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Crl.O.P.No.1521 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.1521 of 2024

and

Crl.M.P.No.1051 of 2024

A.Anbarasu,
S/o.Arjunan

... Petitioner

Vs.

State represented by,
The Inspector of Police,
Central Crime Branch,
Job Racket, Team – 28,
Vepery, Chennai

...Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code to direct the Judicial Magistrate No.1, Poonamallee to conduct a retrial in C.C.No.187 of 2022 on the file of the Judicial Magistrate No.1, Poonamallee.

For Petitioner : Mr.R.Alvin Manoj Raj

For Respondent : Mr.A.Damodaran
Addidtonal Public Prosecutor



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ORDER

This petition has been filed for a direction to the Court

below to conduct proper trial in CC No.187 of 2022 and to proceed further in accordance with law by affording opportunity to the petitioner to defend himself effectively in the pending criminal proceedings.

2. The respondent police registered an FIR in Crime No.91 of 2009 for an offence under Section 420 of IPC, based on the complaint given by one Anbuselvan. The investigation was completed and final report was filed before the learned Judicial Magistrate No.I, Poonamallee and the same was taken on file in CC No.187 of 2022. The Court below took cognizance for offence under Section 420 of IPC.

3. The summon was issued to the petitioner and since the petitioner failed to appear before the Court, non-bailable warrant was issued on 03.11.2023. The petitioner was secured and he was produced before the Court. Since the Court was not convinced with the reasons assigned by the petitioner for his non-appearance, the Court below remanded the petitioner. The copies were furnished to the petitioner under Section 207 of Cr.PC and



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the case was posted for questioning on 18.01.2024.

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4. When the matter came up for hearing on 18.01.2024, the Court below questioned the petitioner and he pleaded guilty. Hence, the Court below posted the case on 19.01.2024 for examination of PW1 and for marking of certain documents and material objects. On the very same day, the petitioner was also questioned under Section 313 of Cr.PC and the petitioner is said to have pleaded guilty on that day also. Hence, the Court below proceeded to post the case for judgement on 30.01.2024.

5. The above procedure that was adopted by the Court below has been put to challenge in the present criminal original petition.

6. Heard Mr.R.Alvin Manoj Raj, learned counsel for the petitioner and Mr. A.Damodaran, learned Addidtonal Public Prosecutor for respondent.

7. The Court below has taken cognizance for offence under



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Section 420 of IPC. This offence is punishable with imprisonment for seven years and fine. Hence, the Court below was expected to follow the procedure under Chapter XIX which provides for trial of warrant cases by Magistrates.

8. On carefully reading Sections 238 to 240, it is clear that the accused person after being served with the copies under Section 207 of Cr.PC, is called before the Court for initial questioning. The Court below has to go through the final report and also the materials available on record and is expected to frame charges under Section 240 of Cr.PC. After framing of charges, the accused person is once again questioned under Section 241 of Cr.PC. If at that stage, the accused person pleads guilty, it is left to the discretion of the Magistrate to convict the accused person on the basis of the accused person pleading guilty. It must be borne in mind that even if the accused person pleads guilty, it is not mandatory for the Magistrate to convict an accused person and the code itself gives a discretion to the Magistrate to either proceed further with the trial in spite of the accused person pleading guilty or the Court can act upon the accused person pleading guilty and convict him. It all depends upon the facts and



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circumstances of each case and such discretion exercised by the Court requires application of mind. It is now well settled that the more serious the offence is, the Courts do not normally act upon the accused pleading guilty and the accused is permitted to defend himself effectively. This is in view of the fact that serious offence also has a serious consequence in terms of punishment.

9. In the instant case, the Court below has not even framed charges as required under Section 240 of Cr.PC. There is no such indication in the proceedings that have been recorded on 12.01.2024, 18.01.2024 and 19.01.2024. Therefore, the Court below fell in error in acting upon the accused pleading guilty during the initial questioning and proceeding further to conduct the case upto the stage of pronouncing final judgement.

10. The learned counsel for the petitioner submitted that the petitioner did not even have a counsel to effectively defend himself and the petitioner was not even aware about the right of fair trial that is available to the accused.



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11. In the light of the above discussion, this Court finds that there is a procedural irregularity which has seriously prejudiced the interest of the accused person. Therefore, there shall be a direction to the Court below to start the proceedings from the stage of Section 240 of Cr.PC and proceed further in accordance with law. The Court below shall ensure that the petitioner is afforded sufficient opportunity to defend himself effectively during trial. The Court below shall also ensure that the proceedings in CC No.187 of 2022 is completed within a period of three months from the date of receipt of a copy of this order. The compliance report shall be filed before this Court.

12. This Criminal Original Petition is disposed of with the above directions. Consequently, the connected miscellaneous petition is closed.

29.01.2024

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Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No



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To
WEB COPY

- 1.The Judicial Magistrate No.1,
Poonamallee
- 2.The Inspector of Police,
Central Crime Branch,
Job Racket, Team – 28,
Vepery, Chennai
- 3.The Public Prosecutor,
Madras High Court.



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