



Crl.O.P.(MD) No.15991 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2023

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.RAMAKRISHNAN**

Crl.O.P.(MD) No.15991 of 2020

and

Crl.M.P(MD)No.7935 of 2020

Kathiravan

... Petitioner

Vs.

1. State Represented by
The Inspector of Police,
Rajakkalmangalam Police Station,
Kanyakumari District.
(Crime No.74 of 2019)

2. Usha Devi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in C.C.No.321 of 2020 on the file of the Learned Judicial Magistrate Court No.1, Nagercoil, Kanyakumari District and quash the same against the above petitioner/accused.

For Petitioner : Mr.R.Anbarasu

For Respondents : Mr.P.Kottaichamy,
Government Advocate (Crl.Side)
for R1
: No Appearance for R2



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accused in the final report and the same was taken on file in C.C.No.321 of 2020 on the file of the learned Judicial Magistrate Court No-I, Nagercoil.

3. The learned counsel for the petitioner submitted that he is a licence holder and there was no recovery from his premises and hence, the offences mentioned in the final report are not made out. He would further submit that the accusation on the basis of the confession of the co-accused is not sufficient to frame the charges against the petitioner. Therefore, he seeks to quash the above said C.C.

4. The learned Government Advocate, on instructions, submitted that even though the petitioner has licence and the recovery is not made out from the petitioner, there is a sufficient material to proceed further. Therefore, he seeks for dismissal of this case.

5. This Court has considered the rival submission made by the learned counsel appearing on either side and perused the materials available on record.



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6. The learned Government Advocate, on instructions, submitted that the petitioner has licence to hold the explosive upto the quantity of 15.kgs and there was no recovery from the premises of the petitioner. Only on the basis of the co-accused's confession, he was arrayed as accused. This Court finds that there is no material except the confession of A2. It is well settled principle that without any sufficient evidence to frame the charges, apart from the confession of the co-accused, the proceedings against the petitioner like accused, is liable to be quashed. The same was fortified by the principles laid down by the Hon'ble Supreme Court in the following judgements:

In Digamber Vaishnav v. State of Chhattisgarh, (2019) 4 SCC 522 at page 527

14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to



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very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

In Surinder Kumar Khanna v. Directorate of Revenue Intelligence, (2018) 8 SCC 271 at page 280

13. On the touchstone of law laid down by this Court, such a confessional statement of a co-accused cannot by 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.

7.This Court finds no material and also the learned Government Advocate fairly submitted that there was no material available except the confession of the co-accused, this Court in view of the above principles, laid down by the Hon'ble Supreme Court inclined to quash the proceedings in C.C.No.321 of 2020 insofar as the petitioner alone.

8. Accordingly, this Criminal Original Petition stands allowed and



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proceedings, in C.C.No.321 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil is quashed against the petitioner alone with direction to the learned trial Judge that he shall independently decide the matter relating to the accusation made against A2 in accordance with law. Consequently, connected miscellaneous petition is closed.

21.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbm

To

1. The Judicial Magistrate No.1,
Nagercoil, Kanyakumari District.
2. The Inspector of Police,
Rajakkalmangalam Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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