

**Joseph Vs. State Represented By**

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**Court :** Chennai

**Decided On :** Jan-19-2015

**Judge :** M.Sathyannarayanan

**Appellant :** Joseph

**Respondent :** State Represented By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN CrI.R.C.(MD)NO.465 of 2014 and M.P.(MD)No.1 of 2014 Joseph .. Petitioner/Petitioner Vs. State represented by The Inspector of Police, Devadanapatti Police Station, Theni District. (Crime NO.48 of 2009) .. Respondent/Complainant Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the entire records relating to the order of the Additional District and Sessions Judge, Theni at Periyakulam dated 23.09.2014 in CrI.M.P.No.138 of 2014 in S.C.No.45 of 2012 dismissing the reinvestigation petition filed by the petitioner and set aside the same. !For Petitioner :: Mr.A.K.Azhagarsamy ^For Respondent :: Mr.P.Kandasamy Government Advocate (CrI.Side) :

ORDER

The revision petitioner claims to be the elder brother of the deceased viz., Albonse and he has filed a petition in Cr.M.P.No.138 of 2014 under Section 173(8) of the Code of Criminal Procedure for re-investigation of the case, on the file of the Court of Additional District and Sessions Judge, Theni at Periyakulam. The said petition, after contest, came to be dismissed on 23.09.2014. Aggrieved by the same, the revision petitioner has filed this Criminal Revision Petition.

2. A perusal of the impugned order filed in the typed set of documents, would disclose the following facts: (i) The case of the prosecution is that one Albonse was found dead at Kodaikanal road and a case under Section 174 Cr.P.C. was registered by the respondent and later on, it was altered to Sections 302, 120(b) r/w 149 I.P.C. The respondent, after investigation, has filed the charge sheet against nine accused including the third accused, who is the wife of the deceased/murdered viz., Albonse. The case, after committal, was taken on file by the Committal Court and after committal, it was transferred to the file of the Additional District and Sessions Court, Theni at Periyakulam. The trial of the case has also been proceeded with and totally 32 witnesses have already been examined and only the remaining witness viz., the Investigating Officer has alone to be examined. (ii) At this juncture, the petitioner, who claims to be the elder brother of the deceased, has filed this petition stating among other things that all the witnesses except the Official witness had turned hostile and the witnesses who have actually seen the occurrence, have not been cited as witnesses at all and further some of the real accused, who have also involved in the commission of offence, have been left out deliberately by the prosecution. It is further alleged that the Investigating Officer is not a fair Officer and that the investigation has not been done in a fair and proper manner. (iii) On behalf of the respondent, objection was filed stating that totally 32 witnesses have been examined and for the very same relief, the petitioner filed a petition in Cr.M.P.No.230 of 2013 and subsequently made an endorsement as not pressing the petition and at a belated stage, he has chosen to file this petition for obvious reasons and therefore prayed for dismissal of the petition. (iv) The trial Court has taken into consideration the fact that the petitioner herein is neither cited as witness nor examined during the investigation and he has no locus standi to file the said petition. The trial Court further found that no documents whatsoever have been produced to prove that the accused are

heinous criminals and habitual offenders involved in other criminal cases and further taking into consideration the fact that the petitioner's earlier application in Cr.M.P.No.230 of 2013 for transfer of investigation to CBCID was also dismissed as not pressed on 05.06.2014 and belatedly, he has chosen to approach this Court and stating the said reasons, dismissed the petition vide the impugned order.

3. The learned Counsel appearing for the petitioner vehemently contended that since the petitioner happens to be the elder brother of the deceased viz., Albonse, he is entitled to maintain the petition and he is coming under the category of victim as per the definition of Section 2(wa) of the Code of Criminal Procedure. The proviso of Section 372 of the Code of Criminal Procedure enables the victim to have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court and therefore he is having right to prefer this revision.

4. It is contended by the learned Counsel appearing for the petitioner that since the investigation has not been done in a fair and proper manner by the prosecution for obvious reasons and further that the accused are heinous criminals and by exhorting pressure, the prosecution made the private witnesses turned hostile and further that some other accused who have involved in the occurrence, have been deliberately omitted to be framed as accused by the prosecution. In all fairness, he would submit that the trial Court ought to have ordered the petition and hence prayed for interference.

5. Per contra, the learned Government Advocate (CrI.Side) has invited the attention of this Court to the impugned order and would submit that admittedly on earlier occasion the petitioner filed a petition for transfer of investigation in Cr.M.P.No.230 of 2013, which was dismissed as not pressed and at a very belated point of time, he has chosen to file this petition only to delay and protract the trial for the reasons best known to him and hence, prayed for dismissal of the petition.

6. This Court has carefully considered the submissions made by the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record in the form of typed set of papers.

7. For deciding the case, this court need not go into locus standi of the petitioner at this stage. In any way, the copy of the petition has not been filed in the typed set of papers. The contentions of the petition extracted in the impugned order would disclose that though the petitioner has stated that the accused are heinous criminals, he has not given the particulars and further contended that some of the witnesses who have seen the occurrence have been left out, for which he has failed to give those names. Further it is stated that the accused are heinous criminals and habitual offenders, however the commission of offences on their part, has also been left out and not stated. Thus the relevant details, have not been furnished.

8. As rightly pointed by the learned Government Advocate(Crl.Side), the trial of the case is in advance stage and according to him, the only one witness viz., the Investigating Officer has to be examined. It is not as if the petitioner is remedyless and if the trial Court finds that the testimony of the witness implicates the role played by any other person/s, it can array them as accused by exercising the power under Section 319 of the Code of Criminal Procedure.

9. This Court, on going through the reasons assigned by the trial Court, is of the considered view that in the absence of materials, the reasons assigned by the trial Court cannot be said to untenable. This Court, having found no merits in this matter, is of the view that it deserves to be dismissed. Therefore, this Criminal Revision Petition is dismissed in the admission stage itself. Consequently, the connected Miscellaneous Petition is also dismissed. 19.01.2015 Index: Yes/No Internet:Yes/No ssl To The Court of Additional District and Sessions Judge, Theni at Periyakulam. M.SATHYANARAYANAN,J.

ssl Crl.R.C.(MD)NO.465 of 2014 and M.P.(MD)No.1 of 2014 19.01.2015

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