

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.7183 of 2014

Reserved on 14.12.2015

A.Chidambaram

... Petitioner / Defacto
Complainant

Vs

1. State rep. by
The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2. The Superintendent of Police,
District Crime Branch,
Kancheepuram.

3. The Inspector of Police (Land Grabbing),
District Crime Branch,
Kancheepuram.

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,
seeking a direction to the first respondent/police to transfer the
investigation to CBCID and expedite the investigation in Crime No.78
of 2013 pending on the file of the 3rd respondent.

For Petitioner : Mr.R.Muniyapparaj

For Respondents : Mr.C.Emalias
Additional Public Prosecutor

Mr.R.Vivekanandan for Intervenor

O R D E R

The present criminal original petition has been filed by the
petitioner, seeking a direction to the first respondent/police to
transfer the investigation to CBCID and expedite the investigation in
Crime No.78 of 2013 pending on the file of the 3rd respondent.

2. The petitioner is the defacto complainant. He lodged a complaint dated 9.10.2013 before the third respondent, which was registered as Crime No.79 of 2013 for the offences under Sections 419, 465, 466, 471 and 420 IPC. According to the prosecution, the petitioner is the absolute owner of the land to an extent of 5.39 acres at Paiyanoor village purchased from one Mohan and sons. He appointed one Dr.Rajagopal as his Power Agent to maintain and sell the property. Subsequently, the petitioner understood that the property was attached by one M/s.Nandhini Electronics for realisation of debts from vendor of the property and though the petitioner took all the efforts to raise the attachment, but they ended in vain and ultimately, the petitioner had lost his property. Consequently, the petitioner cancelled the Power of Attorney executed in favour of said D.Rajagopal. While so, after 4 ½ years of the cancellation of power of attorney, the said Rajagopal sold the property in favour of one A.Vivekanandan by impersonation and by creating bogus documents for a sum of Rs.30 lakhs, for which, accused 3 and 4, namely, Kothaiammal and Sundaravadivelu stood as witnesses.

3. The grievance of the petitioner is that the case was mainly based on the forged sale receipt said to have been prepared by the accused 1 to 4, however, the 3rd respondent/police was not conducting the investigation in a proper way and not taking any steps to find out the real impersonators involved in the crime and there is no considerable progress in the investigation. Hence, the petitioner has come forward with the present petition.

4. The 3rd respondent has filed a detailed status report, stating that during the investigation, the defacto complainant and the Sub-Registrar of Tiruppur were examined and vital documents were collected by the Sub Inspector of Police and later the then Inspector of Police has taken up further investigation and examined various witnesses and recorded their statements. After conducting a detailed investigation, the Inspector of Police referred the case as mistake of fact and served RCS Notice No.3 of 2014 dated 14.3.2014 to the defacto complainant and submitted final report to the Judicial Magistrate, Chengalpet. Aggrieved by the same, the defacto complainant filed a petition before the learned Judicial Magistrate, Chengalpet for further investigation, which was ordered and consequently, the Deputy Superintendent of Police took up the investigation and examined various witnesses and recorded their statements. After conducting the detailed investigation, the Deputy Superintendent of Police also referred the case as 'mistake of fact' and served RCS notice dated 23.6.2014 to the defacto complainant and filed the final report before the learned Judicial Magistrate. Therefore, the 3rd respondent has stated that the investigation was conducted in a fair, proper and impartial manner in accordance with law and hence, there is no necessity to transfer the investigation to CBCID and prayed this Court to dismiss the petition.

5. The learned counsel appearing for the petitioner would submit that though the case was referred as 'mistake of fact' by the third respondent on two earlier occasions, however, considering the material which discloses a prima facie case calling for an investigation by CBI or any other similar agency, this Court can direct the investigation to be done by appropriate agency. He pointed out that the Investigation Officers have not conducted the investigation in a proper manner and also not considered the vital and relevant material connecting with the crime, produced by the petitioner. In support of his submissions, the learned counsel for the petitioner relied upon the decisions, viz., "S.Radha Mony versus The Home Secretary, Government of Tamil Nadu and others" reported in (2007) (1) CTC 273 and "Inder Singh versus State of Punjab and others" reported in (1994) 6 SCC 275.

6. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents and perused the materials available on record.

7. It is no doubt true that in appropriate cases where, this Court feels that the investigation by the police authorities is not in the proper direction and where higher police officials were involved and where the investigating agency had not acted fairly, but in partisan manner to shield real culprits, in order to do complete justice and to instil confidence in the minds of the victims and public, this Court time and again, has directed the investigation to be carried out by the CBI Authorities. In fact, it is not a straight jacket formula to give such a direction merely based on apprehension of the person who seeks the relief. In my considered opinion, ordering further investigation by an independent agency will depend upon facts and circumstances of each case and generally the relief seeking to transfer the investigation to an independent agency cannot be entertained by the Courts as a matter of routine, unless the material discloses a prima facie calling for an investigation by independent agency or if the State Police acted leisurely and in irresponsible manner. In the present case, initially the Inspector of Police had conducted the investigation by examining the defacto complainant and the Sub Registrars and various other witnesses and concluded the same by referring it as a 'mistake of fact'. Later, at the instance of the petitioner, pursuant to the directions of the learned Judicial Magistrate, later the Deputy Superintendent of Police also conducted the investigation by examining various witnesses and he also concluded the same as 'mistake of fact' and filed the final report before the learned Judicial Magistrate. The petitioner was also served with RCS notices.

8. Therefore, considering the above, I do not find any prima facie material on record in order to direct the investigation to be done by the independent agency, i.e. CBCID as sought for by the petitioner. In such view of the matter, the reliance placed upon by the petitioner cannot be made applicable to the facts of the present case.

Accordingly, this Criminal Original Petition is dismissed. However, it is needless to state that the petitioner is at liberty to work out his remedy in the manner known to law.

Suk

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To,

1. STATE REP. BY
THE DIRECTOR GENERAL OF POLICE,
DR.RADHAKRISHNAN SALAI,
MYLAPORE,
CHENNAI-600 004.

2. THE SUPERINTENDENT OF POLICE,
DISTRICT CRIME BRANCH,
KANCHEEPURAM.

3. THE INSPECTOR OF POLICE (LAND GRABBING),
DISTRICT CRIME BRANCH,
KANCHEEPURAM.

4. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1CC to MR.R.MUNIYAPPARAJ, Advocate SR.NO.2772
+1CC to MR.R.VIVEKANANTHAN, Advocate SR.NO.2891

CRL.OP.No.7183 of 2014

SCD (CO)
MK : 03/02/2016