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Crl.R.C.No.458 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.458 of 2024
and
Crl.M.P.No.4402 of 2024

1.Sethamaraickar @ Sheik Dawood
2.Rajak

... Petitioners

Vs.

1.The Inspector of Police,
Town Police Station,
Thiruvarur.

2.Ravichandran @ Ravi @ Mattu Ravi
3.Prabhakaran
4.Muthukrishnan @ Muthukumar
5.Kumar

... Respondents

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, praying to set aside the order passed by the learned Principal District and Sessions Court, Thiruvarur, dated 12.02.2024, in Crl.M.P.No.154 of 2024.

For Petitioners : Mr.P.Vijendran

For Respondent-1 : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Revision Petition is filed to set aside the order passed by the learned Principal District and Sessions Judge, Tiruvarur dated 12.02.2024 in Crl.M.P.No.154 of 2024.

2.This Court, on 13.03.2024 and 20.03.2024, had passed the following orders:

“Proceedings on 13.03.2024:

The petitioners who are L.W.1 and L.W.2 filed a petition under Section 173(2) and (8) Cr.P.C. before the Trial Court in Crl.M.P.No.154 of 2024 seeking further investigation in Crime No.675 of 2011.

2.The contention of the petitioner is that on the complaint, case in Crime No.675 of 2011 registered, investigation conducted and charge sheet filed which was taken on file as S.C.No.85 of 2017. Thereafter, the petitioner came to know that a statement has been annexed in the charge sheet as though it was recorded from L.W.2. According to the first petitioner/L.W.2, no statement was recorded by the Investigating Officer. Further, in the scene of occurrence two more eye witnesses were present, namely, Sudhakar and Velmurugan but they have not been shown as witnesses and no statement recorded from them. The second petitioner/.W.1 has given 164 statement before the learned



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Judicial Magistrate and the said statement does not form part of the charge sheet. In view of the same, the petitioners filed a petition seeking further investigation and the Trial Court without verifying the document and not considering the petitioners' contention, dismissed the same. He further submitted that the charges in this case are yet to be framed and the trial is yet to commence.

3.The learned Additional Public Prosecutor confirms that trial in this case is yet to commence and with regard to the petitioners' contention, he seeks time to get instructions and file his objections.

4.Post the matter on 20.03.2024.

Proceedings on 20.03.2024:

“In continuation and conjunction to the earlier order passed by this Court on 13.03.2024, this Court is passing the following order.

2.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, the trial in S.C.No.85 of 2017 is yet to commence though the charge sheet filed since 2017. He further submits that the statement of LW2 not recorded and two eye witnesses namely Sudhakar and Velmurugan not examined not correct. The petitioner after four years makes such objections. Earlier this Court directed the trial Court to proceed with the trial in Crl.O.P.No.15983 of 2023 vide order, dated 24.07.2023. Hence, the trial Court dismissed the petition finding that this petition would only further protract the



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proceedings. Further, he sought two days time to get details and reply.

3.The learned counsel for the petitioner submits that by getting time, the 1st respondent Police is attempting to make this revision infructuous for the reason that the case is posted for trial on 22.03.2024. Once the trial commences, thereafter the petitioner as a defacto complainant rights to file a petition for further investigation, cannot be entertained.

4.In reply, the learned Additional Public Prosecutor submits that the defacto complainant's apprehension is misconceived. In any event, the learned Additional Public Prosecutor ensures through the 1st respondent Police to inform the trial Court not to proceed in view of the present petition which can be disposed without delay on the next hearing date.

5.Post the matter on 26.03.2024.”

3.In continuation and conjunction to the earlier orders passed by this Court, counter was filed by the first respondent on 03.10.2024, which reads as follows:

“The petitioner herein filed the above petition praying to order further investigation to add the relevant eye witnesses of the offence and also prayed to include the statement recorded by the Learned Judicial Magistrate of the 1st respondent jurisdiction, in the above criminal complaint case in S.C.No. 85/2017, pending for trial before the learned Principal District and Session Judge,



Thiruvavarur.

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2.The Petitioners herein have approached this Hon'ble court with the facts and ground those are duly false and fabricated and they are not withstanding the scrutiny of law and the petition is nothing but totally an abuse of process of law.

3.It is submitted that the core allegation of the above revision petition is that the direct witnesses to the alleged offence have been excluded from the list of prosecution and the statement recorded by the learned Judicial Magistrate was not added in the 161 (1) statement list, as stated in para 2 & 3 of their petitions.

4.It is further submitted that the learned Judicial Magistrate has recorded the statement of LW2 as dying declaration, since the LW2 was severely injured and took treatment in the hospital. Thereafter LW2 cured from injury sustained by him, so the statement recorded by the learned Judicial Magistrate cannot be marked.

5.It is further submitted that the advocate who accompanied injured LW2 had been cited as listed witness number 3 and one Rajendran, Anandhakrishnan cited as witness number 4 and 5, and in their 161(3) Criminal Procedure Code statement reveals that they had been with injured 1st accused had enmity over them and L.W.6/Jeyaraman, L.W.7/Raja, L.W.8/Ramesh who were having shops near the scene of occurrence who had stated about the occurrence as eye witnesses. Hence, the Investigation Officer had examined the persons who had accompanied in which the injured had actively participated



as well as the persons who are having shops near the scene of crime.

6.It is further submitted that in the above complaint 25 witnesses have listed as the prosecution side listed witnesses including official witness listed from L.W.18 to L.W.25. It is to be noted that among the other witnesses, L.W.3 to L.W.8 are the eye witnesses from the place of occurrence. It is proved, that no eyewitnesses have been added by the investigation officer, is a false and baseless allegation by the petitioners herein.

7. It is further suitably observed by the learned Trial Judge in paragraph 25 of the Order that

“25. As stated earlier, the claim of petitioners does not come within the purview of further investigation under section 173 (8) of Criminal Procedure Code and the petitioners did not have the right to choose eyewitnesses to the case and the discretion entirely vest with the Investigating agency and the investigation is not tainted or malafide to order further investigation and the Judicial Magistrate can be examined by using section 311 of Criminal Procedure code at the time of trial this court is of the view that the claim of petitioners had no merits”

8.It is submit that the investigation officer is vested with discretion authorities of conducting investigations, the petitioner's choice of witnesses or enquiry shall not be entertained or interfered. And it is also rightly observed by the learned judge that the petitioner's right of enquiry against the judicial magistrate is open and applicable through the provision under



section 311 of Cr.P.C and seeking further enquiry on the said ground had no merits.

9. The learned Trial Judge has rightly observed the points in paragraph 20 of the order against the claim made by the petitioners herein as they were not examined by police in persons and the investigation officer without application of mind recorded 161 (3) of Cr.P.C. statement

"20. ... Whether the investigation officer had recorded the said 161 (3) of Criminal procedure code statement only after proper examination of injured or not can be rededicated only after conclusion of trial and the said statement is available in the records. Hence, the claim of petitioners that I petitioner was not examined by investigation Officer does not come within the purview of fresh evidence as according to section 173 (8) of Criminal Procedure Code."

10. In the circumstances the claim of the petitioner under the above revision petition are untenable and not maintainable in the eye of law. The petitioner has approached this Hon'ble court without clean hands. It is to be kindly noted the intention of the petitioners that being silent for nearly 13 years and knocked this Hon'ble court all of a sudden, in the strange circumstances, when this Hon'ble court issued direction order in Crl.O.P.No.15983/2023 and Crl.M.P.No.10219/2023 dated 24.07.2023 to dispose the matter in a period of six months, is suspicious and tactics and reasons known to them to delaying the proceedings further and it shall not entertained the said reasons.



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11. Hence the Respondent/Complainant herein humbly prays this Hon'ble court may kindly DISMISS the above revision petition as it is untenable and maintainable in the eye of law and may pass such or other suitable orders as this Hon'ble court deem fit and proper in the said circumstances and thus render Justice."

4.Copy of the final report produced. It is seen that in this case there are totally 6 accused and the investigating officer listed totally 25 witnesses. In this case, of the 25 witnesses, LW2 is the injured witness, who is the first petitioner herein. LW1 is the brother of LW2, who was following LW2 and saw the occurrence and thereafter took the injured to the hospital. LW3 is the Advocate in whose bike LW2/injured was travelling as pillion rider. LW4 and LW5 are the other eyewitness, who were travelling behind LW2 giving protection and escorting LW2. The other witnesses present in the scene of occurrences are LW6, LW7 and LW8. Hence, all the witnesses have clearly stated about the occurrence proper. LW2 got seriously injured and taken to the hospital and LW18/Casualty Doctor attached to the Tiruvarur Government Hospital gave treatment and issued Accident Register. Thereafter the investigating officer recorded the registration of the case, visiting scene of occurrence, preparing observation mahazar and rough sketch in the presence of witnesses, arrest of the accused, confession and recovery of



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articles. Thus the investigation completed in all form and final report filed in this case. It is seen that country bomb used by the assailants to do away LW2.

5.From the charge sheet, witnesses statement and document this Court finds that the investigation is complete in all aspects. The apprehension of the petitioners is unfounded. In view of the above, this Court finds no reason to entertain the above revision.

6.Hence, the Criminal Revision Case is dismissed. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. It is made clear that this six months is only an outer limit. The trial Court to proceed on a day-to-day basis and complete the trial at the earliest. Consequently, connected criminal miscellaneous petition is closed.

04.10.2024

Index : Yes/No
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Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Town Police Station,
Thiruvarur.
- 2.The Principal District and Sessions Judge,
Thiruvarur,
- 3.The Public Prosecutor,
High Court, Madras.

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