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CrI.O.P.No.2557 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.2557 of 2024

and

CrI.M.P.No.1845 of 2024

1.Habibullah
S/o.Mohammed Mohideen

2.Hanif Rahman
S/o.Shajahan

... Petitioners

Vs.

1.State represented by
The Inspector of Police,
Edayur Police Station,
Edayur, Tiruvarur District.

2.R.Dharmalingathevar
S/o.Rajagopalthevar

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records relating to PRC No.10 of 2012 on the file of Judicial Magistrate, Thiruthuraipoondi and quash the same.

For Petitioners : Mr.G.Mohammed Aseef

For Respondents : Mr.A.Gopinath
Government Advocate [CrI.side] [R1]



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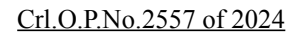
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ORDER

This quash petition has been filed to quash the proceedings pending in PRC No.10 of 2012 on the file of Judicial Magistrate, Thiruthuraipoondi.

2. The case of the prosecution is that the house of one Dharmalinga Thevar was damaged allegedly by an act of mischief committed by some unknown persons. This incident took place on 19.06.2001 at about 19.00 hours. Based on the complaint, a First Information Report came to be registered in Crime No.84 of 2001. On completion of investigation, a final report was filed before the Court below as against six accused persons. The case against the petitioners was spilt up and the committal Court committed the case insofar as A2, A3 and A6. The same was taken on file by the Assistant Sessions Judge/Chief Judicial Magistrate, Tiruvarur, in S.C.No.47 of 2012.

3. Those accused persons filed discharge petition before the concerned Court in Crl.M.P.No.368 of 2012 and this petition was allowed by an order dated 29.10.2021. The relevant portions in the



"I have carefully perused the statement of complaint dated 20.08.2001. The statement of complaint was preferred by one Dharmalinga Devar S/o.Rajagopal of Natham Edaiyarkadu Village. As found from the complaint on 19.08.2001 at 6.00 hours in the morning he left for his daughters house situated in a nearby village. He returned to his house at about 20.00 hours in the night. He came to know that his thatched house was set to fire at about 19.00 hours. By the time he reached the spot the entire house turned into ash. The value of the damages caused would be Rs.40,000/-.

On the basis of the said complaint the First Information Report in Cr.No.84 of 2001 was registered on 20.08.2001 at about 19.00 hours. Nobody was arrayed as accused in the FIR as there is no whisper in the complaint about the accused. The police had investigated this case and recorded 161 statement of six witnesses. I have carefully perused the 161 statements of all the witnesses. None of them had stated anything against the accused. They have not even whispered the names of any persons including the names of the petitioners.

The Inspector of Police appears to have recorded a confession statement of one Sheik Nazurudeen at about 14.00 hours on 20.08.2001. If we peruse the preamble of the confession statement it would read that the confession was being recorded during the course of investigation of the offence u/s.436 registered in Cr.No.84 of 2001 of Edaiyur Police Station. The FIR in Cr.No.84 of 2001 was registered only at 19.00 hours on 20.08.2001. But the alleged confession was said to have been recorded at 14.00 hours on 20.08.2001, three hours before the registration of the FIR. This is nothing but a cock and bull story.

Moreover the alleged confession is not admissible in evidence as there was no fact or material were discovered by the police on the basis of the alleged confession. The alleged confession is clearly hit by section 26 of the Indian Evidence Act. Section 27 of the Indian Evidence Act, which is a proviso to section 26 will not come to the rescue of the police as there was no discovery of any fact based on the alleged confession statement.



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As already stated none of the eye witnesses had stated anything against the petitioners/Accused. Absolutely there is no scope for framing any charge against the petitioners/Accused. In these circumstances if any charge has been framed and the accused were tried it will result in miscarriage of justice. Moreover it will also cause injustice to the accused. By exercising the power conferred upon this court as per Section 227 Cr.P.C. the injustice being caused to the accused can be prevented. Hence I have no hesitation to allow this application."

4. The petitioners, who are A4 and A5, have approached this Court and are seeking for parity with the discharge order that was passed in favour of A2, A3 and A6.

5. Heard Mr.G.Mohammed Aseef, learned counsel for petitioners and Mr.A.Gopinath, learned Government Advocate [Crl.side] appearing for first respondent.

6. In the considered view of this Court, the trial Court did not find any material as against any accused person even to frame charges in this case. That is the reason why A2, A3 and A6 were discharged from the case. The petitioners (A4 and A5) are also similarly placed. There are no other materials or independent witnesses available against the petitioners. Therefore, there is no reason as to why the petitioners should continue to



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undergo the criminal prosecution. The order passed in the discharge petition insofar as A2, A3 and A6 is concerned, will enure to the benefit of the petitioners also.

Accordingly, this Criminal Original Petition is allowed and the proceedings in PRC No.10 of 2012 on the file of Judicial Magistrate, Thiruthuraipoondi, is hereby quashed. Consequently, connected miscellaneous petition is closed.

09.02.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

- 1.The Judicial Magistrate,
Thiruthuraipoondi.
- 2.The Inspector of Police,
Edayur Police Station,
Edayur, Tiruvarur District.
- 3.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J.

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