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Crl.O.P.(MD) No.6338 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.6338 of 2021

and

Crl.M.P.(MD) Nos.3646 & 3647 of 2021

Olimuthu

... Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch Police Station,
Tirunelveli District.
(Crime No.13/2017)

2.Marisamy

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.178 of 2018 on the file of the learned Judicial Magistrate No.1, Tirunelveli and quash the same.

For Petitioner : Mr.H.Arumugam

For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



Crl.O.P.(MD) No.6338 of 2021

ORDER

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Seeking to quash the final report in C.C.No.178 of 2018 on the file of the Judicial Magistrate Court No.1, Tirunelveli, the present Criminal Original Petition is filed.

2. The case of the prosecution in a nutshell is as follows:

(a) The second respondent/*de facto* complainant and one Karuppasamy (L.W.1) were introduced to the present petitioner/accused who was working as an Office Assistant (O.A.) in the Rural Development Office, Tirunelveli by one Samuthiram (L.W.2) who was also working in the very same office.

(b) The present petitioner/accused informed the second respondent/*de facto* complainant and the said Karuppasamy (L.W.1) that he can secure a job as Record Clerks in the District Collectorate if they give him a sum of Rs.1,00,000/- each. Accordingly, both second respondent/*de facto* complainant and Karuppasamy (L.W.1) handed over a sum of Rs.30,500/- and Rs.30,000/- respectively to the present petitioner/accused. This happened in the year 2004. Since the second respondent



Crl.O.P.(MD) No.6338 of 2021

and Karuppasamy (L.W.1) did not get any job, the second respondent lodged a complaint with the District Collector against the present petitioner/accused. However, he did not appear before the enquiry officer in the enquiry proceedings. Therefore, the enquiry officer held that the charges levelled against the present petitioner/accused stood disproved. Subsequently, the District Collector compulsorily retired the present petitioner/accused from service.

(c) In the meanwhile, the second respondent/*de facto* complainant lodged a complaint with the Inspector of Police, District Crime Branch, Tirunelveli on 05.11.2004 which came to be registered as F.I.R. in Crime No.13/2017 on 01.08.2017 against the petitioners. After conducting investigation, a final report against the present petitioner/accused in C.C.No.178 of 2018 was filed before the Judicial Magistrate Court No.1, Tirunelveli.

3. Mr.H.Arumugam, learned counsel for the petitioner/accused would contend that though the second respondent/*de facto* complainant Marisamy lodged a complaint with the police in the year 2004, the police had registered F.I.R. after 14 years and therefore, there is an abnormal delay in registering the F.I.R. In this regard, he relied on the decision of



Crl.O.P.(MD) No.6338 of 2021

the Hon'ble Supreme Court in ***Hasmukhlal D. Vora and another Vs. The State of Tamil Nadu***, reported in ***2023 AIR (Supreme Court) 102 : 2022***

INSC 1294 and contended that an unexplained inordinate delay of 14 years must be taken into consideration as a ground for quashing the criminal proceedings.

4. The enquiry report of Block Development Officer (Enquiry Officer), District Collectorate, Tirunelveli shows that the second respondent/*de facto* complainant Marisamy did not appear in the enquiry proceedings. The specific contention of the learned counsel for the petitioner/accused is that even in the final report filed by the police, the second respondent/*de facto* complainant Marisamy has not been shown as one of the witnesses. According to him, a simple money transaction between the petitioner/accused and the second respondent/*de facto* complainant Marisamy has been given a criminal colour and therefore, the entire final report has to be quashed.

5. Per contra, Mr.K.Sanjai Gandhi, learned Government Advocate (Crl. Side) for the first respondent police, on instructions, would contend that the police after conducting proper investigation had laid the final



Crl.O.P.(MD) No.6338 of 2021

report. His further contention is that there are 2 victims in the present case and that Section 161(3) of Cr.P.C. statements of witnesses would clearly reveal the offence committed by the present petitioner/accused.

6. At the outset, it may be observed that in the departmental enquiry, the present petitioner/accused Olimuthu was exonerated from the charges on the ground that the complainant Marisamy did not appear before the enquiry officer. However, subsequently, he was compulsorily retired.

7. As pointed out by the learned Government Advocate (Crl. Side) for the first respondent, there are 2 victims in the present case i.e., Karuppasamy (L.W.1) and Marisamy (the second respondent/*de facto* complainant). Karuppasamy (L.W.1) in his statement before the police had stated that he handed over a sum of Rs.30,000/- to the present petitioner/accused Olimuthu for getting a job as Record Clerk in the District Collectorate, Tirunelveli and that the present petitioner/accused Olimuthu repaid only a sum of Rs.25,000/- to him and did not repay the balance amount of Rs.5,000/-.



Crl.O.P.(MD) No.6338 of 2021

8. In the instant case, the second respondent/*de facto* complainant Marisamy though had lodged a complaint with the District Crime Branch, Tirunelveli in the year 2004, it is not known as to why the police has not registered the F.I.R. against the present petitioner/accused immediately. Only in the year 2017, the F.I.R. came to be registered and thereafter a final report is filed. Another victim, Karuppasamy (L.W.1) in his statement under Section 161(3) of Cr.P.C. before the police had stated about the payment of Rs.30,000/- to the present petitioner/accused Olimuthu for getting a job. In fact, one of the colleagues of the present petitioner Olimuthu had also in his statement under Section 161(3) of Cr.P.C. before the police had said that he introduced Karuppasamy (L.W. 1) and the second respondent/*de facto* complainant Marisamy to the present petitioner/accused and the present petitioner/accused promised them that he would secure a job for them as Record Clerks in the District Collector's Office, Tirunelveli if they give a sum of Rs.1,00,000/- each.

9. The decision of the Hon'ble Supreme Court in the case of ***Hasmukhlal D. Vora*** (cited *supra*) which was relied on by the learned counsel for the petitioner/accused may not apply to the facts of the present case as the said case arises out of Drugs and Cosmetics Act, 1940. The



Crl.O.P.(MD) No.6338 of 2021

facts of the said case are that the Drug Inspector during inspection of the premises of the accused had found that the accused purchased 75 Kgs of the certain drugs, broke it up, packed in small containers and sold the same to various persons. Since the breaking up of the substance into smaller packages and distribution of the same are being classified as 'manufacturing', a case under Section 18(c) and 3(f) of the Drugs and Cosmetics Act, 1940 was filed against the accused therein. However, no recovery was made by the Drug Inspector during the inspection and after a lapse of 7 years, he filed a private complaint before the jurisdictional Magistrate Court. In the said circumstances, the Hon'ble Supreme Court held that it is the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice and that there was a gap of more than 4 years between the initial investigation and the filing of the complaint and that even after lapse of substantial amount of time, no evidence has been provided to sustain the complaint.

10. In the instant case, the delay is on the part of the police and they have to explain the same before the concerned Court. Merely because the present petitioner/accused was exonerated from the charges in the departmental enquiry, the final report filed by the police against the



Crl.O.P.(MD) No.6338 of 2021

present petitioner/accused cannot be quashed especially when there is another victim whose statement under Section 161(3) of Cr.P.C. *prima facie* shows the commission of offences by the present petitioner/accused.

11. The Criminal Original Petition is therefore dismissed as devoid of merits. Consequently, connected Miscellaneous Petitions are closed.

05.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

To

- 1.The Judicial Magistrate No.1,
Tirunelveli.
- 2.The Inspector of Police,
District Crime Branch Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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