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CrI.O.P.No.26395 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CrI.O.P.No.26395 of 2022

L.Gopikrishna @ Gopi.

... Petitioner

Versus

The Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai - 77

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records in C.C.No.186 of 1998 on the file of the learned Principal Special Judge for EC and NDPS Act cases, Chennai and quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor, CBI cases

ORDER

This Criminal Original Petition has been filed seeking to call for records in C.C.No.186 of 1998 on the file of the learned Principal Special Judge for EC and NDPS Act cases, Chennai and quash the same.



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2. As per the final report in C.C.No.76 of 1996 on the file of the Principal Special Judge for EC and NDPS Act cases, Chennai, this petitioner is ranked as A2 and one S.Sridevan @ Siri ranked is A1. As this petitioner was absconding for long time, the case was split up against the A1 in C.C.No.186 of 1998 and the trial was conducted. A1 was found guilty and sentenced him to undergo 10 years of rigorous imprisonment and payment of fine of Rs. 1 lakh. Subsequently, A1 undergone imprisonment and released. As the A1 already had undergone the imprisonment, he has not preferred any appeal.

3. Now, the present petitioner submit that he is innocent, he had not committed any such offence and even as per the prosecution, the seizure of 430 grams of Heroin was from the residential premise of A1 and the petitioner was not present at the time of the alleged seizure. Admittedly, the petitioner was impleaded in this case, based on the confession of the A1. Mere confession alone is not sufficient to prosecute the petitioner. The learned counsel for the petitioner relied on the ratio laid down in the judgment of this Court in the case of *Guddu Singh @ Vikram Singh v. Intelligence Officer, NCB South Zone, Chennai* made in *CrI.O.P.No.748 of 2019* dated *01.02.2019*. The relevant portion reads as follows:



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"13. As we have already indicated. this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. in dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty a confession can only be used to "lend assurance to other evidence against a co-accused". In re. Peryaswami Noopan,(2) Reilly J. observed that the provision of s. 30 goes not further than this : "where there is evidence against the co-accused sufficient, if, believed, to support his conviction, then the kind of confession described in s. 30 may be thrown into the scale as an additional reason for believing that evidence." In Bhuboni Sahu v. King(1) the Privy Council has expressed the same view. Sir. John Beaumont who spoke for the Board observed that a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in s. 3 of the Evidence Act. It is



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not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved in the case, it can be put into the scale and weighed with the other evidence." It would be noticed that as a result of the provisions contained in s. 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of s. 30, the fact remains that it is not evidence as defined by s. 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other



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evidence. That, briefly stated, is the effect of the provisions contained in s. 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh where the decision of the Privy Council in Bhuboni Sahu's case has been cited with approval."

4. By way of reply, the learned Special Public Prosecutor for the respondent submitted that the above referred authority would not apply to the present case, since, in this case, the petitioner has given his statement. Not only he was impleaded based on the confession of A1 but also the own statement given by the petitioner.

5. Heard both sides and perused the materials placed on record. On seeing the entire facts, it reveals that the recovery was made from the premise of A1. Apart from that, the statement is also given by the house owner that these two persons went to Delhi from Chennai. Furthermore, the prosecution has also raised objections that the petitioner submitted the visa particulars pertained to one Mr.Kanniappan, holder of Indian Passport No.Q-162602 for his travel to Srilanka in the year 1995.



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6. Except these averments by the prosecution, there is no statement made by the passport authorities. If at all, name of the Kanniappan is misused by the petitioner, the statement of the passport authorities is the material evidence, but the same has not been obtained by the prosecution for the reasons best known to them. Therefore, the abuse of identity of Kanniappan has not been established by the investigating agency through the proper evidences. Admittedly, there is also no recovery from the petitioner nor there was sufficient materials to show that the petitioner has abused the name of Kanniappan for the alleged illegal activities. The prosecution also admits that for all these 22 years, there is no case registered against the petitioner in respect of NDPS and considering his past conduct as there is no bad antecedent, this Court is inclined to quash the proceedings as against the petitioner in C.C.No.186 of 1998 on the file of the learned Principal Special Judge for EC and NDPS Act cases, Chennai

7. Accordingly, this petition is allowed. No costs.

08.02.2024

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IT on 13.02.24



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To

1. The Principal Special Judge for EC and NDPS Act cases,
Chennai

2.The Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai - 77

2.The Public Prosecutor,
Madras High Court, Chennai



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T.V.THAMILSELVI, J.

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