

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.8.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.19956/2015 and

M.P.No.1 of 2015

S.Senthilkumar Petitioner/Defacto complainant

Vs

- 1 State Rep by
The Superintendent of police, Namakkal
Namakkal District
- 2 State Rep by
The Deputy Superintendent of police,
District Crime Branch (Anti Land Grabbing
Special Cell) Namakkal Namakkal District.
- 3 State Rep by
The Inspector of police, District Crime
Branch (Anti Land Grabbing Special Cell)
Namakkal Namakkal District.
- 4 N.Sekar
- 5 N.Krishnan
- 6 K.S.Subramaniam
- 7 P.Vengopal
- 8 K.Saravanan Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to pass an order of transfer transferring the investigation in Crime No. 39 of 2012 from the 3rd Respondent Police to CBCID or any other investigating agency as this Honourable Court deem fit.

For Petitioner :Mr.S.Doraisami
senior counsel
for M/s.Muthumani Doraisami
For R1 to R3 :Mr.Mr.C.Emalias
Additional Public Prosecutor

ORDER

On a complaint lodged by petitioner, the Inspector of Police, District Crime Branch registered a case in Cr.No.39/12 on 01.10.2012 u/s. 120-B, 467, 471 and 420 IPC against two persons one N.Sekar (A1) and another N.Krishnan (A2), who are brothers and are said to be practicing advocates in Namakkal.

2. It is the case of the defacto complainant that the accused fabricated a sale agreement dated 05.6.2011 as if the defacto complainant has agreed to sell his property to them for a sum of Rs.6 lakhs in respect of a property worth more than a crore rupees. On the strength of the agreement, the accused filed O.S.No.65/12 before the Sub Court, Namakkal for specific performance of the contract. The defacto complainant is an Assistant Professor in veterinary college and when he came to know of this, he was shocked and therefore, he had no other option but lodging a complaint as aforesaid. From 2012, nothing seems to have progressed. The accused approached this Court in CrI.OP.No.23101/12 for anticipatory bail and this Court granted anticipatory bail wherein in paragraph Nos. 7 and 8, it is stated as follows:

"7. Admittedly, the document has already been filed before the Civil Court, which is subject matter of the suit. Since the investigation is revolving only on those documents, it is appropriate to direct the respondent to seize the document either directly or through accused herein and subject the same for handwriting expert to get an opinion whether it is a forged one or not and there is not need for custodial interrogation at this stage.

8. Therefore, considering the facts and circumstances of the case and also the submissions made, I am of the view that no prejudice would be caused in the event of granting the relief of anticipatory bail to the petitioners with some stringent conditions."

3. In the operative portion of the order, this Court has further stated as follows:

" the petitioners are also directed to produce the original sale agreement by filing appropriate petition before the Civil Court to enable the respondent police to find out the allegation of forgery."

4. Anticipatory bail was granted to the petitioners on condition that they should take steps to file appropriate petition before the Sub Court, Namakkal in O.S.No.65 of 2012 to get back the impugned document and hand it over to the police. While so, the accused filed a modification application before this Court in

M.P.No.2 of 2012 in Crl.O.P.No.23101/2012 for modifying the last portion of the order that has been extracted above.

5. This Court by order dated 13.12.2012 in M.P.No.2 of 2012 in Crl.O.P.No.23101 of 2012 passed the following order:

"... It is very well open to the petitioner to file appropriate application before appropriate Court seeking appropriate direction to send the document to the handwriting expert."

6. Earlier this Court, had directed the accused to obtain the impugned document by filing appropriate application before the civil court and get back the document for investigation. Subsequently, that has been modified as stated above.

7. Now, the document is still in the custody of the civil court in O.S.No.65/12 and the investigation in this case did not progress further. Totally exasperated, the defacto complainant has approached this Court in this petition seeking transfer of investigation from the file of the Inspector of Police, District Crime Branch to any other agency.

8. When the matter came up for admission on 07.08.2015, the learned senior counsel appearing for the petitioner (defacto complainant) sought interim stay of investigation fearing that the police are attempting to close the very case itself at the instance of the accused/advocates. Therefore, this Court granted interim stay and posted the case today for the police to file status report.

9. Today, Mr.A.Rajendran, Deputy Superintendent of Police, (Anti land grabbing cell) is present before this Court. It is seen that on 07.08.2015, when this Court was seized off this case, the police have closed the investigation and affixed the RCS notice (closure notice) on the door of the house of the defacto complainant in a great hurry.

10. Whenever a petition is filed and numbered by the Registry, advance notice would go to the police, from the office of the Public Prosecutor and only thereafter, the case will be listed for admission. This CrlOP has been filed on 05.08.2015 and was listed for admission on 07.08.2015. Therefore, the police got scent of the move by the defacto complainant and in order to frustrate his endeavour, they have acted with such alacrity after sleeping over the matter from 2012. The reason for closing the case is that the said impugned document is in custody of civil court and therefore, only the civil court should file a prosecution in terms of Section 195 Cr.P.C. This reasoning of the police is indeed very specious because the law has been fairly settled by the Supreme Court in Iqbal Singh Marwah and another Vs. Meenakshi Marwah [(2005) 4 SCC 370] wherein the Supreme Court has stated, where the documents has been fabricated outside the Court and later submitted to the Court, the provisions of Section 195 Cr.P.C will have no

application. The police have not done wee bit to even obtain the document from the civil court, may be because of obvious reasons.

11. Therefore, this Court is of the view that this is a fit case to transfer investigation from the file of Deputy Superintendent of Police, (Anti Land Grabbing Cell) to the CBCID. Extraordinary cases requires extraordinary remedies. After all, procedure is hand maid of justice and not its master.

12. Therefore, this Court directs the Sub Judge, Namakkal, who is seized of O.S.No.65/12 to hand over the original of the agreement dated 05.06.2011 to Mr.Rajendran, Deputy Superintendent of Police (Anti Land Grabbing Cell) after taking photocopies and certified the photocopies and keeping the same on the file of the Court within one week from the date of receipt of a copy of this order. Mr.Rajendran is directed to collect the same and hand over the entire case diaries along with the document to the Superintendent of Police, Namakkal District forthwith. The Superintendent of Police, Namakkal shall hand over the case diaries and documents to the investigating officer appointed by the CBCID. Until then the case diary and the documents shall be in the safe custody of the Superintendent of Police, Namakkal.

13. Registry is directed to mark a copy of the order to Addition Director General of Police, CBCID for nominating a competent officer to take over the investigation of this case. A copy of the order to be marked to the Sub Judge, Namakkal, who is dealing with O.S.No.65/12.

Post on 28.8.2015 for reporting compliance.

Sd/-

Asst.Registrar (CS IV)

/true copy/

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Sub Asst. Registrar

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To

1. The Sub Judge, Namakkal.
2. The Superintendent of police, Namakkal
Namakkal District
3. The Deputy Superintendent of police,
District Crime Branch (Anti Land Grabbing
Special Cell) Namakkal Namakkal District.

4. The Inspector of police, District Crime
Branch (Anti Land Grabbing Special Cell)
Namakkal Namakkal District.

5. The Public Prosecutor, High Court, Madras.

Copy to:

1. The Additional Director General of Police,
CBCID, Chennai.

2. The Section Officer,
Criminal Section, High Court, Madras. (to post on 28/08/2015)

+2 ccs to M/s. Muthumani Doraisami, Advocate, sr.42736

+1 cc to Mr.M.Sekar, Advocate, sr.42918.

CrI.OP.No.19956/2015

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