



CrI.O.P.(MD)No.13018 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **06.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD) No.13018 of 2022

and

CrI.M.P.(MD)No.8251 of 2022

Salavudeen @ Salaam

... Petitioner/A10

Vs.

1.The Inspector of Police,
Kaliakkavilai Police Station,
Kanyakumari District.
Crime No.20 of 2003

2.A.Manikandan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of C.P.C., to call for the records in connection with the charge sheet in S.C.No.77(a) of 2005 on the file of the learned Assistant Sessions Court, Kuzhithurai and quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor for R1

No Appearance for R2



ORDER

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The Criminal Original Petition has been filed to quash the proceedings in S.C.No.77(a) of 2005 on the file of the learned Assistant Sessions Court, Kuzhithurai.

2.Initially, the petitioner was not arrayed as an accused in Crime No.20 of 2003 and subsequently, the investigation has been completed and the charge sheet has already been filed and in the charge sheet, the petitioner was arrayed as A10. Challenging the same, the present petition is filed.

3.The case of the prosecution case is that one Senthilkumar along with three others came to the jewellery shop of the defacto complainant and the said Senthilkumar introduced one Vikraman, Arasappan and Elumalai from Chennai and told the defacto complainant that if he gave Rs.1,00,000/-, they would supply the chemical note of Rs.2,00,000/- and further told them that if he gave Rs.10,000/-, they would give a chemical note of Rs.20,000/-. The defacto complainant replied that after consulting with his father, he would inform him about the same. In the meantime, when the said Senthilkumar repeatedly, demanded the defacto



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complainant, he informed him that he did not want that amount. While so, on 15.10.2003 at about 08.30 p.m., the defacto complainant was returning to his house near Athencode Asan Statute after closing his jewellery shop along with his cousin Kannan in his car bearing Registration No.TN-72-Z-246, he was waylaid by the said Senthilkumar and 10 others and they surrounded the car. On seeing them, the defacto complainant's cousin Kannan ran away from the spot and all the accused have threatened the defacto complainant by showing aruval and also forcibly taken 3 sovereigns of gold chain, watch and Rs.700/-. Hence, the case.

4.The learned counsel for the petitioner would submit that admittedly, the petitioner was not arrayed as an accused in Crime No.20 of 2003 and subsequently, he was added as A10 in the charge sheet filed by the first respondent police, without any material, based on the confession of the other accused persons. He would further submit that after trial, the trial Court acquitted A1 to A3 in S.C.No.77(a) of 2005, by order dated 28.03.2018. He would further submit that as per the prosecution witness, P.W.1, he is only the eyewitness available at the scene of occurrence and he deposed before the trial Court that only two



persons were waylaid and he did not adduce any evidence with regard to the other accused persons and the petitioner/A10 and he was not identified by P.W.1 and P.W.1 itself turned hostile and thereafter, other official witnesses also turned hostile. However, without any allegation, forcing the petitioner to face the trial before the trial Court is impermissible. Hence, he prayed for allowing this petition.

5.The learned Government Advocate (Crl. side) for the first respondent did not dispute the said facts submitted by the learned counsel for the petitioner. In fact, the petitioner has not appeared before the trial Court. Thereby, the case was split up and the trial is pending in respect of A10.

6.Heard the learned counsel on either side and perused the material records of the case.

7.Perusal of the records revealed that based on the confession statement of the co-accused, the petitioner was implicated in the above said offence and after trial, A1 to A3 were already acquitted and during the trial, the petitioner has not appeared before the trial Court and hence,



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the case was split up and the trial is pending in respect of the petitioner/A10.

8.In view of the above, since A1 to A3 were already acquitted by the trial Court, this Court is inclined to extend the very same benefit to the petitioner.

9.Accordingly, the proceedings in S.C.No.77(a) of 2005 on the file of the learned Assistant Sessions Court, Kuzhithurai, is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

06.03.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

SJI

To

1.The Assistant Sessions Court, Kuzhithurai.

2.The Inspector of Police,
Kaliakkavilai Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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