

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2015
DELIVERED ON : 17.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.2228 of 2015
and M.P.No.1 of 2015

A.Asaithambi ... Petitioner

vs.

State: rep by
Inspector of Police
B-3, Kancheepuram Taluk Police Station
Kancheepuram Town and District
Kancheepuram Taluk P.S.No.892/2014 ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order in Criminal Revision Petition No.1 of 2015 dated 27.01.2015 passed by the learned Sessions Judge II, Kancheepuram and dismissed the order in CMP No.3498 of 2014 dated 30.12.2014 passed by the learned Judicial Magistrate No.II, Kancheepuram.

For Petitioner : Mr.M.Shreedhar

For Respondents : Mr.C.Emalias, APP

सत्यमेव जयते
O R D E R

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

2. Shorn of unnecessary details, it would be suffice to say that this petition has been filed by the accused, challenging the order dated 27.01.2015 passed by the learned Sessions Judge, Kancheepuram granting police custody of the petitioner under Section 167 Cr.P.C.

3. The petitioner is an accused in Cr.No.892 of 2014 on the file of the respondent police for offences under Sections 392, 395 and 397 IPC. The petitioner is a practising Advocate and it appears that there are several cases against him. The police arrested him in Cr.No.892 of 2014 and produced him before the learned Judicial Magistrate-II, Kancheepuram for remand and sought police custody. The learned Magistrate by order dated 30.12.2014, refused police protection on specious grounds, challenging which

the State approached the learned Sessions Judge, Kancheepuram invoking its revisional jurisdiction. The learned Sessions Judge, by a well considered order, allowed the prayer of the State by order dated 27.01.2015 directing that the petitioner be given police custody. Challenging the order passed by the learned Sessions Judge, this petition has been filed by the accused/petitioner on the ground that if police custody is granted, it would be violative of Sections 126 and 129 of the Indian Evidence Act.

4. According to the learned counsel for the petitioner, this petitioner had filed memo of appearance for accused 1 to 4 who were arrested by police in connection with Cr.No.892 of 2014 and that he had also filed HCP for their release. Therefore, if custodial interrogation is given, the petitioner will be compelled to disclose what his clients had told him in confidence. It is seen that this petitioner is involved in 11 cases, of which, 3 are murder cases.

5. During the course of investigation in the present case in Cr.No.892 of 2014, the arrested accused revealed that it was this petitioner who had masterminded the dacoity and that the substantial portion of the looted amount was given to him. The privilege of an Advocate under Sections 126 and 129 of the Evidence Act is not a cover for illegal activities. The privilege under Sections 126 and 129 of the Evidence Act would apply only in Court proceedings and would have no relevance with the case under investigation.

6. It is trite law that Evidence Act applies to the admissibility and relevancy of evidence in a Court of law and has no application outside of it. Therefore, the learned Judicial Magistrate-II was wrong in refusing police custody on the ground that the privilege of the accused under Sections 126 and 129 of the Evidence Act would stand affected. The learned Sessions Judge had rightly interpreted the provisions of Sections 126 and 129 of the Act and reversed the order passed by the learned Judicial Magistrate. This Court finds no infirmity in the order of the learned Sessions Judge, Kancheepuram and accordingly, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

It is now represented that the accused has been released on bail and he is no more in judicial custody. Hence, the police is given liberty to summon the accused under Section 160 Cr.P.C. for enquiry and if he does not co-operate, steps may be initiated to cancel his bail.

Sd/-
Asst.Registrar (CS IV)

/true copy/

To

1.The Inspector of Police
B-3, Kancheepuram Taluk Police Station
Kancheepuram Town and District
Kancheepuram Taluk P.S.No.892/2014.

2.The Judicial Magistrate No.II,Kancheepuram.

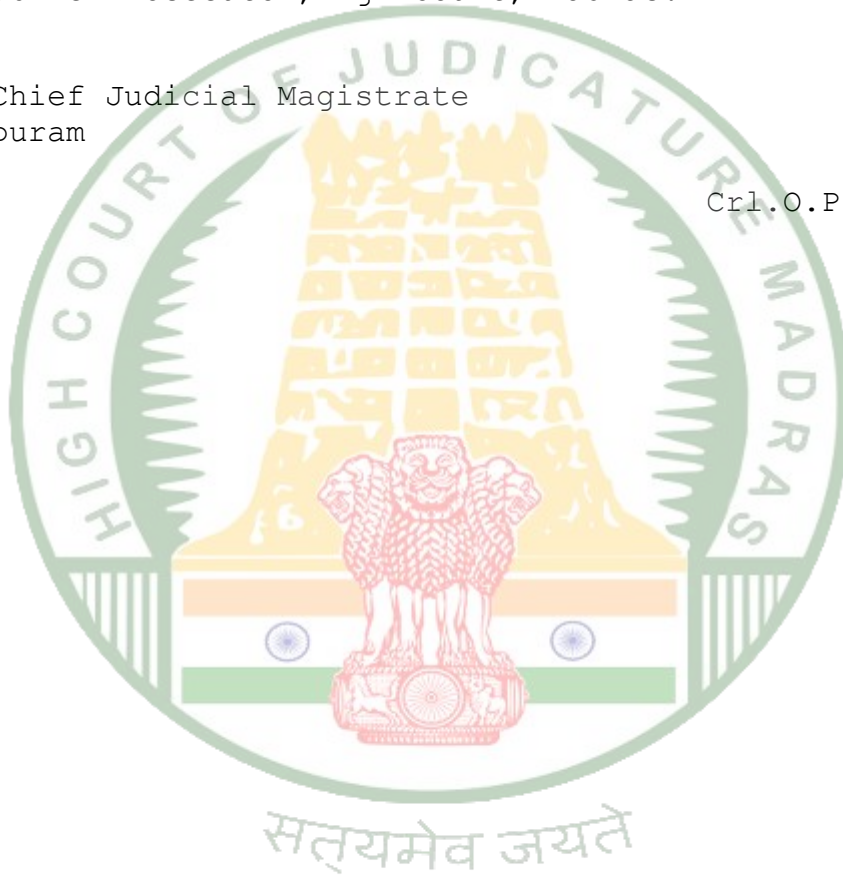
3.The Sessions Judge II, Kancheepuram.

4.The Public Prosecutor,High Court, Madras.

5. The Chief Judicial Magistrate
Kancheepuram

Crl.O.P.No.2228 of 2015

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