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(2015) 04 MAD CK 0322

In the Madras High Court

Case No : Criminal O.P. (MD) No. 325 of 2015 and M.P. (MD) No. 1 of 2015

E. Ganesaboopathy — APPELLANT

Vs

The Inspector of Police and Others — RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 161
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1), 4(i)(ii)(A), 5
Penal Code, 1860 (IPC) — Section 147, 379

Citation : (2015) 04 MAD CK 0322

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : J. Jeyakumaran, for the Appellant; S. Prabha, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J—The petitioner seeks to quash the proceedings in S.T.C. No. 289 of 2014 on the file of learned Judicial Magistrate No. V, Tirunelveli.

2. Heard learned counsel for the petitioner and learned Government Advocate (Criminal side) for the first respondent.

3. The petitioner is a police constable. A case has been registered against the petitioner in Crime No. 854 of 2013 for the offences under Sections 147, 379 I.P.C. and 4(i)(ii)(A) r/w 21(1) 5 of Mines and Minerals Act, 1959. The allegation against the petitioner is that he aided and abetted the crime by providing escort. The complainant is none other than the investigation officer. After registering the case, he proceeded with the investigation.

4. Learned counsel for the petitioner would submit that there is a previous enmity between the petitioner and the investigation officer. He would further submit that in law also the proceedings are liable to be quashed because the

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complainant cannot be the investigation officer. Two roles cannot be performed by the very same person as they are totally differently and distinctly with each other. Reliance is also placed on the following decisions:

(i) State by Inspector of Police, NIB, Madurai, Tamil Nadu Vs. Rajangam and

(ii) Roop Lal Halba Vs. State of Chhattisgarh, (2014) CriLJ 4683 .

5. Learned Government Advocate (Criminal side) would submit that there is no dispute over the fact that the complainant and investigation officer are same. However, taking note of the fact that the case has been taken on file, the petitioner can very well workout his remedy before the trial Court.

6. In Roop Lal Halba Vs. State of Chhattisgarh, (2014) CriLJ 4683 , considering the very same issue, the Hon''ble Supreme Court was pleased to hold as follows:

''12. Applying the ratio of law laid down by the Supreme Court in the above referred cases in the present case, it is held that investigation by Mr.R.K. Sharma, SHO, Rajhara (PW-11), who has registered the crime, should not have proceeded with the investigation of the entire case and it ought to have been done by other officer as investigation made cannot be said to be the fair and impartial causing serious prejudice to applicant and thereby entire proceeding including conviction followed by sentence stands vitiated, consequently, it is liable to be set aside.''

7. Similarly in State by Inspector of Police, NIB, Madurai, Tamil Nadu Vs. Rajangam the following paragraph would be apposite:

''9. The learned counsel appearing for the accused submitted that the controversy involved in this case is no longer res integra. In Megha Singh Vs. State of Haryana, AIR 1995 SC 2339 : (1995) CriLJ 3988 : (1996) 11 SCC 709 , this Court has taken a categorical view that the officer who arrested the accused should not have proceeded with the investigation of the case. The relevant paragraph reads as under: (SCC p.711, para 4)

"4.... We have also noted another disturbing feature in this case, PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 CrPC. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation."

10. The ratio of Megha case has been followed by other cases. In another case in Balasundaran Vs. State, (2000) 67 ECC 30 : (1999) 113 ELT 785 , the Madras High Court took the same view. The relevant portion reads as under: (ELT p. 790, para 16)

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"16. Learned counsel for the appellants also stated that PW 5 being the Inspector of Police who was present at the time of search and he was the investigating officer and as such it is fatal to the case of the prosecution. PW 5, according to the prosecution, was present with PWs 3 and 4 at the time of search. In fact, PW 5 alone took up investigation in the case and he had examined the witnesses. No doubt the successor to PW 5 alone had filed the charge-sheet. But there is no material to show that he had examined any other witness. It therefore follows that PW 5 who the person who really investigated the case. PW 5 was the person who had searched the appellants in question and he being the investigation officer, certainly it is not proper and correct. The investigation ought to have been done by any other investigating agency. On this score also, the investigation is bound to suffer and as such the entire proceedings will be vitiated."

11. In this view of the legal position, as crystallised in Megha Singh case, the High Court was justified in acquitting the accused. We see no infirmity in the view which has been taken by the High Court in the impugned judgment.''

8. In view of the aforesaid principle of law enunciated by the Hon''ble Apex Court, this Criminal Original Petition is allowed and the proceedings in S.T.C. No. 289 of 2014 on the file of Judicial Magistrate No. V, Tirunelveli are quashed. Consequently, connected M.P.(MD) No. 1 of 2015 is closed.

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