

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2015

Delivered on : 20.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.10648 of 2013, 2175 of 2015
and WP.No.2827 of 2015 and M.Ps [3Nos]

Jerry Varghese

.... Petitioner
in Crl.OPs & WP

Versus

1.State rep by its
Inspector of Police,
District Crime Branch,
Kancheepuram District.

2.M/s.Prakesh Suppliers
Rep by its R.Vimal [Power Agent],
No.20, Alagesan Street,
West Tambaram,
Chennai-45.

.. Respondents
in Crl.OPs

1.State of Tamilnadu rep by
The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.

2.The Superintendent of Police,
Office of Superintendent of Police,
Collectorate Campus, Kancheepuram District.

3.The Deputy Superintendent of Police,
District Crime Branch,
O/o.The Superintendent of Police,
Collectorate Campus, Kancheepuram District.

4.The Inspector of Police,
District Crime Branch,
O/o.Superintendent of Police Collectorate
Campus Kancheepuram District

5.The Sub Inspector of Police,
District Crime Branch,
O/o.Superintendent of Police,
Kancheepuram District.

6.The Superintendent of Police,
CB-CID, No.42 Gandhi Nagar,
Opp Collector Office of Kancheepuram,
Kancheepuram District.

7.R.Vimal
(Power of Agent) M/s.Prakash Suppliers,
No.20, Alagesan Street,
West Tambaram, Chennai-45.

8.Elred Kumar .. Respondents
R8 impleaded as per order in WP.2827 of 2015
dated 13.2.2015 by
TSSJ in M.P.2/15 in W.P.No.2827 of 2015

Prayer in CRL.OP.No.10648 of 2013 : Criminal Original petition filed
under Section 482 of the Criminal Procedure Code praying to call for
the records in Crime No.99 of 2012 on the file of the 1st respondent
and quash the same.

Prayer in CRL.OP.No.2175 of 2015 : Criminal Original petition filed
under Section 482 of the Criminal Procedure Code praying to direct
the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur
at Kancheepuram to consider and recall the non-bailable warrant
dated 18.12.2014 issued against the petitioner in Crime No.99 of
2012 on the file of the Sub Inspector of Police, DCB, Kancheepuram.

Prayer in WP.No.2827 of 2015 : Writ petition filed under Article 226
of the Constitution of India praying for a Writ of Mandamus to
direct the 1st respondent to transfer the FIR in Crime No.99 of
2012 pending on the file of the 5th respondent the Sub Inspector of
Police, District Crime Branch at Kancheepuram to the 6th respondent
herein for further investigation and consequentially forbear the
respondents 2 to 5 herein from investigating the petitioner.

For Petitioner : Mr.Vimal B. Crimson
in Crl.OP.2175/15
& WP.2827/2015

in Crl.OP.10648/13 : Mr.Vimal B. Crimson
for Mr.R.Shivakumar

For Respondents : Mr.C.Emalias, APP [for R1]
in Crl.OPs : Mr.A.Ramesh, Senior Counsel
for Mr.K.P.S.Palanivelrajan [for R2]

in WP.2827/2015 : Mr.C.Emalias, APP [for R1 to R6]
: Mr.A.Ramesh, Senior Counsel
for Mr.K.P.S.Palanivelrajan [for R7]

C O M M O N O R D E R

Criminal Original Petition No.10648 of 2013 has been filed under Section 482 of Cr.P.C to quash the proceedings in Crime No.99 of 2012 on the file of the 1st respondent.

Criminal Original Petition No.2175 of 2015 has been filed under Section 482 of Cr.P.C to direct the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur at Kancheepuram to consider and recall the non-bailable warrant dated 18.12.2014 issued against the petitioner in Crime No.99 of 2012 on the file of the Sub Inspector of Police, DCB, Kancheepuram.

Writ Petition No.2827 of 2015 has been filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st respondent to transfer the FIR in Crime No.99 of 2012 pending on the file of the 5th respondent to the 6th respondent herein for further investigation and consequentially forbear the respondents 2 to 5 herein from investigating the petitioner.

2. The decision in Crl.OP.No.10648 of 2013 will have a direct bearing on the other two cases. M/s.Roman Tarmat Ltd. in which, Jerry Varghese [petitioner/accused herein] has stakes, bagged a contract from the State Highways Department for a project in Oragadam. The defacto complainant owned vacant site in Venbakkam Village which was needed by the petitioner, for the purpose of parking his concrete mix plant, lorries and other construction machineries. Therefore, the petitioner and the defacto complainant entered into a lease deed on 01.09.2008, whereby, 3 acres of land was leased out to the petitioner on a monthly rent of Rs.20,000/- for a period of 18 months.

3. The business relationship between the petitioner and the defacto complainant further continued into quarry operations also and things were going fine till about 2011 when they fell apart. The defacto complainant demanded a sum of Rs.4,90,32,114/- and the petitioner had given cheques for Rs.2,98,00,000/- and Rs.1Crore to the defacto complainant.

4. Mr.A.Ramesh, learned Senior Counsel appearing for the defacto complainant fairly placed before this Court all the correspondences between the petitioner and the defacto complainant which included a letter dated 27.08.2011 by the petitioner to the defacto complainant, wherein, it is stated as follows:

"Sub : Pending payments against supply of material,
Kunnavakkam quarry operation and payments towards
sub contracting - Reg.

With the reference to the above we would like to submit following explanation for the above matter.

Even after so many commitments made by us, unfortunately we are unable to fulfill even any one of our commitments due to acute financial crises which is continuing still

today

We would like to recollect the commitment made by our CMD [Mr.Jerry Varghese] through SMS. By giving assurance to settle the payment in full which also not materialized.

In view of the above serious situation with this we are giving a final commitment that within a period of a month defiantly we come with concrete settlement, and also not asking for the further request for the time.

Once again we are seeking apology for the issue."

5. After the expiry of the lease period, the petitioner handed over the leased property to the defacto complainant leaving behind 26 lorries, Bituminous Batching Plant, Bituminous Drum Mix Plant, Wet Mix Plant, etc.as security for the amount due. This also finds place in the correspondence submitted by Mr.A.Ramesh, the learned Senior Counsel for the defacto complainant.

6. Not content with this, the defacto complainant lodged a complaint with the respondent Police based on which, a case in crime No.99 of 2012 was registered on 08.12.2012 for offences under Section 420, 406, 506[iii] IPC against the petitioner challenging which, the petitioner has filed CrI.OP.No.10648 of 2013 for quashing.

7. On a complete reading of the complaint, it is obvious that the entire transaction between the defacto complainant and the petitioner is contractual in nature and there is no element of any criminality in it. Thereafter, the defacto complainant filed OS.No.9 of 2013 before the learned Principal District Munsif, Kancheepuram against M/s.Roman Tarmat Ltd. [petitioner's company], wherein, in paragraph No.10 of the plaint, it is stated as follows:

"10.The 1st plaintiff further submit that, further it was advised by the police officials to the plaintiffs that this is the civil dispute and directed the plaintiffs to get direction from the civil courts to prevent the defendant from disturbing their peaceful possession."

8. In the plaint in OS.No.9 of 2013, the defacto complainant has accepted the fact that he had entered into a lease agreement with the petitioner and that the petitioner had left back all his materials including 26 lorries in the land and the prayer in the suit is for an injunction restraining the petitioner from interfering with the defacto complainant's peaceful possession and enjoyment of the property. In other words, the plaint disclosed that 3 acres land was leased out by the plaintiff/defacto complainant to the defendant/accused and that the defendant/accused had left the aforesaid machineries in the said land as security for the sum due, but the defendant/ accused is attempting to take them away and therefore, a prayer for injunction was made to restrain the defendant/accused from entering into the land, so that he does not take away those properties. Whereas, it is the consistent case of the petitioner/accused that he has no intention of taking away those

properties and that he had left them there as security for the amount due.

9. The defacto complainant started putting pressure through the Police to have the petitioner/accused arrested and therefore, the petitioner/accused approached this Court in CrI.OP.No.6696 of 2013 for anticipatory bail and a conditional order directing him to deposit Rs.20Lakhs was passed by this Court on 01.08.2013. Aggrieved by the order, the petitioner/accused approached the Hon'ble Supreme Court in SLP[CrI] Nos.10229 to 10230 of 2013 and the Hon'ble Supreme Court did not set aside the order, but extended the time limit by two weeks for depositing the amount. The petitioner/accused was not able to make the deposit even thereafter and therefore, he resigned himself to his fate.

10. As pressure mounted on the Police to take action against the petitioner/accused for not paying the money to the defacto complainant, a team of Police officers led by Mr.D.Rajendran, Inspector of Police went to Mumbai and stayed in Hotel Imperial Palace and picked up the petitioner/accused and brought him by Jet Airways flight on 24.09.2014 to Chennai. In the Police Station, he was detained and was asked to settle with the defacto complainant. From the statement of the petitioner/accused recorded by the Police, it is apparent that the petitioner/accused has stated that there is no due from him to the defacto complainant but the defacto complainant and his Manager by name Natarajan had colluded by filing a suit in OS.No.9 of 2013 and obtained ad-interim injunction against him.

11. The Investigating Officer appears to have been a humane person and had perhaps realised that he is being forced to convert an ordinary civil case into a criminal case and so he did not arrest the petitioner/accused, and set him free, on condition that he should report back again. The petitioner/accused had no reasons to report back to the Police because, according to him, no money was due from him to the defacto complainant and that the defacto complainant had to pay him money for appropriating his lorries and machineries.

12. Again pressure seems to have been mounted on the Police to arrest the petitioner/accused, which is obvious from the petition filed by the Sub Inspector of Police, DCB, Kancheepuram before the Judicial Magistrate, Sriperumbudur praying for issuance of a non-bailable warrant for arresting the petitioner/accused, though under the Code of Criminal Procedure Code the Police have the power to arrest a person anywhere in India, if he is involved in a cognizable offence. It may be apposite to extract the averments in the petition filed by the Sub Inspector of Police before the Judicial Magistrate, Sriperumbudur for obtaining arrest warrant.

"It is submitted that the above reference case has been registered on the complaint of one R.Vimal Power Agent of Prakash Supplies against being marginally noted accused stating that the said accused persons being Highway Contractors, have cheated a tune of

Rs.4,90,32,114/- after receiving the machineries, manpower, raw materials for the construction work from the complainant's firm and thereafter evaded to make the payment.

From the date of registration of the case both the accused are absconding. Summons were served on them for their appearance before the Investigation Officer. They failed to comply with the summon. It is learnt that the accused are now residing in Mumbai and doing there business."

13. From the above, it is patent that the Police have completely suppressed the fact that the petitioner/accused was picked up at Mumbai and brought to Chennai, kept in the Police Station and thereafter, let out. The petition proceeds as if from the date of registration of the FIR, the petitioner/accused is in abscondance, which is a dark lie and for which, contempt action can be taken against the police officers for misleading the learned Magistrate for obtaining warrant.

14. Be that as it may, Mr.A.Ramesh, learned counsel appearing for the defacto complainant made a valiant attempt to justify the FIR by contending that the petitioner is an absconder and that he had not complied with the conditional order of anticipatory bail passed by this Court and therefore, he requires no leniency.

15. It is true that the petitioner/accused, fearing arrest based on a false complaint, had approached this Court for anticipatory bail and a conditional order was passed and the Hon'ble Supreme Court also extended the time period for deposit of the amount. When the petitioner was not able to comply with these orders, it cannot be stated that he should not be given any other relief. The Hon'ble Supreme Court in M.C.Abraham Vs State of Maharashtra [2003] 2 SCC 649 has held that even if anticipatory bail application is dismissed, it does not automatically mean that the accused should be arrested.

16. At least, there was one conscientious officer who decided not to arrest the petitioner/accused after picking him up from Mumbai because, it is obvious that this is purely a civil transaction based on Lease Deed, cheques and other records. Therefore, the failure of the petitioner/accused to comply with the deposit condition imposed by this Court, cannot be a reason for this Court to go into the nature of the allegation in the FIR while dealing with a petition to quash it. The FIR in this case is a sheer abuse of process of law and a brazen attempt by the defacto complainant to use the Police machinery in a civil transaction. The FIR in this case passes muster the law laid down by the Hon'ble Supreme Court for quashing an FIR in State of Haryana Vs Bhajan Lal 1992 Supp [1] SCC 335.

17. In the result, CrI.OP.No.10648 of 2013 is allowed and the FIR in Crime No.99 of 2013 is hereby quashed. In view of the quashing of the very FIR, no separate orders are necessary in

WP.No.2827 of 2015 and Crl.OP.No.2175 of 2015. Hence, they are closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The District Munsif cum
Judicial Magistrate
Sriperumbudur at Kancheepuram

2.The Secretary to the Government,
Home Prohibition and Excise Department,
Secretariat, Fort St. George, Chennai-9.

3.The Superintendent of Police,
Office of Superintendent of Police,
Collectorate Campus, Kancheepuram District.

4.The Deputy Superintendent of Police,
District Crime Branch,
O/o.The Superintendent of Police,
Collectorate Campus, Kancheepuram District.

5.The Inspector of Police,
District Crime Branch,
O/o.Superintendent of Police Collectorate
Campus Kancheepuram District

6.The Sub Inspector of Police,
District Crime Branch,
O/o.Superintendent of Police,
Kancheepuram District.

7.The Superintendent of Police,
CB-CID, No.42 Gandhi Nagar,
Opp Collector Office of Kancheepuram,
Kancheepuram District.

8.The Public Prosecutor,
High Court, Madras.

3 ccs to Mr.M/s. Vimal B. Crimson, Advocate, Sr. 36765 to 36767
2 ccs to Ms/. K.P.S. Palanivel Rajan, Advocate, sr. 36401

CRL.O.P.No.10648 of 2013,
CRL.O.P.No.2175 of 2015 and
WP.No.2827 of 2015