

**Kulanthaivel Vs. the State**

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**Court :** Chennai

**Decided On :** Apr-10-2014

**Judge :** P.N.Prakash

**Appellant :** Kulanthaivel

**Respondent :** The State

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 10.04.2014 Coram THE HONOURABLE MR.JUSTICE P.N.PRAKASH Criminal Revision Case (Md.No.348 of 2013 and M.P.(Md.No.1 of 2013 Kulanthaivel ..Petitioner/Petitioner/Accused 2 versus The State Represented by Inspector of Police, Thenkarai Police Station, Periyakulam, Theni District.

(Crime No.129/2011) ..Respondent/Respondent/Complainant PRAYER Criminal Revision Petition filed under Section 397 r/w.

401 of Criminal Procedure Code, praying to call for the records and set aside the order passed by the learned Additional District and Sessions Judge, Theni District in Cr.M.P.No.54 of 2012 in S.C.No.221 of 2012, dated 13.03.2013 by allowing this Criminal Revision.

!For Petitioner ..Mr.D.Selvanayagam ^For Respondent ..Mrs.S.Prabha Government Advocate (Crl.

side) \*\*\* :

## ORDER

There is a saying, ".Facts are stranger than fiction".

but the facts that obtains in this case goes even beyond fiction.

The hero of the story line is one Mr.Raja who was working as Special Sub Inspector of Police, Thenkarai Police Station, Theni District during March, 2011.

According to Mr.Raja, while he was in the police station, he received wireless message at 00.45 hours on 29.03.2011, that one Ramesh Kannan was stabbed; and that he was admitted in the Government Hospital, Periyakulam.

On receipt of this information, Mr.Raja, proceeded to Government Hospital, Periyakulam and learnt that Ramesh Kannan has been shifted to K.Vilakku Hospital.

When Mr.Raja, went to K.Vilakku Hospital, he was told that the victim was shifted to Government Rajaji Hospital, Madurai.

Therefore, Mr.Raja went to Government Rajaji Hospital, Madurai, and found the victim Ramesh Kannan was under medical treatment and was not in a position to give any statement.

So he obtained a statement from Lakshmi, the mother of the victim which was treated as a complaint.

In that statement, Lakshmi has implicated one Sakthivel and Kulanthaivel as the perpetrators of the offence.

Thereafter, Mr.Raja returned to the station with the statement and registered a case at 07.15 a.m.on 29.03.2011 against Sakthivel and Kulanthaivel for the offences under Sections 342 and 307 I.P.C.in Thenkarai Police Station Crime No.129 of 2011.

The complaint and the F.I.R.was sent to the jurisdictional Magistrate.

On 30.03.2011, the victim succumbed to the injuries and therefore, the case was altered to Sections 341 and 302 r/w.

34 I.P.C and investigation was taken over by the Inspector of Police.

After completing the investigation, a final report was filed before the jurisdictional Magistrate against Sakthivel and Kulanthaivel for offences under Section 341 and 302 r/w.

34 I.P.C. When the accused appeared, the proceedings under Section 207 Cr.P.C. was complied with and the case was committed to the Court of Sessions.

Before the Sessions Court, at the time of framing charges, Kulanthaivel/A2 filed a petition for discharge under Section 227 Cr.P.C. on the basis of certain substantial grounds which went to the root of the very case.

The learned Sessions Judge ordered notice to the police and after hearing the counsels on either side, dismissed the discharge application in Cr.M.P.No.54 of 2012 on 13.03.2013.

Aggrieved by which, Kulanthaivel/A2 has preferred this Criminal Revision Petition before this Court.

2. This Court ordered notice to the respondent police in this revision and heard both sides.

3. The learned counsel appearing for the revision petitioner drew the attention of this Court to an appalling fact in this case.

Along with the typed set of papers, the revision petitioner has filed another F.I.R. that has been registered by Mr. Raja, Special Sub Inspector of Police, Thenkarai Police Station on 29.03.2011 at 07.15 a.m. in respect of the very same occurrence and he has assigned the same crime number viz., Crime No.129 of 2011 for that also.

The complainant in this F.I.R. is one Jothimani, the sister of the victim Ramesh Kannan.

4.A reading of that F.I.R.and the complaint of Jothimani shows that, Mr.Raja received a wireless message on 29.03.2011 at 00.45 hours that one Ramesh Kannan was stabbed and that he has been admitted to Government Hospital, Periyakulam.

When Mr.Raja went to Government Hospital, Periyakulam, he was told that the patient was shifted to K.Vilakku Hospital and when he went there, he learnt that the victim was shifted to the Government Rajaji Hospital, Madurai.

He proceeded to the Government Rajaji Hospital, Madurai, and found that the victim was not in a position to give statement as he was under intensive treatment and therefore, he recorded the statement of Jothimani, sister of the victim who was available there.

In that statement, Jothimani has stated that her brother Ramesh Kannan was stabbed near a tea stall by Sakthivel.

There is no reference to the involvement of Kulanthaivelu (A2) in this complaint.

On a reading of this complaint, it appears that Mr.Raja returned to the police station and registered a case on 29.03.2011 at 07.15 a.m.in Thenkarai Police Station Crime No.129 of 2011 under Section 307 I.P.C.against Sakthivel.

This complaint and the F.I.R.also were sent to the jurisdictional Magistrate.

5.The learned counsel for the revision petitioner placed reliance upon the judgement of the Hon'ble Supreme Court in T.T.Antony v.

State of Kerala (AIR 2001 SCC2637 and Anuj Chaudhary v.

State of U.P.and another (2013 (1) CTC714 and contended that the second F.I.R.is not maintainable and therefore, the prosecution deserves to be quashed.

I have no quarrel with the proposition of law laid down in the said two judgments but, unfortunately, the facts in this case does not fit with the law laid down in the said two judgments.

In this case, I am unable to determine as to which is the fiRs.F.I.R.and which is the second F.I.R.Considerable time was spent by this Court with the aid of the learned counsel for both sides to determine this fact.

6.The learned Government Advocate (Criminal Side) appearing for the State was unable to give any explanation as to how in one crime number two different versions of one occurrence has been recorded at the same time by Mr.Raja, the Special Sub Inspector of Police.

I called for the copy of both the F.I.Rs in order to check the serial number on it.

I was indeed surprised to note that both the F.I.Rs bear the same serial number viz., C2899568.

The Inspector of Police has not even recorded any statement from Mr.Raja as to how he could record two F.I.Rs in one crime number bearing the same serial number.

7.The learned Government Advocate (Criminal Side) who was instructed by the police on duty, was unable to give any satisfactory explanation in this regard.

I am unable to fathom as to how Mr.Raja could record two different statements at the same time from two different persons who are not strangers to each other but are kith of the victim and who were giving two different versions about the same occurrence.

Was this done deliberately to save the real accused or was Mr.Raja foolhardy?.

Either way he has successfully caused a serious dent in the prosecution thereby providing an escape route for the real offender to go sCo.free.

Another question that nags my judicial conscience is, was there an attempt to falsely implicate Kulanthaivelu (A2) in this case?.

I cannot afford to leave these questions unanswered.

In the peculiar facts and circumstances of this case, I am of the opinion that interest of justice will be served if a further investigation is ordered in exercise of my powers under Section 482 Cr.P.C.r/w.

173(8) Cr.P.C.to unravel the mystery behind the two F.I.Rs.It will be in the fitness of things, if the Superintendent of Police, Theni District, is directed to depute an officer in the rank of Deputy Superintendent of Police, to conduct a further investigation in this case and file a further report before the trial Court viz., the Additional District and Sessions Judge, Theni, where the case is now pending.

8.Now the next question is, will the revision petitioner/A2 be entitled to be discharged from S.C.No.221 of 2011 on account of the two F.I.Rs.The answer is an emphatic No.The question of discharge from the criminal case in terms of Section 227 Cr.P.C.will arise only when after consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused on the prosecution if the Judge considers that there is no sufficient ground for proceeding against the accused he can discharge the accused.

At present, records relating to the investigation conducted based on the F.I.R.given by Lakshmi, the mother of the deceased, is alone before the learned Sessions Judge.

At this juncture, I am informed that charges have been framed against A1 and A2 and some witnesses including Lakshmi have also been examined before the trial Court.

It also appears that Lakshmi has implicated the revision petitioner in her evidence.

In this backdrop, I am ordering further investigation of the case under Section 173(8) Cr.P.C.It is too late in the day to return the clock back and put the parties to the position where they were prior to the stage of framing charges.

As a damage control exercise, I am ordering stay of all further proceedings in S.C.No.221 of 2011 pending filing of the further report by the Deputy Superintendent of Police.

On the Deputy Superintendent of Police filing the further report along with the materials collected by him in support of his opinion, the learned Sessions Judge shall furnish copies of the same to both the accused so as to ensure a fair trial for them.

Thereafter, the trial of the case shall proceed in the usual course.

Based on the further materials submitted by the Deputy Superintendent of Police, if the accused pray for recalling any witnesses for cross-examination, by filing petition under Section 311 Cr.P.C., the trial Court may liberally consider the same and give them adequate opportunity to cross-examine them.

The trial Court is also given liberty to examine other witnesses whose names surfaced in the further report and whose evidence will be just and necessary for a fair decision in this case.

9. In fine, the following directions are passed: (a) the Superintendent of Police, Theni District is directed to entrust the further investigation of the case in Thenkarai Police Station Crime No.129 of 2011 to a competent officer in the rank of Deputy Superintendent of Police under his jurisdiction and supervise the further investigation himself.

The further investigation should be undertaken expeditiously and completed within a period of four months from the date of receipt of a copy of this order.

(b) Since further investigation has been ordered in exercise of powers under Section 482 Cr.P.C./w.

Section 173(8) Cr.P.C. the police need not have to obtain the leave of the trial Court for conducting further investigation.

(c) Pending further investigation as directed above, all further proceedings in S.C.No.221 of 2011 on the file of the Additional District and Sessions Judge, Theni, are stayed.

(d) If the Superintendent of Police finds that there has been dereliction of duty or abuse of power on the part of Mr.Raja, Special Sub Inspector of Police, in

registering two F.I.Rs at the same time under the same crime number, departmental action shall be initiated against him and the same shall be reported to the Additional District and Sessions Judge, Theni in S.C.No.221 of 2011.

(e)After completing the further investigation, the Deputy Superintendent of Police shall forward the further report under Section 173(8) Cr.P.C.to the Additional District and Sessions Judge, Theni in S.C.No.221 of 2011.

(f)On receipt of the further report, the trial Court shall furnish a copy of the report and the supporting documents filed by the Deputy Superintendent of Police to the accused and proceed with the trial.

The accused may be given adequate opportunity to recall witnesses for cross-examination as indicated in the body of this order.

10.With the above directions, this Criminal Revision Petition is disposed of.

Consequently, connected miscellaneous petition is closed.

Sr.To 1.The Additional District and Sessions Judge, Theni.

2.The Superintendent of Police, Theni District.

3.The Inspector of Police, Thenkarai Police Station, Periyakulam, Theni District.

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