

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2015

Delivered on : 01.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.13516 and 14935 of 2015

Crl.OP.No.13516 of 2015

M.Selvarani

.. Petitioner

Versus

State by

1.The Superintendent of Police,
Tiruppur District, Tiruppur.

2.The Deputy Superintendent of Police,
Dharapuram Taluk, Tiruppur District.

3.The Inspector of Police,
Mulanur Police Station,
Mulanur, Dharapuram Taluk,
Tiruppur District.

.. Respondents

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondents to hand over the petitioner's house key and house hold articles recovered in Crime No.192 of 2015, pending investigation on the file of 3rd respondent.

Crl.OP.No.14935 of 2015

Murugesan

.. Petitioner

Versus

1.Thamizharasu @ Kuppusamy
2.Rajendran

3.State by

The Inspector of Police,
Mulanur Police Station,
Mulanur, Dharapuram Taluk,
Tiruppur District.

.. Respondents

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to modify the condition no.[i] and [ii] imposed in CMP.No.2394 of 2015 dated 15.05.2015 on the file of the Hon'ble Judicial Magistrate, Dharapuram.

For Petitioner : Mr.N.Ponraj
in both Crl.OPs

For Respondents : Mr.C.Emalias, Addl. Public Prosecutor
[for R1 to R3 in Crl.OP.13516 of 2015 &
for R3 in Crl.OP.14935 of 2015]

For Intervenor : Mr.Guruprasad

C O M M O N O R D E R

Crl.OP.No.13516 of 2015 has been filed to direct the respondents to hand over the petitioner's house key and house hold articles recovered in Crime No.192 of 2015, pending investigation on the file of 3rd respondent and Crl.OP.No.14935 of 2015 has been filed to modify the condition no.[i] and [ii] imposed in CMP.No.2394 of 2015 dated 15.05.2015 on the file of the learned Judicial Magistrate, Dharapuram.

2. The facts of the case has cinematic twists and turns and makes interesting reading. For the sake of convenience, the parties will be referred to by their name.

3. It is the case of Murugesan that he paid Rs.3lakhs as consolidated rent to Rajendran and took his premises on rent. Murugesan was living in that premises with his aged mother Valliathal, his wife Selvarani and their two children. It is alleged by Murugesan that on 23.04.2015, Rajendran came to his house in the evening and asked him to immediately vacate the house and when Murugesan demanded the return of Rs.3lakhs, Rajendran repudiated it.

4. It is further averred by Murugesan that on 25.04.2015 around 8.45p.m. in the evening, some 8 persons barged into his house and forcibly bundled up his household articles including fridge, bureau, cot, etc. and loaded them in a tempo and tried to evict his family forcibly. It is alleged by Murugesan that one among the group assaulted his mother Valliathal, a 70 year old lady and caused her death.

5. On the complaint lodged by Murugesan, the police registered a case in Crime No.192 of 2015 on 26.04.2015 for offences under Section 120B, 147, 148, 323, 324, 302, 395 read with 397 IPC against Rajendran, Thamizharasu and 8 others. Police flung into action and seized the household item that were loaded by the gang in the tempo lorry, under the cover of panchanama. Rajendran and few others were arrested by the police and remanded to custody.

6. During the course of investigation, it came to light that Rajendran and his cohorts wanted to only dispossess Murugesan and his family and the death of Valliathal was not committed by anyone of them, but by Murugesan. The Investigating Officer fairly brought it to the notice of the concerned court and thereby,

Rajendran was granted bail. Now, it is alleged that Murugesan has been arrested for the murder of his mother Valliathal and is now in custody.

7. In this backdrop, Murugesan filed an application in C.M.P.No.2394 of 2015 before the learned Judicial Magistrate, Dharapuram under Section 451 Cr.P.C. for return of 36 articles that were seized by the police, based on the confession of the arrested accused. The learned Judicial Magistrate after hearing the State, allowed the petition in C.M.P.No.2394 of 2015 by order dated 15.05.2015, on condition that Murugesan should furnish a bond for Rs.75,000/- with one surety who should have Certificate of Solvency issued by the Revenue Official. The learned Magistrate has further stated that the articles should not be alienated and should be produced during trial.

8. Aggrieved by this order, Murugesan has approached this Court in Crl.OP.No.14935 of 2015, seeking modification of the onerous conditions that has been imposed by the learned Judicial Magistrate, Dharapuram. Apart from 36 articles covered under panchanama, it is the case of Murugesan that the key of the house is also with the police and that should be returned to them, so that they are put back in possession of the house. For this relief, it appears that a separate petition under Section 451 Cr.P.C has been filed and it is pending before the learned Judicial Magistrate, Dharapuram. Murugesan has now been arrested by the police for causing the death of his mother and therefore, his wife Selvarani has filed Crl.OP.No.13516 of 2015, for a direction to the police to hand over the house key to her.

9. Mr.M.Guruprasad, learned counsel appearing for the intervenor Rajendran submitted that Murugesan was never forcibly evicted and that he himself voluntarily vacated the house and had handed over the key. This Court perused the case materials and found that there are prima facie materials to show that Murugesan's family was forcibly evicted by Rajendran and his group on the fateful day. The panchanama drawn by the police for seizure of the articles shows that the articles are all documents like educational certificates, community certificates, bank passbooks, pan cards, etc. of the members of Murugesan's family. Some pronotes and cheque books have also been seized. These documents are definitely required for the family of Murugesan, especially, the ration card, gas connection receipts, community certificates, mark sheets, etc.

10. This Court is of the view that the aforesaid conditions imposed by the learned Magistrate in CMP.No.2394 of 2015 for returning the articles are indeed onerous. However, vile and crooked Murugesan may be, his wife and children cannot be made to suffer for his wrong doings. For the sin of having caused the death of his mother and putting the blame on Rajendran, Murugesan is now rightly cooling his heels in prison. His wife and children are living as refugees as they have been illegally dispossessed from the house.

11. The further condition imposed by the learned Magistrate is that, Murugesan should not alienate the documents. The children will have to submit the transfer certificates and other certificates to the educational institutions and they cannot be asked to preserve it for eternity, to be marked as an exhibit in a trial which may or may not happen several decades later. It defines common sense to say that a seizure has to be proved only by marking the seized articles. It is true that in cases where the seized article is a weapon, then it should necessarily be available in the court to be marked as a material object. Here, the seized articles are not used by the offenders for the commission of an offence. They have allegedly been removed by the offenders for forcibly evicting a tenant. Therefore, it will be ridiculous to ask the petitioners to keep the pronotes, LIC policies etc. in tact and further enmesh them in procedural tangles. It will serve the interest of justice, if photocopies of the same are taken and after the photocopies are attested by the learned Judicial Magistrate, Dharapuram, the originals could be returned to the petitioner.

12. Extraordinary cases require extraordinary remedies. This Court cannot throw its hands up in despair and deny relief to the hapless. After all, procedure is a hand maid of justice. Under such circumstance, this Court directs the respondent police and the learned Judicial Magistrate, Dharapuram to immediately hand over the house key ***and house hold articles** to Selvarani and ensure that their family is put back in possession of the house, without prejudice to the defense and rights of Rajendran. The Judicial Magistrate, Dharapuram is directed to take photocopies of documents 1 to 36 and attest the same. The attested copies shall kept in the case bundles and the originals be ***returned** to Selvarani on she furnishing a bond for Rs.5,000/- without sureties. Whatever observation on facts that has been made above shall in no way affect the defense available to Rajendran.

13. In the result, these petitions are ordered accordingly.

Sd/-

Assistant Registrar

1.7.2015

*Amended as per order dated 10.7.2015 made herein

Sd/-

Assistant Registrar

13.7.2015

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Dharapuram.

2. The Superintendent of Police,
Tiruppur District, Tiruppur.

3. The Deputy Superintendent of Police,
Dharapuram Taluk, Tiruppur District.

4. The Inspector of Police,
Mulanur Police Station,
Mulanur, Dharapuram Taluk,
Tiruppur District.

5. The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s. N. Ponraj, Advocate **Sr.35063**

to be substituted to
the Order already
despatched on 1.7.2015

SAI (CO)
Eu 01.07.15

pmk.13.7.2015

CRL.O.P.No.13516 & 14935 of 2015

सत्यमेव जयते

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