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Crl.R.C.(MD).No.656 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Reserved On	:	18.07.2024
Pronounced On	:	23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.656 of 2024
and
Crl.M.P.(MD).No.6668 of 2024

P.Paramasivan

... Petitioner

Vs.

1. State Rep. by
The Deputy Superintendent of Police,
Crime Branch CID, Trichy Range, Trichy,
Kadayanallur Police Station,
(Crime No.391 of 2006)
- 2.S.Prathap Singh
Assistant Deputy Superintendent of Police,
Formerly DSP, DCB, Nagercoil.
- 3.I.Eswaran
Deputy Superintendent of Police,
Valapadi, Salem District,
Formerly DSP, Nagercoil Town.
- 4.M.Chandrapaul,
DSP Q Branch, Tirunelveli,
Formerly Inspector of Police,
Vadaseri Police Station.



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5.Durai Lakshmana Raj
Formerly Inspector of Police,
Aralvaimozhi.

6.M.Sathiaraj
Sub Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.

7.Rathinasamy, HC 542
Aralvaimozhi Police Station,
Kanyakumari District.

8.Baskaran HC 1836
Central Crime Branch, Nagercoil,
Kanyakumari District.

9.Micheal Chandran HC 1691
Kottar Police Station,
Kanyakumari District.

10.Mutu HC 1568
Boothapandi Police Station,
Kanyakumari District.

11.Stephen HC 1726
Vadaseri Police Station,
Kanyakumari District.

12.S.Murugan (died)

13.P.Madasamy (died)

... Respondents

{No relief claimed against the respondent Nos.2 to 13. Hence, notice may be dispensed with}



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PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order dated 22.04.2024 passed in S.C.No.195 of 2011 by the learned Additional District and Sessions Judge (FTC) Tenkasi District.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Ravi
Additional Public Prosecutor for R1

: Mr.S.Sureshkumar
for R7 to R9

ORDER

The petitioner herein has filed this Criminal Revision Case against the order passed in S.C.No.195 of 2011 dated 22.04.2024 by the learned Additional District and Sessions Judge (FTC) Tenkasi District.

2.The revision petitioner filed this revision challenging the impugned order of deleting the petitioner from the list of witnesses and arraying him accused No.A13 in the S.C.No.195 of 2011 under section 319 of Cr.P.C.



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3. One Hasanammal married Mohammed Masood and both were living in Kadayanallur. He conducted chit company and there was a failure of repayment. Aralvaimozhi police official registered the case in Crime No.482 of 2005. While so on 29.11.2005 at 01.00 a.m., the police officials from Aralvaimozhi, came to her house and informed that they had taken her husband and he was in their custody and took her and her brother Thahir Sulaiman in the police jeep to the Aralvaimozhi police station. She was confined in the bathroom and they obtained signature in the papers and thereafter, they dropped her at Tirunelveli bus stand. The said Mohammed Masood is said to have been taken to Keeriparai Police Station and tortured for three days from 11.00 p.m. on 28.11.2005 to 30.11.2005 and thereafter, the said Mohammed Masood was missing and found dead. Therefore, the Revenue Divisional Officer conducted enquiry for the custodial torture in terms of PSO 151 and submitted report to the Government and government passed G.O. and directed to take action against the police officials who were all responsible for the incident. Therefore, a private complaint was filed and the same was taken on file in C.C.No.77 of 2012 on the file of the Judicial Magistrate, Boothapandi.



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3. She had last seen her husband on 28.11.2005, before her departure from her house to go to the hospital and thereafter he was never seen. Therefore, she made enquiry with Kadayanallur police station and Palayamkottai Jail authorities and her husband was never found in any of the place and she approached the Hon'ble High Court to produce him. In the meantime, he is said to have died and his body was disposed off. Therefore, the enquiry under section 173 of Cr.P.C. and police standing order 151 was conducted by the RDO, Padmanabhapuram and he found that the petitioner and other officers had taken the deceased to the police station. Therefore the Kadayanallur Police registered the case in Crime No.391 of 2006 for the alleged offence under Sections 120 (b) r/w. 343, 344, 348, 323, 355, 302, 201, 218 r/w. 109 of I.P.C, and thereafter the said case was transferred to the 1st respondent police. The 1st respondent police registered the case against many accused namely respondent Nos.2 to 13. The 1st respondent police after investigation filed the final report before the Learned Judicial Magistrate, Tenkasi and the same was committed and taken on file in S.C.No.195 of 2011 on the file of the Learned Additional District Judge, Tenkasi. In the C.C.No.77 of 2012 the petitioner was arrayed as "A3". In the S.C.No.195 of 2011 the petitioner was arrayed as "witness". Therefore, the Crl.O.P.(MD).No. 3167 of 2018 and Crl.O.P.(MD).No.6937 of 2018 were filed by the petitioner for



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the following reliefs:

Crl.O.P.(MD).No.6937 of 2018	Crl.O.P.(MD).No.3167 of 2018
To transfer the C.C.No.77 of 2012 (<i>in which the petitioner was arrayed accused No.3</i>) to try along with S.C.No.195 of 2011 (<i>in which the petitioner was arrayed as a witness</i>)	To defer proceedings in C.C.No.77 of 2012 till the completion of the trial in S.C.No.195 of 2011.

4.This Court after elaborate consideration has passed the following order inCrl.O.P.(MD).Nos.6937, 4728 & 3167 of 2018:

“9.1. If the Sessions Court treats Paramasivan as an accused, then C.C.No.77 of 2012 should necessarily stand terminated. And, if the Sessions Court decides that he is not an accused, still C.C.No.77 of 2012 shall have to be terminated.

9.2.But it may be appropriate to have C.C.No.77 of 2012 on the file till the conclusion of trial of S.C.No.195 of 2011 to avoid any possible technical difficulties that might arise. (For instance, if C.C.No.77 of 2012 is quashed now, and if the Sessions Judge intends to make use of any of the material in C.C.No.77 of 2012 for the purpose indicated, then there could be an objection as to permissibility of using the materials available in a case quashed by this Court. After all in this country, road blocks to justice are more than the ways available for achieving justice, and this has to be anticipated). A case of prospective quashing



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of a criminal case may appear novel, but given the circumstances, the present course is inevitable.”

5. The department proceedings also was initiated against the petitioner and charge memo dated 12.02.2009 was issued. To quash the charge memo writ petition in W.P.(MD).No.5816 of 2010 was filed by the petitioner. The same was dismissed and the writ appeal in W.A.(MD).No.1257 of 2018 was filed. This Court allowed the writ appeal by passing the following order:

10. The admissible evidence of a persons which is recorded under Section 164 Cr.P.C., by the leaned Judicial Magistrate vis-a-vis a statement before the Executive Officer in an enquiry proceedings, undoubtedly, the evidentiary value of statement under Section 164 Cr.P.C., will prevail, more so, when the maker of the statement has reached his maker it became a previous statement of a person, who cannot be cross-examined. In such circumstances, till the disposal of the case, where, as rightly pointed out by the brother Judge in Crl.O.P. (MD).No.6937 of 2018, dated 19.02.2020, if the Sessions Court treats Paramasivan as an accused, then C.C.No.77 of 2012 should necessarily stand terminated. And, if the Sessions Court decides that he is no an accused, still C.C.No.77 of 2012 shall have to be terminated.

11. In other words, unless and until the appellant Paramasivam is found guilty in C.C.No.77 of 2012, there is no



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foundation for the department to proceed against him under Rule 22 of the Tamilnadu Subordinate Police Officers Conduct Rules 1964. As far as the present case is concerned, the general principles laid by the Court cannot apply to this case due to the peculiar facts and circumstances which is narrated above.

6. In the S.C.No. 195 of 2011, a Special Public Prosecutor was appointed to conduct the trial. During the course of the trial, the special public prosecutor submitted that before proceeding the trial, in the interest of justice required to decide whether the petitioner who had been cited as list witness L.W.15 in the S.C.No.195 of 2011 is to be arrayed as accused or not as per the order of the Crl.O.P.(MD).No.6937 of 2018 dated 19.02.2020. Therefore, the learned trial judge in order to arrive at a conclusion whether the material adduced before the Court both in C.C.No.77 of 2012 and the S.C.No.195 of 2011 required to add the petitioner as a accused in the S.C.No.195 of 2011, initiated the proceedings under section 319 of Cr.P.C. The petitioner filed detailed written submission and made oral submission and submitted that no material is available to array him as a accused in S.C.No.195 of 2011. The Learned Trial Judge considering the report of the revenue divisional officer who conducted the enquiry under 176 (5) of Cr.P.C., into the death of the said Mohammed Masood and other evidence



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namely P.W.1 to P.W.6 and the various documents, namely, Ex.P.1 to Ex.P.104 has directed to delete the name of the petitioner from the witness list in S.C.No. 195 of 2011 and array the petitioner as A13 along with other accused person in S.C.No.195 of 2011 by passing the impugned order.

7. Challenging the same, the petitioner filed this revision and the learned counsel appearing for the petitioner vehemently submitted that the Learned Trial Judge has no jurisdiction to look into the enquiry report of the revenue divisional officer into the death of the Mohammed Masood under section 176 (5) of Cr.P.C. and the statement recorded in the said proceedings. The two contradictory statement made by one “*Mr.Mariya Arul*” cannot be taken into consideration to array the petitioner as a accused in S.C.No.195 of 2011. When the division bench of this Court has held that Mariya Arul statement made before the Judicial Magistrate prevailed over the statement made before the revenue divisional officer, the learned trial judge committed error in considering the said Mariya Arul statement. Therefore, he seeks to set aside the impugned order.

8. The Learned counsel for the defacto complainant and the additional public prosecutor would submit that this Court either in Crl.O.P.(MD).No.6937



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of 2019 or in the W.A.(MD).No.1257 of 2018 has rendered a finding that the appellant has not committed any offence. In the Crl.O.P.(MD).No.6937 of 2019, this Court specifically directed the Learned Trial judge to consider the situation whether it is required to initiate proceedings against the petitioner under section 319 of Cr.P.C. In the writ appeal, this Court quashed the charge memo and specifically held that unless and until the appellant Paramasivam is found guilty in C.C.No.77 of 2012, there is no foundation for the department proceedings against him under Rule 22 of the Tamil Nadu Subordinate Police Officers Conduct Rules 1964. To find out whether the Paramasivam is guilty or not in C.C.No.77 of 2012, it is necessary to delete his name as a witness in S.C.No.195 of 2011. That apart, there are sufficient materials available to convict the petitioner for the alleged cause of death of Mohammed Masood. Therefore, the Learned Trial Judge correct in passing the impugned order. The factual argument that the contradictory statement of the Paramasivam before the Learned Judicial Magistrate under 164 of Cr.P.C. and the statement made before the revenue divisional officer are all matter for appreciation of evidence during the course of trial. Hence, they seek to dismiss this revision.



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9. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available the record.

10. In C.C.No.77 of 2012, there is a specific allegation against the petitioner that he had involved in the custodial death of Mohammed Masood. The revenue divisional officer conducted the enquiry under section 176 (5) of Cr.P.C. by examining the number of the persons. The revenue divisional officer after elaborate enquiry recommended to initiate the proceedings against the number of the persons including the petitioners. The said report was accepted by the government and recommended to take action as per law. Therefore, the private complaint was filed before the Learned Judicial Magistrate and the same was taken on file in C.C.No.77 of 2012. The said proceedings has not been challenged by the petitioner till date. Even in the earlier proceedings before this Court in Crl.O.P.(MD).No.6937 of 2018 and Crl.O.P.(MD).No.3167 of 2018, the petitioner has not sought for the remedy of quashment of the proceedings. Therefore, the allegation made against him can be decided either way. This Court specifically ordered to transfer in C.C.No.77 of 2012 on the file of the Learned Judicial Magistrate, Boothapandi to the Additional District Judge, Tenkasi in S.C.No.195 of 2011. Both C.C.No.77 of 2012 and S.C.No.195 of 2011 are



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relating to the alleged custodial torture leading to death of Mohammed Masood.

In private complaint case the petitioner was arrayed as a accused in C.C.No.77 of 2012 and in police case, the petitioner was arrayed as a witness. It is well settled principle that in the case of police case and in the private complaint relating to the same occurrence, the trial Court has to follow the procedure stated in the section 176(5) of Cr.P.C.

11. When the cognizance taken in C.C.No.77 of 2012 is available and the material collected in the S.C.No.195 of 2011 is still under the consideration, the learned trial judge considered the material circumstances more particularly that of the petitioner had taken the Mohammed Masood to the police station and subsequently he entrusted the custody to the other accused and in the said custody he is said to have died and so the chain of the events clearly establish the prima facie case to proceed against the petitioner. Therefore, this Court finds no reason to differ with finding of the learned trial judge to proceed against the petitioner under the charged offence in C.C.No.77 of 2012. It is the case of custodial torture and allegation that deceased Mohammed Masood was taken from his native place Kadayanallur to a far away police station namely Keeriparai and he was subjected to police torture for three days in the said



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station and thereafter he is said to have died in another police station and hence there is a continuing offence and therefore all the persons involved in the said continuing offence has to be tried. Hence, this Court finds no merit in this revision and hence revision is liable to be dismissed.

Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected criminal miscellaneous petition is closed.

23.08.2024

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

To

1. The Judicial Magistrate,
Tirunelveli.
2. The Inspector of Police,
CBCID, Organized Crime Unit,
Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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