



Crl.R.C.No.1954 of 2023
and Crl.M.P.Nos.18219 and 18221 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2023

DELIVERED ON : 15.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.R.C.No.1954 of 2023
and
Crl.M.P.Nos.18219 and 18221 of 2023

Alwin Raja
S/o.Ramalingam

... Petitioner/Accused

Vs.

State by
The Inspector of Police,
SHO Olakkur Police Station,
Tindivanam Taluk,
Villupuram District.
(Crime No.33 of 2009)

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C to set aside the order dated 04.11.2023 passed in Crl.M.P.No.257 of 2023 in S.C.No.12 of 2023 pending on the file of II Additional District and Sessions Judge (Fast Track), Tindivanam.



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For Petitioner : Mr.R.Rajarathinam, Senior Counsel
for Mr.M.Santhanaraman

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed seeking to set aside the order dated 04.11.2023 passed in Crl.M.P.No.257 of 2023 in S.C.No.12 of 2023 pending on the file of learned II Additional District and Sessions Judge (Fast Track Court), Tindivanam.

2.The petitioner/Accused in S.C.No.12 of 2023 filed a discharge petition in Crl.M.P.No.257 of 2023, which came to be dismissed by the trial court on 04.11.2023, against which the present revision.

3.The contention of the learned Senior Counsel appearing for the petitioner is that the respondent police registered a case against eight persons, in Crime No.33 of 2009 and the charge sheet was filed in S.C.No.44 of 2010,



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in which the petitioner arrayed as A8, which is the mother case. Thereafter, the case against the petitioner was split up and S.C.No.12 of 2023 was assigned. He further submitted that earlier the petitioner filed a quash application and this Court found favour in the petitioner's contention and admitted the quash application and granted stay. Thereafter, during passage of time, the track of quash application was lost and finally, quash application was dismissed for non prosecution and that is the reason for delay and also split up of the case.

4.The further contention of the learned Senior Counsel is that in this case, A1 to A7 joined together, some of them dressed in Khaki Pant and White Shirt to project themselves as Enforcement officers, intercepted the lorry driven by PW1, who was transporting Soap Oil. Thereafter, the driver and cleaner kidnapped, lorry driven away by some of the accused and lorry was parked near the petitioner's shop with 18 tons of Soap Oil, out of which, a portion of Soap Oil transferred and unloaded in a vehicle parked there and



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petitioner/A8, knowing it to be stolen property paid only Rs.7,50,000/-

though the value of the Soap Oil was around 15,00,000/- and hence, he had committed the offence. The prosecution relied upon the statements of LW1, LW2, LW3, LW4 and LW7 (witnesses for the confession). He further submitted that the prosecution primarily implicates the petitioner on the confession of A2 the driver, who drove away the Tanker Lorry with Soap Oil and parked the vehicle near the petitioner's shop.

5.The learned Senior Counsel further submitted that there is no iota of materials available to frame charge for an offence under Section 411 IPC against the petitioner, who was arrayed as A8 in S.C.No.44 of 2010 on the file of II Additional Sessions Court (Fast Track Court), Tindivanam and the same was split up on 09.02.2023 against petitioner/A8 and re-assigned as S.C.No.12/2023. As per prosecution, 18 tons of Soap Oil was transported in the Lorry bearing registration No.TN-32-Q-1594 (LW4-Devanathan, owner of Nathan Chemicals Company, LW3-Baskar, owner of the Tanker Lorry).



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On 01.02.2009 from Nathan Chemicals Company, Madhakadipattil Soap Oil loaded and was to be delivered at Guntur. But no documents secured and produced along with the final report to show that 18 tons of Soap Oil was loaded and transported from Nathan Chemicals Company to Guntur. Further, no documents produced to show the place of destination where Soap Oil was to be unloaded, no transport Challan, Invoice, Permit, etc. produced to show Soap Oil was transported in the Tanker Lorry TN-32-Q-1594.

6.He further submitted that as per seizure Mahazar dated 16.02.2009-17.02.2009, A2 identified the Lorry No.TN-32-Q-1594 with Soap Oil with total weight of 14.330 ton, but neither the separate weighment of Soap Oil shown nor left over Soap Oil produced. The petitioner is implicated in this case on the sole confession of A2 (Ilanchezhiyan) dated 16.02.2009. In A2 confession statement, it is mentioned "We parked the lorry at Karapakkam, Soap Oil shop owned by petitioner and he transferred the Soap Oil to another Lorry and he gave Rs.7,50,000/- to us". Further submitted that



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LW3 and LW7 are the witnesses to the confession statement of A2. The Hon'ble Apex Court in the case of **Suresh Budharmal Kalani @ Pappu Kalani vs. State of Maharashtra** reported in (1998) 7 SCC 337, held that any confession statement of an accused given to a police officer is not admissible in evidence and cannot be used as against the co-accused. It was alleged that there is a confession statement of A8 dated 17.02.2009 but no witness speaks about the confession statement of A8 and no recovery made on the said confession. Further submitted that even Section 30 of the Evidence Act, 1872 will not be applicable in this case, utmost the confession can be taken as an additional factor and not the sole basis and foundational fact in proceeding against the petitioner.

7.The learned Senior Counsel further relied upon the decision of the Hon'ble Apex court in the case of **Shiv Kumar vs. State of Madhya Pradesh** reported in (2022) 9 SCC 676 for the point that the petitioner who is



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proceeded against section 411 Cr.P.C., shown to have committed the primary fact that he received and retained the stolen goods dishonestly knowing to be stolen and also having reason to believe the same to be stolen goods. In this case, admittedly, prosecution not seized any stolen articles from the petitioner to lay foundation of the case. In this case, though the petitioner has paid Rs.7,50,000/- for the stolen goods, nothing seized. Though they projected that from A1 Rs.1,50,000/- and A2 to A7 Rs.1,00,000/- each, in total Rs.7,50,000/- seized which is highly improbable, considering the seizure made several days, after the petitioner is said to have made the payment. Further, he submitted that in this case, the confession projected against the petitioner is that the petitioner received the stolen goods and thereafter sold the goods in retail to many persons. On the other hand, the confession of A2 is that the petitioner had received the stolen goods and he transported the same in another lorry. There is no material produced regarding what had happened to the other lorry or to whom all the Soap Oil sold.



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8. Lastly, the learned Senior Counsel relied upon the judgment of the Hon'ble Apex Court in the case of ***Kanchan Kumar vs. State of Bihar*** reported in **(2022) 9 SCC 577**, that it is not necessary that all the points have to be decided only during trial and no roving enquiry is required at this stage, may not be proper on the facts of the above case. The Apex Court held that on the materials available, has to sift the evidence and consider the materials produced and the lower court ought to have discharged the accused, and not reciting that roving enquiry is not permitted. Hence, looking at the materials in detail would not always amount to roving enquiry. Hence, prays for allowing this petition.

9. Learned Additional Public Prosecutor on the other hand submitted that the case of the prosecution is that the de-facto complainant by name, Tr.Gajendran, who is the Lorry Driver bearing Regn.No.TN-32-Q-



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1594, who was transporting Soap Oil from Thirukanur to Guntur on 01.02.2009 at 11.00 p.m., at that time the accused persons Asaithambi [A1], Elansezhiyan [A2], Ayyappan [A3], Puthupattan [A4], Irusappan [A5], Ragavan [A6] and Sivakumar [A7] came in a car, way laid the said tanker lorry and assaulted the defacto complainant and the cleaner of the lorry and taken away the lorry from them. The lorry driver and cleaner were kidnapped by them in a car and left them at Theevanur, Tindivanam to Ginjee Road after several hours. A1 to A3 conspired together kidnapped the lorry to commit the robbery. A1 to A7 committed robbery of the said lorry with Soap Oil worth about Rs.15 lakhs and drove away the lorry to the shop of Alwinraja [A8/petitioner herein) and sold the oil to him at a lesser price of Rs.7,50,000/- Hence, this complaint.

10.He further submitted that during the course of investigation, on 17.02.2009 & 22.02.2009, the then Inspector of Police arrested A1 to A6 and



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recorded their confession statements in the presence of witnesses and seized the case property under cover of seizure mahazar, later accused were produced before the learned Judicial Magistrate, Tindivanam, who remanded them to judicial custody.

11.He further submitted that after completion of elaborate detailed investigation, based on the statement of witnesses, material evidence, on 16.04.2009, the then Inspector of Police altered the section into Sections 395, 411, 120-B r/w. 395 IPC and then filed a charge sheet against A1 to A8 before the learned Judicial Magistrate, Tindivanam and the same was taken vide PRC.No.15 of 2009, and case was committed to the learned II Additional Sessions Judge (Fast Track Court) at Tindivanam and assigned S.C.No.44 of 2010. On 09.02.2023, the said S.C.No.44 of 2010 was split up against A-8/Alwin Raja, and re- assigned in S.C.No.12 of 2023, dated 09.02.2023 on the file of the learned II Additional Sessions Judge (Fast Track Court) at Tindivanam.



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recovery or any material collected based on the statement, hence, it has no relevance. Further in this case it is seen that LW1/Driver of the Lorry, LW2/Cleaner of the Lorry, LW3/Owner of the lorry, LW4/Owner of the Soap Oil-Nathan Chemicals Company and LW7 the witnesses to the confession, who speak about hiring the tanker lorry, loading the same with Soap Oil of 18 tons and transporting the same, the lorry driven by LW1 with LW2/cleaner intercepted, kidnapped and the offence of dacoity committed. None of the other witnesses not spoken anything about the petitioner.

14.The case against the petitioner is that he conspired and received the stolen property. Admittedly, the petitioner was not in the scene of occurrence and never identified by any of the witnesses. The prosecution not produced any invoice copy, transport document or any other documents to show that 18 tons of Soap Oil was loaded in the tanker lorry bearing registration No.TN-32-Q-1594 on 01.02.2009, to be delivered at Guntur. Further, after the arrest of some of the accused and recovery on 16.02.2009,



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based on the confession of A1 in presence of LW3 and LW7, the lorry with 14.330 tons of Soap Oil is said to have been seized. The confession statement of A2 is that the Soap Oil transferred and loaded in a vehicle parked near the petitioner's shop, neither the transported lorry was seized nor the seized container lorry was produced with balance 14.330 tons of Soap Oil. Added to it, in this case no witnesses examined to show, who purchased the stolen Soap Oil from the petitioner. In this case, the cash recovery shown after 15 days almost intact is highly doubtful, in any event there is nothing to even remotely connect with the petitioner. There is no material to show that the petitioner received dishonestly the stolen property. Further there is nothing to infer any conspiracy between the petitioner and the other accused. The Lower Court dismissed the petition merely recording that these facts can be considered only during trial.

15.The Hon'ble Apex Court in the case of ***Kanchan Kumar vs. State of Bihar*** reported in ***(2022) 9 SCC 577*** referring to ***Sajjan Kumar vs.***



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CBI case held that at the stage of Sections 227 and 228 Cr.P.C., the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Further it had held that what is required is not a roving enquiry, but a simple and necessary enquiry for a proper adjudication of an application for discharge is to be made for coming to a conclusion that a *prima facie* case is made out against the accused to stand trial.

16.In view of the above, considering the police report and documents and examination of the same, it is seen that the charge against the petitioner is groundless. In view of the same, the order dated 04.11.2023



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passed in Crl.M.P.No.257 of 2023 in S.C.No.12 of 2023 by the learned II Additional District and Sessions Judge (Fast Track Court), Tindivanam is set aside and the revision is, accordingly, allowed. The petitioner is discharged from the above case. Consequently, connected criminal miscellaneous petitions are closed.

15.04.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
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To

- 1.The Inspector of Police,
SHO Olakkur Police Station,
Tindivanam Taluk, Villupuram District.
- 2.The II Additional District and Sessions Judge
(Fast Track Court), Tindivanam.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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**Pre-delivery order in
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