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Crl.O.P.(MD)Nos.19678 of 2021 and 4460 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)Nos.19678 of 2021 and 4460 of 2022

and

Crl.M.P.(MD)Nos.11029, 11030 of 2021 and 3164 of 2022

1.*****

1.M.Sutheer

2.K.Prabhusingh

3.M.Mohan

... Petitioner in Crl.O.P.(MD)No.
19678/2021

*[1st petitioner was deleted vide order dated 22.04.2024
and ranks of the petitioners were altered]*

Sam Christudhas Joseph

... Petitioner in Crl.O.P.(MD)No.
4460/2022

Vs.

1.The State rep by

The Inspector of Police,

Marthandam Police Station,

Kanyakumari District.

(Crime Nos.3 of 2016 and 277 of 2019)

2.Y.Nallathambi

... Respondents in both petitions

COMMON PRAYER : Criminal Original Petitions filed under Section
528 of BNSS, to call for the records in connection with the final report in



Crl.O.P.(MD)Nos.19678 of 2021 and 4460 of 2022

P.R.C.No.28 of 2021 on the file of the learned Judicial Magistrate No.1,
Kuzhithurai and quash the same.

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In Crl.O.P.(MD)No.19678 of 2021:

For Petitioner : Mr.C.Mayilvahana Rajendran
for Mr.D.Selvanayagam

In Crl.O.P.(MD)No.4460 of 2022:

For Petitioner : Mr.V.Karthirvelu
for Ms.M.Shobana

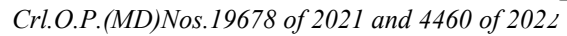
In both petitions:

For R1 : Mr.S.Ravi
Additional Public Prosecutor
For R2 : Mr.S.Gokulraj
for Mr.G.Mohankumar

COMMON ORDER

These petitions have been filed by A1, A3 and A4 to A6 to quash the proceedings in P.R.C.No.28 of 2021 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai.

2.The case of the prosecution is that on 21.07.2019 at about 02.50 a.m., some persons trespassed into the Society premises and broke open the door locks and took away the ballot box and damaged the voting slips and also took away hard disks and CCTV cameras from the premises. According to the prosecution, this was done by A1 in connivance with the



4. The main ground that was urged by the learned counsel appearing on behalf of the petitioners in CrI.O.P.(MD)No.19678 of 2021 is that except the confession of A2 and A3, there is absolutely no material available in this case. To substantiate his submission, the learned counsel relied upon the statements recorded from L.W.13 to L.W.16. The learned counsel further submitted that A4 and A6 have been roped in this case, since they happened to be the sons of A1.



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5.The learned Senior Counsel appearing on behalf of the petitioners in Crl.O.P.(MD)No.4460 of 2022 submitted that the only allegation made against A3 was that he was aware about the conspiracy among other accused persons and their plan to storm into the Society and in spite of the same, he did not inform it to the authorities. Thus, the only charge that is sought to be put against A3 is that the offence under Section 176 of IPC.

6.The learned counsel submitted that there is absolutely no material available to sustain the charge and that apart, even if the petitioner is going to be proceeded for this charge, it cannot be done by way of police report and only a private complaint can be filed. To substantiate this submission, the learned counsel relied upon the judgment of this Court in *Jeevanandhan and others vs. State rep.by Inspector of Police and another* reported in *CDJ 2018 MHC 1543*.

7.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the conspiracy in this case can be established only through circumstantial evidence. That will come to light only during the course of trial. It is submitted that based on the confession of A2, materials have been seized and the said fact has been



spoken by L.W.15. It was submitted that the scope of Section 10 of the Indian Evidence Act will come to light only during the course of trial and the proceedings cannot be interfered at this stage.

8.The learned counsel for the second respondent/defacto complainant submitted that the entire case is borne out by substantial evidence. Hence, each link in the circumstances will get established during trial and as of now, there are *prima facie* materials to proceed further against the accused persons.

9.The first link that is sought to be put against the accused persons is 'motive'. According to the prosecution, A1 wanted to participate in the election and his nomination was rejected. Same was put to challenge and the case was pending and A1 realized that he will not be able to succeed in the case. Therefore, he wanted to ensure that the counting of votes does not take place and he conspired with the other accused persons and destroyed the ballot box and other voting slips to ensure that a fresh election is conducted. The above motive has been stated by some of the witnesses, whose statements have been recorded by the Investigation Officer.



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10.The next link that has to be proved by the prosecution is the charge of conspiracy. Insofar as conspiracy is concerned, it is always hatched in secrecy. However, even to frame charge for conspiracy, some materials must be available before the Court. This is in view of the fact that the ultimate beneficiary may be A1 but to rope in other accused persons, there is no other motive for them to commit this offence except the conspiracy they had hatched along with A1.

11.The prosecution for this purpose, strongly relied upon the statement recorded from L.W.13 to L.W.16. L.W.13 is the Village Administrative Officer and L.W.14 is the Village Assistant. Both of them have spoken about the confession that was made by A2 and A3 in the presence of the police. In view of the same, the so called confession will be straight away hit under Section 25 of the Indian Evidence Act. Apart from the confession made by A2 and A3 in the presence of police, L.W.13 and L.W.14 cannot speak anything more.

12.That leaves only L.W.15 and L.W.16. These two witnesses were the witnesses to the confession made by A2. The statements of these two



witnesses will also not help the prosecution to prove the charge of conspiracy. At the best, the statement of L.W.15 will help the prosecution to prove one more link, viz., recovery. Apart from that, the statements of L.W.14 and L.W.15 cannot be relied upon.

13.All the other witnesses are only talking about what they heard from others and about the previous incidents, where A1 had challenged his rejection of nomination and therefore, he had the intentions to somehow stall the election result.

14.Even if the entire materials are taken together, this Court does not find any material to sustain the charge of conspiracy and even during trial, there is no one to speak about the charge of conspiracy in this case. Even the watchman, who was guarding the premises has been made as an accused in this case (A7). If atleast this Watchman was available for the prosecution to speak about the incident, that would have been a *prima facie* case for the prosecution to establish the entire chain of circumstances. Hence, apart from the motive and recovery, there is no material available for the prosecution to sustain the other links in the chain of circumstances.



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15.Insofar as A3 is concerned, the charge is that he was aware about the conspiracy made by other accused persons to enter into the premises and inspite of the same, he did not inform about it to the higher authorities. If the charge of conspiracy has not been substantiated against other accused persons, it is next to impossible to prove the charge against A3. Apart from that, the prosecution is attempting to proceed against A3 for offence under Section 176 of IPC. If that is so, it could be done only by way of a private complaint and not through a police report.

16.In the considered view of this Court, the entire investigation is botched up and the Investigation Officer has not even cared to have atleast one witness, who will speak about this incident. If according to the prosecution the Watchman was also involved, atleast steps could have been taken to make him an approver in this case. Even that has not been done. Hence, with the available materials, there is no use in sending the petitioners to face the ordeal of trial. In any case, A1, who would be the beneficiary, is no more and if the others are going to face the trial, this Court does not find materials against them.



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17.In the result, the continuation of proceedings against the petitioners will result in abuse of process of law and the same requires the interference of this Court. Accordingly, the proceedings in P.R.C.No.28 of 2021 on the file of the learned Judicial Magistrate No.1, Kuzhithurai is quashed and these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

19.12.2024

NCC : Yes/No
Index : Yes / No
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To

- 1.The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

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