



Crl.O.P.(MD).No.5177 of 200

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	06.12.2023
Pronounced On	:	07.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD)No.5177 of 2020

and

Crl.M.P(MD)Nos.2973 and 2974 of 2020

Nithya

.. Petitioner/ Accused No.5

Vs.

1. State represented by,
The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirapalli District.

.. 1st Respondent/Respondent

2. Ranjith Kumar

.. 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.

praying to call for the records in connection with the Charge sheet in S.C.No.148 of 2022 dated 07.09.2022 on the file of the District and Sessions Court, Trichy as against the Petitioner/Accused Rank-5 and quash the same as against the Petitioner/Accused Rank-5 alone.



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(Amended as per order of the Court dated 04.01.2023 in Crl.M.P(MD)No.15832 of 2022 in Crl.O.P.(MD).No.5177 of 2020 by K.M.S.J.)

For Petitioner : Mr.V.Kathirvelu, Senior Counsel
for Mr.D.Selvanayagam

For Respondents : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)
for R1

: Mr.T.R.Subramanian for R2

ORDER

This petition is filed to quash the Charge sheet in S.C.No.148 of 2022 dated 07.09.2022 on the file of the District and Sessions Court, Trichy, as against the Petitioner/Accused No.5.

2.The petitioner is Accused No.5 in S.C.No.148 of 2022 on the file of the learned District and Sessions Judge, Trichy. She is alleged to have conspired with the other accused and committed murder of one Rajini. The respondent police filed the final report against the petitioner and other accused for the offence under Sections 109, 147, 148, 149, 120B, 294(b), 302, 307, 506(ii) and 341 IPC. In the final report, it is stated that the petitioner abetted to commit murder of the said Rajini. As



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per the averment in the final report, the deceased Rajini alias Karuappaiya is a friend of one Guru. The said Guru is the husband of the petitioner. The said Guru and Rajini were earlier doing prawn culture business for which Rajni received the investment from Guru and did not make the repayment as per the agreement. Hence, he demanded money from the income of the said prawn culture business on the ratio of the amount sent by him. He was unable to return the money and hence, Rajini entrusted the car which stands in the name of Rajini's mother. Because of the mortgage, Rajini was unable to pay the due and hence, Guru and the petitioner are said to have sold the car to L.W20-Siva, who conducts car business in the name of “Sri Amman Cars”. The same was questioned by the deceased Rajini and he scolded the petitioner and Guru and also assaulted them in the public place and hence, the petitioner/A5 returned the money to L.W.20 and received the car back from L.W20-Siva. After receipt of the car from L.W20, the deceased threatened A5 and A1 and had taken the car from the custody of the A5. Parallelly, A4, who is a friend of A1 had some other motive with regard to some other business transaction with the deceased Rajini. Hence, they conspired together to murder Rajini and approached A2, who is a history sheeted rowdy and A2 engaged A3 and A7 to commit the murder. As per their



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plan, A3 and A7, who are the hirelings of the accused conspired together and murdered the deceased Rajini on the date of occurrence, ie., on 08.07.2019. Hence, the case was registered and investigation was conducted and final report was also filed before the concerned Court and the same was taken on file in S.C.No.148 of 2022 dated 07.09.2022 on the file of the District and Sessions Court, Trichy.

3. As per the final report, allegation against the petitioner is that she abetted the commission of murder by other accused. Hence, final report was filed against her for the offence under Section 302 read with 109 IPC. To substantiate the allegation, prosecution examined L.W.20-Siva. He stated before the investigating agency that A5 and A2 approached him and sold the car belonging to the deceased Rajani and the said car was returned to the petitioner/Nithya/A5 and Guru as demanded by the deceased Rajini. Thereafter, there was some talks between them. On the basis of the confession of the co-accused and the statement of L.W.20 and also the documents relating to the sale of the car to Siva-L.W.20, the final report was filed against the petitioner. The learned counsel for the petitioner submitted that the above material is not sufficient to frame the charge against the petitioner, who is a lady and she



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was falsely implicated in this case. The above materials show that she is working as officer in the Electricity Board. In order to harass the family, she was added as accused. Except the confession of the co-accused and the statement of L.W20, no other materials are available to proceed against the petitioner for the grave charge of murder. Hence, he seeks quashing of the final report against the petitioner/A5. He relied on the following judgment of the Hon'ble Supreme Court as well as this Court:

(i) 2010(8)SCC233 [S.Arul Raja v. State of T.N]

(ii) Crl.O.P(MD)No.4474 of 2012[T.K.Justin Marshal v. The Inspector of Police]

(iii) 2019(2) Tamilnadu Law Reporter Page 924[M.Rajendran v. The Inspector of Police and another]

(iv) 2019(1)LW(cri)239 [Guddu singh @ Vikram singh v. The intelligence Officer, NCB, South Zone, Chennai]

4. The learned Government Advocate (Criminal side), on instructions submitted that the motive of A5 namely the petitioner, and her husband A1 has been clearly proved through examination of number of witnesses. Apart from motive, the other material to convict the petitioner under Section 109 IPC is that L.W20 speaks about some



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relationship between the deceased and A5 namely, the petitioner. More over, the co-accused's confession clearly spells out the conspiracy between them. In the said circumstances, the prosecution collected number of materials and also documents relating to the car transaction entered into between the petitioner/Nithya and L.W20-Siva and hence, *prima facie* materials are available to frame charge against the petitioner. He further submitted that to frame the charge, the consideration of materials is totally different from consideration of materials for convicting the accused. The petitioner's involvement in the above crime is clearly proved through the evidence collected by the prosecution. The same is sufficient to frame the charges. Hence, he seeks dismissal of the quash petition.

5. On behalf of the defacto complainant, no one appeared, hence, this Court appointed legal aid counsel. He reiterated the submission of the learned Government Advocate(Criminal side) and also specifically stated that the manner of execution of the murder with the help of the hirelings is to be considered along with the circumstances that the petitioner had a dealing relating to the car of Rajini with L.W20. LW20 clearly speaks about the fact that the car was sold by Nithya namely the



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petitioner and hence she has every motive against the deceased Rajni, because Rajini took the car without making the repayment of the mortgaged amount and also he scolded the petitioner and her husband Guru in the public place and also assaulted them. Hence, the motive is clearly established. Apart from that L.W20 also produced number of the receipts which show that there is a connecting link between the petitioner and the alleged occurrence.

6. From the above narration of the facts, the evidence is sufficient to frame the charges. He seeks for dismissal of the quash petition.

7. From the above said circumstances and facts, it is clear that the evidence of LW20 is that Nithya handed over the car of the deceased Rajani. The said car was entrusted with Guru as a security for the debt incurred by him. Because of the non-payment of the amount, she sold the car to LW20. He also received the remaining consideration of the said amount after making the repayment of the mortgage loan. The said narration of facts spoken by LW20 is supported by the confession of the co-accused. It is settled principle that under Section 10 of the Evidence Act, the evidence of action or statement made by one of the accused is



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admissible one against other accused. The statement of LW20 is corroborated by the documentary evidence collected by the prosecution.

The said circumstances clearly show about the involvement of the petitioner in the above case. Section 109 IPC speaks about the conspiracy and also abetment of the offence. To prove the charge against the petitioner, the evidence of LW20 and the documents collected relating to the sale transaction of the car were produced before this Court. Not only the statement of LW20 but also the document produced relating to the dealing with respect to the car, made by the petitioner is sufficient to frame the charge against the petitioner. It is also evident from the records that the deceased also assaulted and scolded the petitioner and Guru/A1. The deceased not only failed to make the repayment but had also taken the car by threatening the petitioner and the same is available in the materials, from the statement of number of witnesses collected by the investigating agency. In the said circumstances, as held by the Hon'ble Supreme Court, this Court finds that sufficient materials are available to frame the charges against the petitioner under Section 302 IPC r/w 109 IPC.



8.The Hon'ble Supreme Court in the following judgment has held that the sufficiency of material to frame the charges is different from sufficiency of materials for sustainability of the conviction:-

Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 at page 482

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1.*Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the*



charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

In this regard, appreciation of evidence relating to conviction is different from the appreciation of materials to frame the charges. In the



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said circumstances, this Court finds no merit in the contention of Mr.V.Kathirvelu, learned Senior counsel for the petitioner.

9. Further as held by the Hon'ble Supreme Court in **2023 4 SCC 298**, this Court has no jurisdiction to look into the question of the reliability and Probative Value of the statement of the witnesses recorded under Section 161 of Cr.P.C., to quash the proceedings. Apart from that, in the case of conspiracy, pivotal role of the petitioner may be in any part of the execution of the alleged act as held by the Hon'ble Supreme Court in **2021 11 SCC 1** in the following dictum:

“It is not necessary that all conspirators should participate from the inception to the end of the conspiracy. Some may join that conspiracy after the time when such intention was first entertained by any one of them.

10.The Hon'ble Supreme Court, in the case of ***State of Madhya Pradesh Vs. Yogendra Singh Jadon and another*** reported in **2020 12 SCC 588** has held that the power under Section 482 of Cr.P.C., cannot be exercised where the allegations are required to be proved in Court of law. The relevant paragraph of the said judgement is as follows:

“5.We find that the High Court has examined



*the entire issue as to whether the offence under
Section 420 and 120-B of IPC is made out or not at
pre-trial stage.*

11. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

07.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJL/sbn

To

1. The District and Sessions Judge,
Trichy.
2. The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirapalli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL/*sb*n

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