

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-02-2015

Coram

THE HONOURABLE MR. JUSTICE R.S. RAMANATHAN

Cr1.O.P. No. 31003 of 2013

R. Chandramohan

... Petitioner

Versus

1. The Commissioner of Police
Greater Chennai
Egmore, Chennai - 600 008
2. The Joint Commissioner
IV - Team
Central Crime Branch
Commissioner of Police Office
Egmore, Chennai - 8
3. Dy. Commissioner of Police
Central Crime Branch
Egmore, Chennai - 8
4. Asst. Commissioner of Police
Central Crime Branch
Egmore, Chennai - 8
5. Tr. Srinivasan
Inspector of Police
IV Team, Central Crime Branch
Commissioner of Police Office
Egmore, Chennai - 8
6. The Additional Director General of Police
Crime Branch C.I.D.
Guindy, Chennai - 600 032
7. Joint Director
Central Bureau of Investigation
Shastri Bhavan
Nungambakkam
Chennai - 600 034

... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the sixth respondent, the Additional Director General of Police, C.B.C.I.D. or the 7th respondent, the Central Bureau of Investigation to take suitable action by registering a case on the petitioners complaint dated 11.10.2012 filed before the Commissioner of Police.

For Petitioner : Mr. Elephant G. Rajendran
for Mr. R. Neil Rashan

For Respondents : Mr. M. Maharaja
Additional Public Prosecutor RR1 to 6
Mr. K. Srinivasan
Special Public Prosecutor for R7

ORDER

On the basis of a complaint dated 04.10.2012 given by one S.S. Senthil/ defacto complainant, the case in Crime No. 509 of 2012 came to be registered by the fifth respondent herein against the petitioner and another for the alleged offences punishable under Sections 420, 447, 448, 471 and 120 (b) of IPC. On the basis of the registration of the case, on 05.10.2012, the petitioner was arrested and remanded to judicial custody. According to the petitioner, during his custody with the police and before his remand by the learned Judicial Chief Metropolitan Magistrate, Egmore, Chennai. the defacto complainant, with the active assistance of the fifth respondent/investigation officer has threatened and coerced him, obtained three cheques for Rs.11,00,000/- each for a total sum of Rs.33,00,000/- from him besides obtaining his signature in blank documents which were used to create a memorandum of understanding. In connection with this incident, the petitioner gave a complaint dated 11.10.2012 to the first respondent herein. In the said complaint dated 11.10.2012, the petitioner has narrated the incidents that took place on 05.10.2012 leading to his arrest by the fifth respondent and also various irregularities alleged to have been committed by the investigation officer while he was arrested. As the complaint was not taken cognisance of by the first respondent, the present petition is filed by the petitioner seeking for a direction to direct either the sixth respondent or the seventh respondent to register a case on the basis of the complaint given by the petitioner on 11.10.2012 and to conduct investigation thereof.

2. Mr. Elephant G. Rajendran, learned counsel for the petitioner would contend that the petitioner was arrested and remanded to judicial custody on 05.10.2012. Before the petitioner was produced before the learned Judicial Chief Metropolitan Magistrate, cheques were obtained from him by force by the defacto complainant and the fifth respondent. The petitioner was also forced to sign a document purportedly to be a memorandum of understanding. These facts would be proved on the various contradictory statements given by the fifth respondent in the proceedings relating to the case in Crime No. 509 of 2012. He would further submit that in the memorandum of understanding alleged to have been signed by the petitioner and filed before the Court in Crime No. 509 of 2012, there were interpolations made to the effect that the petitioner agreed to honour the cheques given by him. These wordings were not mentioned in the memorandum of understanding originally typed and signed by the petitioner and these words were inserted later. The learned counsel for the petitioner also submits that in the petition filed for cancellation of the bail granted in CrI.MP No. 4986 of 2012 in Crime No. 599 of 2012, the defacto complainant has stated that petitioner's wife Sumathi has negotiated

with him and agreed to compensate the wrongful loss and handed over the three cheques drawn on Axis Bank for Rs.11,00,000/- each, all dated 10.10.2012, 19.11.2012 and 24.12.2012 bearing Cheque Nos. 521232, 521233 and 521234. Therefore, according to the defacto complainant, the cheques were handed over by the petitioner's wife whereas, in the affidavit filed by him in Crime No.509 of 2012 dated 06.10.2012, it was stated that on the advise of the well wishers and family members, the Memorandum of Understanding was entered into between him and the petitioner and he agreed for compounding the offence committed by the petitioner/accused. When the petitioner moved a petition seeking bail in Crime No. 509 of 2012 by filing CrI.MP No. 4986 of 2012, before the learned Chief Metropolitan Magistrate, Egmore, Chennai, it was argued on behalf of the prosecution that some post dated cheques were given by the petitioner/ accused in favour of the defacto complainant. Therefore, according to the learned counsel for the petitioner, these are contradictory statements given by the defacto complainant and they only indicate that the cheques were not issued either by the petitioner or his wife voluntarily but they were obtained from him only by threat and coercion during his custody with the fifth respondent police. Therefore, according to the learned counsel for the petitioner, the police officers have committed various offences by misusing their powers, caused threat and intimidation to the petitioner to issue the cheques and to sign the memorandum of understanding and for that purpose, the complaint dated 11.10.2012 was given by the petitioner/accused in which cognisable offences have been made out against the persons named therein. As no action has been taken on such complaint dated 11.10.2012, seeking for a direction to register a case on the basis of his complaint dated 11.10.2012 and to direct either the respondent 6 or 7 to investigate the case, the present petition has been filed. In support of his contentions, the learned counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in the case of Lalita Kumari vs. Government of Uttar Pradesh and others (2013) 6 CTC 353 wherein the Honourable Supreme Court has given guidelines to be followed by the investigating agency in filing the first information report and the manner in which they should proceed thereafter.

3. The learned counsel for the petitioner also submitted that though the petitioner has initially filed WP No. 29020 of 2012 before this Court praying for a Writ of Mandamus directing the first respondent herein to take suitable and proper action on his complaint dated 11.10.2012 by registering a case, that writ petition was disposed of by this Court on 27.11.2012 directing the petitioner to challenge the order passed by the fourth respondent herein dated 03.11.2012. As against the order dated 27.11.2012, the petitioner has filed a Review Application No. 14 of 2013. By order dated 19.07.2013, this Court disposed of the Review Application No. 14 of 2013 holding that before passing the order dated 03.11.2012, the fourth respondent did not give an opportunity to the petitioner. Therefore, if any challenge is made to the order dated 03.11.2012, the appropriate Court will look into the matter. With such an observation, this Court closed the Review Application No. 14 of 2013 on 19.07.2013. The petitioner also thereafter filed WP No. 30638 of 2013 before this Court seeking for a direction to direct the

Additional Director General of Police or the Central Bureau of Investigation to take up the case and register a complaint on the basis of his complaint dated 11.10.2012. According to the learned counsel appearing for the petitioner, the said writ petition No. 30638 of 2013 was dismissed as withdrawn with liberty to approach the appropriate Court. Therefore, the present Criminal Original petition has been filed by the petitioner seeking for a direction to direct either the sixth respondent or the seventh respondent to conduct investigation on the basis of his complaint dated 11.10.2012 on the ground that the aforesaid orders passed by this Court in the writ petition or the review application will not be a bar or stand in the way of the respondents 6 and 7 to register a case and to conduct an investigation.

4. On the other hand, the learned Additional Public Prosecutor appearing for the respondents 1 to 6 would contend that already this Court passed an order in WP No. 29020 of 2012 on 27.11.2012 dismissing the writ petition filed by the petitioner for identical prayer sought for in this petition. Once again, the petitioner has filed this Criminal Original Petition for the very same relief and therefore, the relief sought for in this petition cannot be entertained. The review application No. 14 of 2013 filed by the petitioner was also not entertained by this Court by citing the report dated 03.11.2012 of the fourth respondent herein. The petitioner, without challenging the order dated 03.11.2012, has once again filed this Criminal Original Petition without any basis. The only remedy available to the petitioner, under Law, is to challenge the order dated 03.11.2012 passed by the fourth respondent and the present Criminal Original Petition is not maintainable.

5. On the above submission, I also heard the learned standing counsel appearing for the 7th respondent/CBI.

6. I heard the counsel on either side and perused the materials placed. The present petition is filed seeking for a direction to direct either the 6th respondent or 7th respondent to register a case on the basis of his complaint dated 11.10.2012 given by the petitioner and to conduct investigation thereof. According to the learned counsel for the petitioner, the complaint dated 11.10.2012 given by the petitioner discloses a cognisable offence and therefore as per the decision of the Honourable Supreme Court in the case of Lalita Kumar vs. Government of Uttar Pradesh and others (2013) 6 CTC 353, the respondents police are bound to register a case and to investigate into the matter and without registering a case, they are not entitled to conduct an enquiry. It is further argued that non-registration of a case on the basis of the complaint dated 11.10.2012 of the petitioner is illegal.

7. It is to be pointed out that the petitioner has earlier filed WP No. 29020 of 2012 before this Court praying for a Writ of Mandamus directing the first respondent herein to take suitable and proper action on his complaint dated 11.10.2012 by registering a case. The said writ petition was disposed of by this Court on 27.11.2012 directing the petitioner to challenge the order passed by the fourth respondent herein 03.11.2012. As against the order dated 27.11.2012, the petitioner has filed a Review Application No. 14 of

2013. By order dated 19.07.2013, this Court disposed of the Review Application No. 14 of 2013 holding that before passing the order dated 03.11.2012, the fourth respondent did not give an opportunity to the petitioner. Therefore, if any challenge is made to the order dated 03.11.2012, the appropriate Court will look into the matter. Therefore, as per the orders passed by this Court in the review application No. 14 of 2013 dated 19.07.2013, the only course open to the petitioner is to challenge the order dated 03.11.2012 of the fourth respondent herein. However, without challenging the order dated 03.11.2012, the petitioner once again filed WP No. 30638 of 2013 before this Court seeking for a direction to direct the Additional Director General of Police or the Central Bureau of Investigation to take up the case and register a complaint on the basis of his complaint dated 11.10.2012, however, the said writ petition was dismissed as withdrawn with liberty to approach the appropriate Court. Thereafter, the present petition has been filed with a prayer to direct either the sixth respondent or the seventh respondent to register a case on the basis of the complaint dated 11.10.2012 of the petitioner and to conduct investigation thereof.

8. Having regard to the earlier orders passed by this Court in the writ petition as well as the review application filed by the petitioner, the petitioner has to work out his remedy only by challenging the order dated 03.11.2012 of the fourth respondent herein, by which the complaint given by the petitioner was closed as a mistake of fact, either before the concerned Judicial Magistrate or by filing writ petition. Therefore, the present Criminal Original Petition filed by the petitioner is not maintainable.

9. As regards the submissions made by the learned counsel for the petitioner regarding the contradictory statements taken by the defacto complainant, it cannot be accepted for the reasons that in the bail application filed by the petitioner in Crime No. 509 of 2012, the petitioner stated in clear terms that he agreed to pay the amount in instalments, as has been stated in the memorandum of understanding signed by him with the defacto complainant. A copy of the memorandum of understanding was also produced before the Chief Metropolitan Magistrate along with the bail petition. Even, the learned counsel who appeared for the petitioner in the bail petition, argued that the petitioner and the defacto complainant have entered into a memorandum of understanding and therefore, on that ground, he prayed for enlarging the petitioner on bail. In the order passed by the learned Chief Metropolitan Magistrate in the bail petition filed by the petitioner, it was observed that even though the prosecution objected for granting bail to the petitioner, it was admitted that some post dated cheques have been given by the petitioner/accused in favour of the defacto complainant. In fact, the defacto complainant also filed an affidavit in Crime No. 509 of 2012 stating that on the advise of well wishers and his family members and on the basis of the memorandum of understanding entered into between the petitioner, he prayed for compounding the offence committed by the petitioner/accused. Therefore, the contention of the learned counsel for the petitioner that the memorandum of understanding was obtained from the petitioner while he was in police custody by coercion and threat before he was produced for remand before the learned Chief Metropolitan Magistrate, Egmore

cannot be accepted. Further, the petitioner has not stated before the learned Chief Metropolitan Magistrate, Egmore, on being produced for remand, that he was threatened and coerced to sign the cheques as well as memorandum of understanding. All these aspects have been taken note of by the fourth respondent while passing the order dated 03.11.2012 and closed the complaint dated 11.10.2012 given by the petitioner/accused as a mistake of fact. If at all the petitioner is aggrieved by the said order dated 11.10.2012, he has to work out his remedy in accordance with law. Such relief was also given to the petitioner by this Court in the writ petition as well as Review Application filed by him. In those circumstances, the relief sought for in the present Criminal Original Petition cannot be countenanced. The Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar
Dated:17.3.15

True Copy

Sub Assistant Registrar

To

1. The Commissioner of Police
Greater Chennai, Egmore, Chennai - 600 008
2. The Joint Commissioner
IV - Team, Central Crime Branch
Commissioner of Police Office
Egmore, Chennai - 8
3. Dy. Commissioner of Police
Central Crime Branch, Egmore, Chennai - 8
4. The Inspector of Police,
IV Team, Central Crime Branch,
Commissioner of Police, Egmore, Chennai.
5. Asst. Commissioner of Police
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6. The Additional Director General of Police
Crime Branch C.I.D.
Guindy, Chennai - 600 032
7. The Joint Director
Central Bureau of Investigation
Shastri Bhavan, Nungambakkam
Chennai - 600 034

+1 cc to Mr.Elephant G.Rajendran, advocate, SR.9889.

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krd 23/3

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Cr1.OP No. 3190 of 2015