



Crl.R.C.(MD).Nos.988 of 2022 and 17 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).Nos.988 of 2022 and 17 of 2023
and Crl.M.P.(MD).No.12218 & 12219 of 2022

Cause Title in Crl.R.C.(MD).No.988 of 2022

Seenivasa Perumal @ Seeni

... Petitioner

Vs.

The State through
The Sub Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
Crime N.2014 of 2012.

.. Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records of the order made in Cr.M.P.No.1307 of 2021 in S.C.No.777 of 2016 on the file of the III Additional District Court, Tirunelveli, dated 23.03.2020 and set aside the same and consequently discharge the petitioner from the above case.

For Petitioner : Mr.M.Sam Fugine Jebakumar

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor



Cause Title in Crl.R.C.(MD).No.17 of 2023

Seenivasa Perumal @ Seeni

... Petitioner

Vs.

The State through
The Sub Inspector of Police,
Palayamkottai Police Station,
Tirunelveli District.
Crime N.2014 of 2012.

.. Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 01.12.2022, framing charges against the petitioner in S.C.No. 777 of 2016 on the file of the III Additional District Court, Tirunelveli and set aside the same.

For Petitioner : Mr.M.Sam Fugine Jebakumar

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

COMMON ORDER

Crl.R.C.(MD).No.988 of 2022 has been filed against the order made in Cr.M.P.No.1307 of 2021 in S.C.No.777 of 2016 on the file of the III Additional District Court, Tirunelveli, dated 23.03.2020 and Crl.R.C. (MD).No.17 of 2023 has been filed against the order, dated 01.12.2022, framing charges against the petitioner in S.C.No.777 of 2016 on the file of the III Additional District Court, Tirunelveli.



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2.The case of the prosecution in brief:

The defacto complainant is the son of the deceased. He lodged the complaint stating that on 31.12.2012 at about 6.15 p.m., his father namely A.S.Raj was driving a two wheeler bearing registration No.TN 72 AB 1454, along with one Arul Raj as pillion rider in the Tiruchendur Road. When they were nearing the place of occurrence, 4 persons in two separate two wheelers intercepted his father, caused assault with aruval and the above said Arulraj went away from the place of occurrence and all the 4 persons criminally intimidated the public and the defacto complainant. The deceased was taken to the hospital, where he was declared to be dead. On the basis of the above said occurrence, the case was registered and during the course of investigation involvement of 11 persons came to light. So the final report was filed before the committal Court. Now after the committal process was over, it was taken as S.C.No.777 of 2016 and transferred to III Additional District Court, Tirunelveli. Now, charges have been framed against all the accused. These petitions have been filed by the 11th accused namely Seenivasa Perumal @ Seeni against the above said proceedings. CrI.R.C.(MD).No.988 of 2022 is filed against the order passed in CrI.M.P.No.1307 of 2021, which was filed by the petitioner seeking discharge under Section 227 of Cr.P.C. and CrI.R.C.(MD).No.17 of 2023



has been filed against the framing of charges under Section 302 r/w 34 of IPC.

3.Before we go into the disputed merits of the case, the background facts may be kept in mind, so that a clear understanding is possible. One Sudalai Muthu @ Pattan is the uncle of the first accused. Sudalai Muthu @ Pattan contested for Village Panchayat. Against him, one Ganesan contested. Since both were polled equal votes, the above said Pattan was declared as Vice President through Thiruvolai. Because of the above said issue, the above said Ganesan and others murdered Pattan. To retaliate the above said murder, the accused persons conspired to kill the above said Mariappan. In pursuance of the above said conspiracy, accused No.1 to 4 were waiting near the place of occurrence on 31.12.2012. If the Mariappan escapes from Accused No.1 to 4, it was planned in such a way that accused No.5 to 7 must wait near Sankar Colony. Another team comprising accused Nos.8 & 9 were to wait in another area. Accused No.10 & 11 were given task of noting the movements of the deceased. But, by mistake, the accused No.1 to 4 committed murder of the deceased namely A.S.Raj, due to mistaken identity. This is the background facts.

4.As I mentioned earlier, it is a clear case of mistaken identity and



transfer of malice. The allegation against this petitioner is that he was watching the movement of the above said Mariappan along with accused No.10; Now it has been submitted by the petitioner to the effect that proper investigation was not undertaken; No individual overt act are mentioned or specified in the final report; The charges under the head of 6 & 7 are defective in nature; The procedure under Section 228(3) Cr.P.C. was not properly followed, while framing the above said charges; Only based upon the confession statement of the co-accused, this petitioner has been arrayed as accused and three versions have been given by the prosecution; Even though the mobile phone was seized, it was not sent for Forensic Laboratory for examination; No materials has been collected during the course of investigation to connect this petitioner in the above said criminal conspiracy and no recovery was also made. Even as per the allegation made in the FIR and final report offences under Section 147 and 34 of IPC are not made out and attracted. There was no common motive to commit the above said crime.

5.Per contra, the learned Additional Public Prosecutor would submit that even as per the investigation findings this petitioner was engaged to identify and watch the movements of the deceased. According to him, since a common motive under Section 34 of IPC has been alleged,



the trial Court must be permitted to continue to its logical conclusion.

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6.Heard both sides.

7.As I mentioned earlier, it is a case of transfer of malice and this petitioner alleged to have conspired to murder one Mariappan, but murdered the deceased by mistake. It is a gruesome murder. Four persons joined together and attacked the deceased, who was unarmed at the time of the occurrence and caused indiscriminate cut injuries, causing death on the spot itself. So the question which arises for consideration is whether such a crime must be concluded even without trial against these petitioner on the grounds that has been mentioned by him in the revision petition.

8.The learned counsel for the petitioner would rely upon the number of judgments.

1.Judgment of the Honourable Supreme Court in the case of ***Suresh Budharmal Kalani alias Pappu Kalani Vs. State of Maharashtra*** reported in ***(1998) 7 Supreme Court Cases 337***.

2.Judgment of the Honourable Supreme Court in the case of ***Dipakbhai Jagdishehandra Patel Vs. State of Gujarat and others*** reported in ***2019 (2) MWN (Cr.) 85 (SC)***.



3. Judgment of this Court in the case of ***P.Kallapiran Vs. The State represented by the Inspector of Police Alwarkurichi Police Station,*** reported in ***2018-2-L.W. (Crl.) 779.***

4. Order passed by this Court in the case of ***M.Sakubar Sadik Vs. The State rep. By The Inspector of Police, S-2, Airport Police Station, Kancheepuram District*** in ***Crl.R.C.No.693 of 2017*** and

5. Order passed by this Court in the case of ***D.N.M.Veeraiyan Vs. State by The Inspector of Police, CBI/ACB/Chennai*** in ***Crl.R.C.No.37 of 2021.***

9. For the purpose of argument that no charge can be framed on the basis of the confessional statement of the co-accused, Now whether any material is available or collected during the course of investigation to connect this petitioner to the above said crime is the only matter for consideration. The contentions with regard to the contrary versions and not sending the mobile phone for Forensic Laboratory verification are all matter for consideration by the trial Court at the time of trial. Similarly, the argument with regard to what sort of offence is attracted is also matter for consideration by the trial Court at the time of trial. Therefore, I am not going in to those aspects now, since already charge sheet has been framed by the trial Court. During the course of investigation, the statement of one Maripandi was recorded and he stated in the statement to the effect that he



found this accused along with other persons in a two wheeler near the place of occurrence. So this is only connecting link in the form of statement during the course of investigation. This is made available by the prosecution. Moreover the statement of the co-accused implicating the other persons is not *per-se* admissible in evidence.

10.In the light of the above said statement of the witnesses as to availability of this petitioner near the place of occurrence, whether this fact that was discovered during the course of investigation and whether this fact will show the above said common motive and conspiracy is a matter for consideration by the trial Court. So the contention on the part of the revision petitioner that no material has been collected during the course of investigation to connect this petitioner with the above said crime is not at all correct on record. So I find absolutely no merit in these revision petitions. The murder of this nature and allegation such magnitude must be tried to its logical conclusion. These petitions deserve to be dismissed and accordingly, both petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

01.02.2023

Index : Yes / No

Internet : Yes / No

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To

1. The III Additional District and Sessions Judge, Tirunelveli.
2. The Sub Inspector of Police, Palayamkottai Police Station, Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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