

(2011) 11 MAD CK 0099

In the Madras High Court

Case No : Criminal R.C. No. 65 of 2007 and M.P. No. 3 of 2007

P. Dharamchand

APPELLANT

Vs

State and H. Premchand (impleaded the 2nd respondent as per order of this Court dated 05.07.2007 in M.P. No. 2/07)

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 227, 309, 482, 91
Explosive Substances Act, 1908 — Section 3(1)
Penal Code, 1860 (IPC) — Section 307, 332, 448, 506

Citation : (2011) 11 MAD CK 0099

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : A. Raghunathan, for Mr. P. Vijayan, for the Appellant; A.N. Thambidurai, APP For Respondent 1 and Mr. A.R.L. Sundaresan, for Mr. R. Natesh Kumar For Respondent 2, for the Respondent

Judgement

Honourable Mr. Justice C.T. Selvam

1. This revision arises against the order of the learned Sessions Judge, Additional Sessions Court for exclusive trial of bomb blast cases, Chennai at Poonamallee, passed in Crl. M.P. No. 478 of 2006 in S.C. No. 7 of 2004 dated 02.12.2006.

2. The first respondent State moved Crl.M.P. No. 478 of 2006 seeking further investigation. The petition was moved by the first respondent informing the need to conduct further investigation on the basis of documents received from the Special Secretary to Government, Home (Police-16) Department by its letter dated 30.08.2006. Therein, the first respondent/petitioner informed that the documents received were vital and connected to the case pending in S.C. No. 7 of 2004. Informing that the copies of documents had been sent to the District Collector, Chennai on 18.09.2006 towards obtaining sanction in PRC No. 36 of 2006 in S.C. No. 7 of 2004 under the Explosive Substances Act and the Commissioner of Police has also ordered an enquiry as to why the investigating

agency did not send those documents to the District Magistrate, Chennai, the first respondent sought direction for further investigation. Against the dismissal of such petition, the petitioner, who is an accused in the case, has preferred this revision.

3. Heard Mr. A. Raghunathan, learned senior counsel for the petitioner, Mr. A.N. Thambidurai, learned Additional Public Prosecutor and Mr. A.R.L. Sundaresan, learned senior counsel for the intervener.

4. Though much has been submitted on either side on the locus standi of the petitioner/accused as also the interlocutory nature or otherwise of the order under challenge, this Court is of the view that the present petition can be disposed on mere factual considerations. The final report in the case was filed in March 2003 and the case is still at the stage of framing of charges. The order of the Court below reveals that the petitioner herein moved a petition u/s 309 Cr.P.C. for adjourning the case on two occasions and the same were dismissed. There against, the petitioner brought up the matter to this Court and further to the Supreme Court, but failed. He filed W.P. No. 556 of 2005 seeking a mandamus to the Commissioner of Police, Egmore, to produce before this Court a report dated 18.12.2003 for further investigation in the above crime number. The same was dismissed by this Court. Thereafter, he filed Crl.O.P. Nos. 17321 and 33169 of 2005 seeking the same relief u/s 482 Cr.P.C. Under orders of this Court one Criminal Original Petition was closed and another was dismissed. Against the orders of this Court, the petitioner moved Special Leave Appeal No. 1159 of 2006 which also was dismissed. Thereafter, the matter stood posted for proceedings u/s. 227 Cr.P.C. At such stage, Section 91 Cr.P.C. petition moved by the petitioner seeking to call for certain documents prior to framing of charges was also dismissed. In dismissing the petition seeking further investigation, the Court below touched upon the reply filed by the police in Crl. M.P.No. 198 of 2005 i.e., one of the petitions by which the petitioner sought adjournment wherein the stand of the police was as follows:

It is submitted that in view of the serious nature of the offences committed by the accused, the question of the 6th accused relying upon certain original sale agreement purported to have been executed between the parties has no relevance for the proof of the prosecution case. It is submitted that those documents are not relevant for the purpose of deciding this case. Moreover, the accused is dragging on the proceedings endlessly in order to protract the trial from the beginning. The earlier proceedings would go to show that the petitioner is bent upon dragging on the proceedings.

5. Having perused the documents, the Court below was of the view that the same related to property rights and were of civil nature and further found that at the stage of framing charges, the Court cannot consider any material other than that relied on by the prosecution.

6. One other consideration which weighed with the Court below was that the

petition before it attacked the prior charge sheet which was not permissible as what Section 173(8) Cr.P.C. contemplated was a further investigation which would have to lead to a report which was supplementary in nature and not in contradiction of the original case put up by the police. The Court below has also observed, by taking into account the earlier steps taken by this petitioner and the contents of the petition before it that in substance the petition was similar to the demand of the petitioner/accused. It also found it improper to direct further investigation in the case wherein cognizance has been taken as early as on 24.03.2003.

7. In all the reasoning informed by the Court below, this Court does not find any incorrectness, illegality or impropriety as would require the exercise of revisional powers by this Court. This Court does find from the petition moved before the Court below that the documents enclosed by the Special Secretary to Government, Home (Police-16) Department by its letter dated 30.08.2006 were those regarding a Mandavali market property. The Court below rightly has held that the documents are of civil nature.

8. Learned senior counsel for the petitioner placed much reliance on a communication dated 19.12.2006 addressed by the first respondent police herein to the District Collector wherein inter alia it has been informed that in so far as the Mandavali market property was concerned, the documents obtained from the registration officials show that the property originally belonged to one Janakia Chettiyar and it was crystal clear that thereafter the same belonged to Dharamchand, the petitioner herein and one Shantilal. The documents had also revealed that one Premchand had been a witness to the documents of sale executed by the Janakia Chettiyar. Therefore, it had come to light that the statement of the said Premchand as LW-3 recorded on 07.06.2001 did not reflect the correct position when taken for comparison with the documents. Further, as on the date of the statement, the said Premchand had not produced any documents to the investigating officer regarding proof of his ownership. Therefore, the documents submitted by the petitioner, Dharamchand, would show that the Mandavali property belonged to him and Shantilal.

9. According to learned senior counsel for the petitioner, if further investigation was ordered in respect of the above, the same may result in his being exonerated of any offence pending trial in S.C.No.7 of 2004.

10. As rightly submitted by learned senior counsel for the intervener, the said contention ignores what is further informed in the communication of the first respondent dated 19.12.2006 immediately after the portion relied on by learned senior counsel for petitioner. The same informs that investigation into the bomb blast that occurred at door No. 6, Muthuram street on 07.06.2001 and the statement of the witnesses recorded revealed that the occurrence took place at the instigation of this petitioner. It is such case for which the petitioner standing trial. As is reflected in the order of the Court below, the petitioner taking recourse to one petition after another has resulted in the case remaining at the

stage of framing charges since the year 2003. The present contention that a further investigation in the case could exonerate him has earlier been made before this Court in slightly different terms i.e., the production of the very same documents would lead to his exoneration. This Court may refer to the following found in the order of this Court in Crl. O.P. No. 17321 of 2005 dated 23.12.2005:

13..... The case against the petitioner who is the sixth accused and other accused was registered under Sections 448, 307, 332 and 506(ii) IPC and 3(1) of Indian Explosives Substance Act on account of the occurrence in and by which the accused had thrown the bomb on the police officials and injured one Sub Inspector of Police and another constable and therefore during the investigation, materials were gathered by the second respondent to substantiate the charges under the said provisions of law. In the above circumstances, the documents sought to be produced by the petitioner are not relevant as they are not relied on by the prosecution side, so as to frame the charges against the accused in the case. Hence, the petitions preferred by the petitioner are not sustainable in law.

14. The learned counsel for the petitioner has drawn attention to the nature of documents relied on by him so as to impress upon this Court that they are essential in the facts and circumstances of the case to frame appropriate charges and that if the said documents are made available before the Court below, the petitioner will certainly be exonerated from the charges levelled against him by the prosecution.

21. Having regard to factual aspects of the matter as narrated above and the ratio laid down by the Supreme Court in the decisions cited supra, this Court is of the considered opinion that the petitioner cannot be heard to say that he as a matter of right, is entitled to press in to service at the time of framing of charges, the documents mentioned in the representations made by him to the respondent and other authorities on various occasions. Further he will be at liberty to produce the same at the time of trial, if so advised and therefore finding no merit of acceptance, the above Criminal Original Petitions filed by the petitioner herein liable to be closed. However in view of the facts of the case as narrated above, this Court finds that heinous offence had been committed as a result of which police personnel sustained injuries and therefore it is needless to say that early disposal of the said case by the Court below is absolutely essential. Therefore, the trial Court is directed to dispose of the said case after trial on merits and in accordance with law within 6 months from the date of production of a copy of this order.

11. Finding no merits in the revision, this Court would dismiss the same. Further, noting that an order of this Court passed as early as on 23.12.2005 directing completion of the case has till date gone uncomplished with, this Court would direct the Court below to dispose of the case after trial on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.