

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2015

DELIVERED ON : 24.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.9923, 11773 of 2015 and W.P. No.18023 of 2015
and
M.P. Nos.1 to 1 of 2015

Mohamed Anzer ...Petitioner in Crl.O.P.9923/2015/
Accused
A.Paramasivan ...Petitioner in Crl.O.P.11773/2015/
Accused
Ganapathy Ramasubramaniam ...Petitioner in W.P.18023/2015

Vs

1.The State through the Inspector of Police
G-1, Vepery Police Station
Vepery, Chennai 600 007.

2.D.Pandiarajan ...Respondents in both Crl.O.Ps./
Complainant/Defatco Complainant
in Crl.O.P.9923 & 11773 of 2015

1.The Chief Immigration Officer
Immigration Department
Ministry of External Affairs
Government of India, Shastri Bhavan
Haddows Road, Chennai 600 006.

2.The Deputy Commissioner of Police-Kilpauk
Kilpauk Range, Kilpauk
Chennai 600 010.

3.The Inspector of Police
G-1, Vepery Police Station
Vepery, Chennai 600 007.

...Respondents in W.P.18023/2015

Prayer:- Criminal Original Petition Nos.9923 and 11773 of 2015 filed under Section 482 Cr.P.C. to call for the entire records pertaining to the FIR in Cr.No.595/2015 pending on the file of the 1st respondent police, Vepery, Chennai and quash the same.

Prayer:- Writ Petition No.18023 of 2015 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the proceedings under RC No.297/DC-Kilpauk/LOC/2015 dated 09.04.2015 acknowledged by the 1st respondent dated 09.04.2015 and quash the same and consequently direct the first respondent to permit his ongoing travel to the UAE and other countries and return travel back to India.

For Petitioner : Mr.Vijay Narayan,
in Crl.OP.9923/2015 Senior Counsel
for M/s V.Jayachandran Associates

For Petitioner : Mr.L.Chandra Kumar
in Crl.OP.11773/2015 for M/s V.Jayachandran Associates

For Petitioner : Mr.N.R.Elango, Senior Counsel
in W.P.18023/2015 for Mr.P.M.Sozhendran

For R1 : Mr.S.Shanmugavelayutham
in both Crl.OPs. Public Prosecutor

For R2 : Mr.S.Ilamvaludhi
in both Crl.OPs. for Mr.Sivasubramani

For Respondents : Mr.S.Shanmugavelayutham
in W.P.18023/2015 Public Prosecutor

C O M M O N O R D E R

The facts obtaining in these cases may apparently appear to stem from three distinct sources, but, at the subterranean level, if a deeper scrutiny is done, the insidious oneness in the plot will emerge. Therefore, for better appreciation of the facts, a narration of the concatenation of events becomes imperative.

2. On a complaint dated 19.03.2015 lodged by one D. Pandiarajan (de facto complainant) before the Commissioner of Police, Chennai, a case in Crime No.129 of 2015 for offences under Sections 406, 420, 506(i) read with 34 IPC was registered on 02.04.2015 by the Inspector of Police, Team IV, Central Crime Branch, against one Sujai Anand, Sailaja Reddy, S.V. Subramaniam and unnamed others. The gravamen of the allegations in the

complaint is that, the accused induced the de facto complainant to invest Rs.50 lakhs in South India Bottling Company Pvt. Ltd. run by them, on the promise that they would give him 25% equity shares in the Company and after getting investment, they neither allotted the shares nor paid any dividend and gave false information to the Registrar of Companies by concealing the investments made by the de facto complainant and thus, they have siphoned off a sum of Rs.50 lakhs paid by the de facto complainant.

3. After some preliminary enquiry, the respondent police registered the aforesaid case and investigation was in progress. During the progress of investigation by the Central Crime Branch, Pandiarajan (de facto complainant) was required to come to the office of the Central Crime Branch on 01.04.2015 for enquiry. Pandiarajan (de facto complainant) appeared before the Deputy Commissioner of Police, Central Crime Branch on 01.04.2015 and submitted certain documents and records relating to the investigation in Crime No.129 of 2015. When he came out of the Commissioner's Office, he was accosted by one Ganapathy and 10 others at the instance of Sivanandi I.P.S., the Inspector General of Police and was criminally intimidated to withdraw the complaint given by him in Crime No.129 of 2015. Pandiarajan (de facto complainant) escaped from them and went to the nearby G-1 Vepery Police Station and lodged a complaint on 01.04.2015, disclosing the involvement of Sivanandi I.P.S., Ganapathy and 10 others in the offence of criminal intimidation. Initially, Vepery Police registered the complaint as C.S.R. and after some preliminary enquiry, a regular case in G-1 Vepery P.S. Crime No.595 of 2015, for offences under Sections 143, 144, 341, 294b and 506(ii) IPC was registered against Ganapathy and 10 others on 02.04.2015. As news spread that the Central Crime Branch has registered a case in Crime No.129 of 2015 and G-1 Vepery Police Station has registered a case in Crime No.595 of 2015, the accused started moving heaven and earth to wrap up the trails resulting in Pandiarajan (de facto complainant) sending communications to the police station in desperation, withdrawing the complaints made by him. The issue became murky, but undeterred, the police proceeded with the investigation and the Central Crime Branch started taking serious steps to apprehend the accused involved in Crime No.129 of 2015.

4. It may be relevant to state here that, 03.04.2015 was 'Good Friday' followed by Saturday and Sunday, which were holidays. Sensing the imminent arrest of the accused involved in Crime No.129 of 2015 and Cr.No.595 of 2015 by the police, a group of lawyers headed by Sridharan, came to the house of the Chief Justice for a special motion to move anticipatory bail. The Chief Justice was in New Delhi between 4th and 7th April, 2015 for attending the All India Conference of Chief Justices chaired by the Hon'ble Chief Justice of India. The lawyers broke the police cordon and barged into the residence of the Chief Justice and created ruckus. The glorious

reputation of the Madras High Court reached its nadir. The police remained stoic and allowed a free hand for the lawyers to have their way, perhaps out of fear of reprisal. This incident once again proved the point, how defenceless, Judges are! Police, except giving a smart salute, would never protect a Judge, for obvious reasons. That, lawyers would be protective of Judges has been proved to be a myth now. Be that as it may, the attack and siege by the lawyers at the Chief Justice's house is undoubtedly a shameful act and is reminiscent of lawyers owing allegiance to Nawaz Sharif ransacking the Supreme Court of Pakistan against Chief Justice Syed Sajjad Ali Shah for taking the establishment head on.

5. As to the attitude of Senior lawyers, Chief Justice Syed Sajjad Ali Shah wrote "During the hearing of my case in the Supreme Court on my appointment as Chief Justice, I noticed that not many senior lawyers had appeared on my behalf. This was because they knew that there was a conflict between the government and the judiciary. It was in the common interest of the government and judges who were determined to see me go. Thus the senior lawyers did not want to be entangled in such litigation and incur the displeasure of the government and the majority of Supreme Court Judges. They also knew that the government had taken action against the Chief Justice after consultation with other quarters, hence, the decision was final and had support of majority of Supreme Court Judges. Everybody knew which way the wind was blowing. They did not bother about the victory of truth or what was right. They quietly watched the show to clap with the winner as they had to keep in view their own futures."

6. It is common knowledge that the majority of lawyers are decent, but their general apathy to the happenings around them can be well described via the following quote of Napoleon Bonaparte:

"The world suffers a lot, not because of the violence of bad people, but because of the silence of the good people."

In connection with the said sordid incident, a case in Crime No.1077 of 2015 in E-5 Pattinampakkam Police Station was registered on 04.04.2015 for offences under Sections 143, 188, 353, 448 and 506(i) IPC.

7. On 05.04.2015, one Mohamed Anzer was arrested by G-1 Vepery Police Station in Cr.No.595 of 2015 and his statement was recorded. He was the driver of Ganapathy Ramasubramaniam (A1 in the case) and in his statement, he stated that he had driven the Toyota Fortuner car of his owner on 01.04.2015 and in another car that followed, one Muthuramalingam, Advocate and one Venkatesan known to his owner were also there along with others and that they intercepted Pandiarajan (de facto complainant) and threatened him to withdraw the complaint in Crime No.129 of 2015 before the Central Crime Branch. Mohamed Anzer was produced before the XIV

Metropolitan Magistrate and he was released on bail on 07.04.2015 on the ground that Pandiarajan (de facto complainant) had withdrawn the complaint given to the Vepery Police Station. Since the involvement of Muthuramalingam, Advocate and Sivanandi I.P.S. surfaced in the case in G-1 Vepery Police Station in Crime No.595 of 2015, they both filed Crl.O.P. Nos.8743 and 9062 of 2015 respectively before this Court for anticipatory bail and the anticipatory bail came up for hearing on 13.04.2015. It was submitted on behalf of the accused that, Pandiarajan (de facto complainant) had withdrawn the complaint and on that score, anticipatory bail was granted to both the accused on 13.04.2015. Following suit, most of the accused involved in Crime No.595 of 2015 in G-1 Vepery Police Station were also granted anticipatory bail by the Sessions Court and this Court. Whereas, in Crime No.1077 of 2015 relating to the attack of Chief Justice's house, several lawyers were arrested and remanded to custody and they had to cool their heels in jail when their benefactors, for whom they took up cudgels, walked out scot-free with the aid of bail orders.

Now, let me deal with each of the petitions before me.

8. Crl.O.P. No.9923 of 2015 has been filed by Mohamed Anzer to quash the prosecution in G-1 Vepery Police Station Crime No.595 of 2015 on the ground that, Pandiarajan (de facto complainant) himself has withdrawn the complaint.

9. Crl.O.P. No.11773 of 2015 has been filed by A. Paramasivan for quashing the prosecution in G-1 Vepery Police Station Crime No.595 of 2015 on the ground that, Pandiarajan (de facto complainant) has withdrawn the complaint.

10. The Deputy Commissioner of Police, Kilpauk District, made a requisition to the Chief Immigration Officer, Bureau of Immigration on 09.04.2015 to issue a look out circular in order to prevent Ganapathy Ramasubramaniam, the 1st accused in G-1 Vepery Police Station Crime No.595 of 2015 from fleeing out of India.

11. W.P. No.18023 of 2015 has been filed by Ganapathy Ramasubramaniam for a writ of certiorarified mandamus to quash the communication dated 09.04.2015 issued by the Deputy Commissioner of Police and to permit him to go abroad.

12. Heard Mr. Vijay Narayan, learned Senior Counsel, Mr. N.R. Elango, learned Senior Counsel and Mr. L. Chandrakumar, learned advocate, appearing for the accused, Mr. Ilamvaludhi, learned Advocate for Pandiarajan [defacto complainant] and the learned Public Prosecutor appearing for the State.

13. All the counsels submitted in unison that, the entire case against the accused has been fabricated by the police and that, when the de facto complainant himself had withdrawn the

complaints, the prosecution against them is a clear abuse of process of law. Mr. Ilamvazhudhi, the learned advocate appearing for Pandiarajan, (de facto complainant) also filed a supporting affidavit given by Pandiarajan, (de facto complainant) stating that he has no objection for the F.I.Rs. being quashed.

14. The learned Senior Counsels relied upon the judgment of the Hon'ble Supreme Court beginning from Gian Singh v. State of Punjab and another [(2012) 10 SCC 303] upto Narinder Singh vs. State of Punjab [(2014) 6 SCC 466] for the proposition that, if the complainant and the accused arrive at a compromise, the proceedings can be quashed.

15. This Court has no quarrel with the aforesaid proposition of law laid down by the Hon'ble Supreme Court. Does this case fall under such a category, is a question that begs an answer. This is a case where Pandiarajan (de facto complainant) lodged a complaint and when he came out of the Commissioner's office, he was wrongfully restrained by a group of goondas set up by Sivananda IPS, an Officer of the rank of Inspector General of Police and an Advocate, following which a separate case was registered by the Vepery Police Station. When the police were taking steps to apprehend Ganapathy Ramasubramaniam and Radha, a group of Advocates were set up to attack the Chief Justice's house, knowing full well that the Chief Justice was in New Delhi attending the Conference chaired by the Hon'ble Chief Justice of India. This is not a run of the mill case or a simple case of cheating where the de facto complainant and the accused arrive at a compromise and come to the Court for quashing the FIR. In fact in Rachapalli Abdulla vs. State of Andhra Pradesh [2002 (3) Supreme Today 172] the Hon'ble Supreme Court has held that obtaining affidavits from prosecution witnesses saying that they had not seen the offence etc. would amount to tampering of witness and the practice has been deprecated by the Supreme Court. In this case also, there are sufficient materials to infer that there is an invisible and hidden hand behind Pandiarajan's somersault.

16. Mr. N. R. Elango, learned Senior Counsel appearing for Ganapathy Ramasubramaniam submitted that, the fundamental right to go abroad which has been recognised by the Hon'ble Supreme Court in Menaka Gandhi vs. Union of India [AIR 1978 SC 597] has been stifled by the prosecution via the look out circular. In the considered opinion of this Court, neither Article 21 of the Constitution of India nor Menaka Gandhi's case can be used as shield for depredators to take umbrage under.

17. Mr. S. Shanmugavelayutham, learned Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in State of Maharashtra v. Arun Gulab Gawali [CDJ 2010 SC 743], wherein, the Hon'ble Supreme Court has very categorically stated as follows in

para 25:

"25. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/Complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Sessions is empowered to discharge an accused under [Section 227 Cr.P.C.](#) even before initiating the trial. The accused can, therefore, move the Trial Court itself for such a relief and the Trial Court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under [Section 482 Cr.P.C.](#) for the quashing of a prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the Trial Court nor the Investigating Agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against a society and not against a victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

Thus, while exercising such power the court has to

act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power."

This Court is bound by the aforesaid dictum of the Apex Court.

18. This is a textbook case which demonstrates the evil effects of an unholy nexus between a serving Senior Police Officer, Advocates, Business men and Goondas. Taking out a leaf from Chief Justice Syed Sajjad Ali Shah's autobiography, "Law Courts in a Glass House", nemesis caught up with Nawaz Sharif when he was arrested by Gen Pervez Musharraf and there was no independent judiciary to rescue him. In fine, the apprehension of the police that, if Ganapathy Ramasubramaniam flees India, he can never be secured, is indeed bona fide. Hence the look out circular cannot be quashed. This is surely not a fit case to quash the FIRs either on the ground that, the complainant and the accused have arrived at a settlement or on the ground that there is no prima facie material against the accused. With Sivanandi IPS continuing as Inspector General of Police, small wonder if the investigation by the local police would be free from interference. The Police have collected sufficient materials against Sivanandi IPS incriminating him in the offence which is available in the Case Diary, but which cannot be revealed. The very act of getting affidavit from Pandiaraj is a brazen attempt to impede the course of investigation which will entail cancellation of bail. This is in fact a fit case to be transferred to the CBI, but this Court does not want to take the extreme step as the State Government, by opposing the petition of the accused tooth and nail, have manifestly demonstrated their sincerity. Therefore, this Court is of the view that it will serve the interest of justice if the investigation in all the three cases is transferred to the CB CID, in order to find out if there was a continuing conspiracy amongst the accused in all the three cases to perpetrate the offences by previous concert. Mr. Vijay Narayana, learned Senior Counsel fairly submitted that, his client would have no objection if the case is transferred to the CB CID. Accordingly, the investigation in: Cr.Nos.129 of 2015 on the file of the Central Crime Branch; Cr.No.595 of 2015 on the file of G-1 Veperiy Police Station; and Cr.No.1077 of 2015 on the file of E5, Pattinampakkam Police Station is transferred to the file of the CB CID.

With the above direction, all these petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
G-1, Vepery Police Station
Vepery, Chennai 600 007.

2.The Chief Immigration Officer
Immigration Department
Ministry of External Affairs
Government of India, Shastri Bhavan
Haddows Road, Chennai 600 006.

3.The Deputy Commissioner of Police-Kilpauk
Kilpauk Range, Kilpauk
Chennai 600 010.

4.The Inspector of Police
E-5 Pattinampakkam Police Station
Chennai.

5.The Public Prosecutor
High Court, Madras.

1 CC to Mr.S.Sivasubramanian, Advocate SR.No. 38099

1 CC to the Government Pleader, SR.No. 37843

3 CCs to M/s V.Jayachandran Associates, Advocate SR.No. 37677 to 37679

CrI.O.P. Nos.9923, 11773 of 2015
and W.P. No.18023 of 2015

PSI (27.07.2015)