

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.08.2016

PRONOUNCED ON: 26.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.15110 of 2016 and Crl.M.P. No.7481 of 2016

S. Siva

Petitioner

vs.

The Inspector of Police
S-10 Pallikaranai Police Station
Chennai 600 100
(Crime No. 1109/2007)

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to direct the Judicial Magistrate Court at Alandur, Chennai 16 to take the discharge affidavit order xerox copy of CMP No.9600/2009 in CC No.916/2007 dated 15.09.2009 and further proceed as per law pending on his file.

For petitioner Mr. Siva - Party-in-person

For respondent Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to direct the Judicial Magistrate Court at Alandur, Chennai 16, to take the discharge affidavit order photo copy of CMP No.9600/2009 in CC No.916/2007 dated 15.09.2009 and further proceed as per law pending on his file.

2 Heard Siva, the petitioner, who appeared as party-in-person and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent police.

3 On 19.07.2016, this Court passed the following order:
"Heard the party--in-person. He stated that his wife Ambika had given a complaint, based on which a case in Cr.No.1109 of 2007 was registered and after completing the Investigation, the police filed a Final

Report in C.C.No.916 of 2007 before the Judicial Magistrate, Alandur. After receipt of summons, the petitioner appeared before the Judicial Magistrate, Alandur and filed an application for discharge in CrI.M.P.No.9600 of 2009. According to the petitioner, CrI.M.P.No.9600 of 2009 was allowed and he was discharged from the case, despite which it is his grievance that the trial Judge has summoned him once again in C.C.No.916 of 2007. The party-in-person has kept a photocopy of the order purported to have been passed on 15.09.2009 by the Judicial Magistrate, Alandur, wherein it is stated that "the discharge affidavit is allowed."

2. Under such circumstances, a report is called for from the Judicial Magistrate, Alandur as to circumstances under which the party-in-person has been summoned once again in C.C.No.916/2007. In the meantime, learned Additional Public Prosecutor is directed to take instructions from the respondent police.

Post on 28.07.2016 for orders at 2.15 p.m. There shall be an order of interim stay till then."

4 The Judicial Magistrate, Alandur has sent a report dated 26.07.2016, wherein, it is stated as follows:

"I respectfully submit that with regard to the CrI.M.P. No.9600/2009 order dated 15.09.2009, I have carefully perused the entire case records and came to that there was no such order, available in the case record and further I respectfully submit that on perusal of the Criminal Miscellaneous Petition Register (C.M.P. Register) it is found that the last CMP number in the year 2009 was 5493/2009 and further respectfully that on perusal of the 15/09/2009, "A" Diary and Calendar Case Register in C.C. No.916/2007, it is found that there is no such order reflected either in the CMP register or "A" Diary or No.4 Register (Calendar Case Register). Hence, I herewith submit that the accused was appeared before this Court only on 23.05.2016 and there is no order in C.M.P. No.9600/2009 dated 15.09.2009 is available in the records.

I humbly submit that the copy of the entries made in CMP register in the year 2009 and "A" Diary dated

15.09.2009 and Calendar Case Register pertaining to the C.C. No.916/2007 for your honour's kind perusal and consideration and oblige."

5 From the above, it is limpid that the photocopies of the documents produced by the petitioner stating that he has been discharged by the Court, lack credence. This Court cannot proceed on the basis of such dubious documents.

In the result, this Criminal Original Petition is dismissed with a direction to the Trial Court to proceed with the trial in C.C. No.916 of 2007 and complete the same within a period of three months from the date of receipt of a copy of this order. It is made clear that Siva shall cross-examine the witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015 (1) MLJ (Cr1.) 288]. It is also made clear that if Siva adopts any further dilatory tactics, the Trial Court can remand him to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
W-32, All Women Police Station
Madipakkam, Chennai

2 The Judicial Magistrate Court
Alandur, Chennai 16

3 The Public Prosecutor
Madras High Court
Chennai 600 104

Cr1.O.P. No.15110 of 2016

ad co

kra 08.09.2016