of the Manufacturers of the Car and also the Experts in the field of Automobile Engineering. No one was able to find out the reason for burning of the Car. Some years back, when the Ambassador provided to the Hon'ble Judges of the High Court was taken for surrender to the Central Workshop, on the way the car caught fire. Fortunately, the driver sensed burning smell and came out of the Car and saved himself. Similarly some years back, a Maruthi Omni Van proceeding from Bangalore to Coimbatore caught fire near Bhavani which was reported in the news papers. These are the incidents where passengers jumped out from the burning Vehicles. Similarly, some years back in Chennai a newly purchased car viz., TATA Indica, caught fire when the owner had taken it outside the house in the morning hours. Sensing burning smell, the owner-driver jumped out of the Car. These past incidents were reported in the news papers. Therefore, there are no scientific reasons



CRL.OP.(MD)No.12137 of 2022

available in the public domain regarding the burning of cars. Here also similar incident had taken place in the intervening night on 21.06.2021. It is true that the Respondent as Complainant/owner of the Car did not report any suspicion. The Police had recorded the statement of the two individuals as though they had set fire to the Car. In cases of this nature, the fire destroys the evidence. Therefore, circumstances alone available before the Court. On perusing the available materials, the Petitioner's name had been implicated based on the civil dispute only. Therefore, the contention of the learned Counsel for the Petitioner and in the light of the reported rulings cited by the learned Counsel for the Petitioner strengthened the case of the Petitioner. The ingredients of the offence are not made out to implicate the Accused in this case from the available materials. Therefore, the submission of the learned Counsel for the Petitioner is accepted and the submission of the learned Additional Public Prosecutor is rejected.

22. In the light of the above discussion, Point for Consideration is answered in favour of the Petitioner and against the Prosecution.



CRL.OP.(MD)No.12137 of 2022

In the result, this ***Criminal Original Petition is allowed.*** The charge

sheet in PRC No.13 of 2022 on the file of the learned Judicial Magistrate, Paramakudi is quashed against this Petitioner only. Consequently, connected miscellaneous petitions are closed.

13.06.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

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CRL.OP.(MD)No.12137 of 2022

To

1. The Judicial Magistrate,
Paramakudi.
2. The Inspector of Police,
Paramakudi Taluk Police Station,
Paramakudi,
Ramanathapuram District.
3. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.OP.(MD)No.12137 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery judgment made in
CRL.OP.(MD)No. 12137 of 2022

13.06.2023