

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.29526 of 2011

S.Varadharajan

... Petitioner

Vs.

1. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
2. The Inspector of Police,
D-6, Maraimalainagar Police Station,
Kancheepuram District,
Kancheepuram.
3. The Inspector of Police,
Sithode Police Station,
Erode District,
Erode.

... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to order further investigation in Crime No.702 of 2008 by any other independent agency or more specifically by CB CID other than the respondents herein and consequently, enabling the Judicial Magistrate No.II, Chengalpet to frame additional charge sheet in C.C.No.53 of 2009.

For Petitioner : Mr.Kavianthan
for M/s.Nathan & Associates

For Respondents : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner praying to order for further investigation in Crime No.702 of of 2008 on the file of the 2nd respondent-Police, by any other independent agency, more specifically by CB CID, other than the respondents herein; consequently, enabling the learned Judicial Magistrate No.II, Chengapet to frame additional charge-sheet in C.C.No.53 of 2009.

2. In the affidavit filed in support of this petition, it has been averred by the petitioner as follows:-

2-1. The petitioner herein is working as Branch Manager in Gokulam Chits and Finance Pvt. Ltd. The petitioner's wife is working in IGRASAI Motors as a store incharge, and after her office duty, she would look after her house and their children. Since both of them are going to office, they used to leave their one son in his in-laws house until evening and another child in his sister Mrs. Ramaniabai's house, which is situated nearby to their house. On 29.12.2008, as usual, they left their children and went to office. When they returned back to their house from their offices, they were shocked to see that their house was broken open and several articles were looted, including 104 sovereigns of gold jewels, from the house. Hence, the petitioner lodged a complaint with the 2nd respondent-Police, on the basis of which a case was registered in Crime No. 702 of 2008. The 2nd respondent-Police enquired into the matter. During the course of investigation, it was revealed that the accused persons viz., one Balu, Vadivelu, Mariyappan @ Ravi Danieal and Ragu are involved in the alleged crime; but, they were confined in Central Prison, Coimbatore, in connection with other cases. After completing the investigation, charge sheet was filed by the 2nd respondent before the Judicial Magistrate, Chengalpattu; but, the charge sheet contains too much of contradictory statement. The first accused Mariappan @ Ravi @ Ravi Danial and the 2nd accused Balu @ Balusamy admitted that they sold the stolen jewels to one Mr. Mittalal Shiet, the proprietor of L.K.s. Jewellery Shop, situated at Perambur, Chennai and the same has been admitted by the Kiral Chand, Manager, Mittalal's L.K.S. Jewellery Shop. In the statement given by the said Kiral Chand, he had stated that the jewels obtained from the accused were handed over to the Inspector of Police, Erode Police Station, the 3rd respondent herein. In the confession statement of the accused Vadivelu, he had also stated that all the stolen properties were sold in Kerala only and they did not sell any property in Chennai. Further, the confession statement given by the accused Ragu also shows that the stolen jewels were sold to Raj Kumar Sheit, in Kerala. The accused Ragu further stated that they sold the petitioner's jewels and bought two new Pulsar Bikes for their personal use.

2-2. The petitioner herein made several representations on various dates before the respondents 1 & 2; but, the same were not considered by them. After taking custody of the accused persons, there was formal enquiry with them and after recording the confession statements, they were sent to the prison. According to the petitioner, neither there was a recovery from the accused persons nor there was a proper enquiry upon the whereabouts of 104 sovereigns of gold

2-3. Aggrieved by the acts of the respondents-Police, earlier the petitioner had filed a petition in CrI.O.P.No.2581 of 2010 before this Court for transfer of the investigation. In the said criminal original petition, since it was reported by the prosecution that the chargesheet was filed before the concerned Magistrate Court and the transfer could not be possible, the said petition was dismissed by this Court on 31.03.2011. Now, once again, the petitioner has come forward with the present petition before this Court.

3. The 2nd respondent-Police filed a counter, contending that based on the complaint lodged by the petitioner herein, a case in Crime No.702 of 2008 under Sections 454 & 380 IPC was registered on 29.12.2008 and then Inspector of Police took up the first investigation and he went to the scene of occurrence and prepared observation Mahazar and Rough Sketch; with the help of Finger Print Experts, he lifted the finger prints which were available at the scene of occurrence. The then Inspector of Police had examined nine witnesses and recorded their statements. Thereafter, the 2nd respondent herein-Police continued the investigation and sent the finger prints gathered to the Single Digit Finger Print Bureau for comparison, where it tallied with the finger prints of the old accused persons viz., one Balu @ Balusamy, Vadivel, Mariappan @ Ravi @ Ravi Danial and Raghu @ Muralikumar. On verification, it was revealed that all the said four accused persons were confined at Central Prison, Coimbatore in connection with Erode North Police Station Crime Nos.196, 398 & 669 of 2008, Erode Taluk Police Station Crime Nos.341 & 467 of 2008, Perundurai Police Station Crime Nos.1082 & 1083 of 2008, Sithode Police Station Crime No.463, 464 & 465 of 2008, Mangalam Police Station Crime No.365 of 2008, Tiruppur District Karumathampatti Police Station Crime No.910 of 2008 and Erode Nommaaraa Police Station Crime No.377 of 2008. After obtaining permission from the Superintendent of Prison, the 2nd respondent-Police formally arrested the said four accused persons and subsequently, the accused were produced before the Judicial Magistrate No.II, Chengalpet through P.T.Warrant. On 05.05.2009, the 2nd respondent-Police applied for taking police custody of the accused for a period of one week. During the police custody, it came to light that accused Mariappan @ Ravi @ Ravi Daneal and Balu @ Balusamy alone were involved in the crime. The voluntary confession statements given by the said accused persons were recorded in the presence of the Deputy Tahsildar, Chengalpet. After thorough interrogation, the accused persons were sent back to judicial custody on 12.05.2009. In the confession statements, the accused Mariappan @ Ravi @ Ravi Daniel and Balu @ Balusamy have confessed that they have pledged some portions of the stolen property with 1) Ashok Lal Sait, Bangaru Street, Ayanavaram, Chennai. 2) Mittalal Jewellery, Perambur and 3) Mohaideen I.K.S.Jewellers, Paper Mills Road, Perambur and few

other portions of the jewels are under the custody of their respective wives. Based on that, 50.88 gms of gold was seized from Mittal Lal Jewellery and the same was deposited before the Judicial Magistrate No.II, Chengalpet under Form 95. On enquiry, the said Ashok Lal Sait informed that the jewels pledged by the accused were already recovered by Sithode Police Station and produced four documents in support of his claim. The said four documents were submitted before the learned Judicial Magis No.II, Chengalpet along with the remand report. Since the said Mohaideen of L.K.S. Jewellers is absconding till date, no recovery could be made from him. Similarly, the police party also could not recover those jewels alleged to be under the custody of the wives of the accused persons as stated by them, since the investigation revealed that they have vacated their respective houses at Chennai, Thisayanvilai and Thoothukudi. After obtaining a legal opinion dated 23.11.2009 from the assistant Public Prosecutor, Chengalpet, the said Mohaideen was added as an accused along with the said Mariappan @ Rvi @ Ravi Daniel and Balu @ Balusamy. Subsequently, after completion of investigation, chargesheet under Sections 454, 380 & 411 IPC was filed before the learned Judicial Magistrate No.II, Chengalpet on 23.11.2009 and the same was taken on file in C.C.No.53 of 2010 on 09.03.2010. Thus, the 2nd respondent sought for dismissal of the petition.

4.The 3rd respondent-Police has also filed a counter, opposing the prayer of the petitioner.

5.When the matter was taken up for consideration, the learned counsel for the petitioner made his submissions, reiterating the contentions raised in the affidavit filed in support of this petition.

6.The learned Additional Public Prosecutor vehemently opposed to order for further investigation by any other independent agency, stating that in the instant case, absolutely there is no need for further investigation. The learned Additional Public Prosecutor would further contend that only if the investigation exfacie is unfair, tainted, mala fide and smacks of foul play, the Court can set aside such an investigation and direct for further investigation or reinvestigation. But, in the instant case, no such situation has arisen. Thus, he sought for dismissal of the petition.

7.Keeping the submissions made on either side, I have carefully gone through the materials available on record.

8.No doubt, this Court can order for further investigation, if the investigation exfacie is unfair, tainted, mala fide and smacks of foul play. But, as per the dictum laid down in the judgment relied upon the learned

counsel for the petitioner, (2013) 5 SCC 762 [Vnay Tyagi Vs. Irshad Ali @ Deepak and others], such power has to be exercised fairly, only in rarest of rare cases and not in all cases. In the instant case, the entire submission made by the learned counsel for the petitioner is not supported by any material evidence. Further, this Court is of the view that further investigation can not be ordered mechanically, in the absence of any material evidence supporting the submission made by the learned counsel for the petitioner. Further, only when this Court comes to the conclusion that the investigation was not conducted by the respondent-Police in a proper and fair manner and the investigation was conducted in violation of the settled principles of investigative cannons, this Court can order for further investigation / reinvestigation. But, in the instant case, I do not find any such situation. By merely accepting the submission of the learned counsel for the petitioner, this Court cannot order for further investigation by any other investigating agency.

9. Further, it is a matter of the year 2008. Earlier, the petitioner had filed Criminal Original Petition No.2581 of 2010 for transferring the investigation and the same was dismissed by this Court as early as on 31.03.2011. Now, after five years, the present petition has been filed for the same relief.

For the above said reasons, I do not find any merit in the present petition and the same is liable to be dismissed.

In fine, the criminal original petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

SSV

To

1. The Judicial Magistrate No.II,
Chengalpet.
2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
3. The Inspector of Police,
D-6, Maraimalainagar Police Station,
Kancheepuram District,
Kancheepuram.

4. The Inspector of Police,
Sithode Police Station,
Erode District,
Erode.
5. The Public Prosecutor,
Madras High Court, Madras.

+1cc to M/s.Nathan & Associates, Advocate, S.R.No.12772

Cr1.O.P.No.29526 of 2011

SAI (CO)
CA(15/03/2016)



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