

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.Nos.7278 of 2015
and 28306 of 2014

Nachimuthu

... Petitioner in both Crl.OPs

Vs

1.Inspector of Police,
DCB, Tiruppur.

2.Amit Kumar,
Superintendent of Police,
Tiruppur District.

3.Vijayalakshmi

4.Rajendran

... Respondents in Crl.OP.7278/15

1.DGP,
Beach Road, Mylapore,
Chennai.

2.Davidson Devasirvatham,
IGP, West Zone,
Coimbatore.

3.Amit Kumar Singh,
Superintendent of Police,
Tiruppur District.

4.Pitchai,
DSP, Udumalpet Town,
Tiruppur District.

5.P.Rajendran ... Respondents in Crl.OP.28306/14
[R5 impleaded vide order dt.09.06.2015
in MP.No.1 of 2015]

Prayer in Crl.OP.No.7278 of 2015 : Criminal Original Petition filed
under Section 439[2] of Cr.P.C., praying to invoke 439[2] Cr.P.C
and [a] scrutinize the misconduct of all 4 respondent's, post-bail

dt.06.01.14, [b] set-aside the order dt.06.01.14 in CrI.MP.No.151/14, JM1, Udumalpet & [c] cause arrest of serial-offenders R3 & R4 as per 439[2] Cr.P.C.

Prayer in CrI.OP.No.28306 of 2015 : Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the 1st respondent to prima facie probe the role of the respondents 2 to 4 in hushing-up the investigation into Crime No.35/13 DCB, Tiruppur and to thenceforth assign the prosecution of the findings into the police-criminal nexus to an appropriate central agency or an SIT to the satisfaction of this Court.

For Petitioner : Mr.Mathan Kumar
in CrI.OP.7278/15 for Mr.Manikandan Vathan Chettiar

For Respondents : Mr.S.Jayakumar, for R4
in CrI.OP.7278/15

For Petitioner : Mr.S.Anburaj
in CrI.OP.28306/14

For Respondents : Mr.S.Jayakumar, for R5
in CrI.OP.28306/14

For R2 in both : Mr.S.Shanmugavelayutham,
Public Prosecutor

C O M M O N O R D E R

CrI.OP.No.7278 of 2015 has been filed under Section 439[2] of Cr.P.C., praying to invoke 439[2] Cr.P.C and [a] scrutinize the misconduct of all 4 respondent's, post-bail dt.06.01.14, [b] set-aside the order dt.06.01.14 in CrI.MP.No.151/14, JM1, Udumalpet & [c] cause arrest of serial-offenders R3 & R4 as per 439[2] Cr.P.C.

CrI.OP.No.28306 of 2015 has been filed under Section 482 of Cr.P.C., praying to direct the 1st respondent to prima facie probe the role of the respondents 2 to 4 in hushing-up the investigation into Crime No.35/13 DCB, Tiruppur and to thenceforth assign the prosecution of the findings into the police-criminal nexus to an appropriate central agency or an SIT to the satisfaction of this Court.

2. It is the case of the petitioner that he lodged a complaint based on which, a case in Crime No.35 of 2013 was registered by the District Crime Branch [DCB], Tiruppur and that the police did not properly investigated this case and that they are acting in collusion with the accused.

3. The Inspector of Police, DCB, Tiruppur has filed a Status Report, wherein, it is stated that the police have arrested two persons in the case and vehicles were seized and properties were recovered. In paragraph No.19 to 24, it is stated as follows:

"19. It is submitted that the petitioner has not co-operated during investigation to clarify the following points on which the investigation is still pending-

[i]The cheques has to be sent for handwriting analysis to prove the signature of the accused A1 in the said cheques.

[ii]The accused have stated in their confession that they gave a portion of the amount cheated to their relatives. During investigation the relatives of the accused A1 & A2 have denied the said fact and the investigation is pending in this regard.

[iii]As per the statement of the de facto complainant the amount cheated was Rs.75Lakhs. But the de facto complainant has produced the cheque for Rs.90Lakhs alleged to be issued by the accused A1, when he demanded to return back the advance amount. When the summons was issued to the petitioner to clarify the same, the petitioner has issued a legal notice dated 11.11.2014 stating that not to disturb him. Why the accused A1 issued the cheque for Rs.90Lakhs when the amount appropriated was only 75Lakhs has to be clarified. Due to the non-cooperation of the petitioner the said aspect stands without clarification from the petitioner's end.

20. It is submitted that accused Vijayalakshmi [A1] had committed suicide by hanging herself on 20.03.2015.

21. It is submitted that I continued and conducted the investigation in a free and impartial manner in accordance with law. The accused were arrested promptly and they were incarcerated for a period of 61 days. Further, through my investigation I have collected the details of the properties acquired by the accused persons and the vehicles acquired by the accused to the extent of about Rs.30Lakhs from the amount cheated and has taken proper action in this connection. To allege malfeasance and impute motive in such a case on the part of the police is unjustified.

22. It is submitted that for the above said reasons the investigation cannot be completed within 60days and the Judicial Magistrate No.I, Udumalpet has ordered the mandatory bail as per Section 167[2] of Cr.P.C. There is no misconduct on the part of the 1st and 2nd respondent.

23. It is submitted that in Tiruppur DCB Cr.No.35/13 u/s 120[b], 406, 420 IPC was registered and on the next day itself both the accused persons were arrested and

remanded, there after custody was taken and adhering all legal formalities, again the accused persons were remanded to judicial custody. As per confession statements given by A1 and A2 property worth about 30lakhs were traced. In this case the 161[3] Cr.P.C statements were recorded from the witnesses. As per the confession statements of A1 and A2 Rs.45lakhs were disbursed to the relatives of the accused namely 1.Tmt.D.Mariammal, grand-mother of A2, 2.Tmt.Karpagavalli, Sister of A1, 3.Tmt.Nagaveni, Sister of A2 and 4.Subramani, Brother in-law of A2. But they denied the version of the accused A1 and A2 at the time of investigation. Investigation has to done in that regard to trace the said Rs.45lakhs. Therefore question of misconduct by the 1st respondent does not arise.

23. It is submitted that the 3rd respondent/A1 not alive and she committed suicide by hanging herself on 20.03.2015 at Udumalpet and a case in Udumalpet P.S Cr.No.231 of 2015 u/s 174 Cr.P.C was registered and the P.M Certificate has been obtained.

24. It is submitted that the case diary entries in the above said case was not at all manipulated and the petitioner is put to strict proof of the same."

[extracted verbatim]

4. From the above, it is apparent that one of the accused Vijayalakshmi was arrested and after release on bail, she has committed suicide in this case. From the Status Report filed by the police, this Court has no reasons to conclude that the investigation in Crime No.35 of 2013 has been improper.

5. Now coming to the averments in the petition, the petitioner in paragraph Nos.3[D], 4[A], 4[B] and 7 has made the following allegations:

"3[D] Nexus with PP Mr.Shanmugavelayudham of Madras High Court, discloses that he went to the extent of concealing the case [Cr1 OP.28306/14] from the knowledge of the 1st respondent therein namely the DGP of Tamilnadu.

4[A] PP Mr.Shanmugavelayudham of Madras High Court, daring to deploy an un-named IO namely Kanakasundaram to file a

[1]False Counter-affidavit in this court,

[2]Preventing production of Case Diary before the Judge of this Court, &

[3]Seeking repeated adjournments to scuttle the case,

In order to facilitate the accused-duo to cheat more people.

[B] PP Mr.Shanmugavelayudham went to the extent of deploying criminals to influence the counsel for the petitioner.

7. Lastly it is imperative to observe that the obstinate refusal of the PP Mr.Shanmugavelayudham to produce the case diary before this court is a high-handed act, aimed at intimidating judges of Madras High Court."

[extracted verbatim]

6. The Bar Council of India has framed rules setting the standard of professional conduct and etiquette to be observed by the advocates under Section 49[1][c] of the Advocates Act. Bar Council Rule No.4 reads as follows:

"4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices of from doing anything in relation to the Court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court."

7. Today, Mr.Manikandan Vathan Chettiar's another junior Mr.Mathan Kumar appeared. This is not merely an isolated incident of such uncharitable allegations being made against Mr.S.Shanmuga Velayutham. Mr.Manikandan Vathan Chettiar's office has been consistently making such allegations.

8. Mr.S.Shanmuga Velayutham is a Senior Advocate of this Court and presently, he is the Public Prosecutor appointed by the State Government for this High Court. Therefore, he holds a very responsible position in the State apparatus and he definitely does not deserve such an uncharitable remark referred to above.

9. This Court cannot be a silent spectator to such insinuations being unleashed against the Public Prosecutor of the State in pleadings which will remain as a blot forever, as this is a court of record.

10. In view of the above, this petition is dismissed with cost of Rs.10,000/- payable by the petitioner to the Tamil Nadu Legal Services Authority. The Secretary, Bar Council of Tamil Nadu is directed to take disciplinary action against the counsel on record Mr.Manikandan Vathan Chettiar, Enrolment No.81/2000 and Mr.Mathan Kumar, Enrolment No.2613/2013 for the violation of the aforesaid

Rule of the Bar Council by making allegations referred to above in the petition against Mr.S.Shanmuga Velayutham, Public Prosecutor. The Registry is directed to send a copy of the petition along with this order to the Secretary, Bar Council of Tamil Nadu for appropriate action.

Sd/-
Assistant Registrar(CO)

//True Copy//

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To

Sub Assistant Registrar

1. Inspector of Police,
DCB, Tiruppur.
2. Amit Kumar,
Superintendent of Police,
Tiruppur District.
3. DGP,
Beach Road, Mylapore,
Chennai.
4. Davidson Devasirvatham,
IGP, West Zone,
Coimbatore.
5. Amit Kumar Singh,
Superintendent of Police,
Tiruppur District.
6. Pitchai,
DSP, Udumalpet Town,
Tiruppur District.
7. The Public Prosecutor,
High Court, Madras.
8. The Secretary,
Bar Counsel, Tamil Nadu.

+2cc's to Mr.S.Jaya Kumar, Advocate, S.R.No.38250 & 38249

+2cc's to Public Prosecutor, S.R.No.28540 & 38538

CRL.OP.Nos.7278 of 2015
and 28306 of 2014

NM(CO)
CA(11/08/2015)