

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.17852 and 10999 of 2016 &

CRL.R.C.NO.55 OF 2016

CRL.M.P.Nos.341,776, 5752 &

5694, 8493, 8494, of 2016

S.Ramesh

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Petitioner in
both CrI.O.Ps.&
CrI.R.C.

versus

1. State rep. by
The Inspector of Police,
J-1, Saidapet Police Station,
Chennai-600 018.

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Respondent No.1
in both CrI.O.Ps.&
CrI.R.C.

2. Dr.N.Sethuraman,
Millenium Apartments,
No.148, North T.Nagar,
Chennai-600 017.

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Respondent No.2
in CrI.OP 17852 of 2016

Prayer in CrI.OP 17852 of 2016: This petition is filed under Section 482 Cr.P.C., praying to recall for the records relating to the case in C.C.No.4228 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet and quash the same.

Prayer in Crl.OP 10999 of 2016: This petition is filed under Section 482 Cr.P.C., praying to set aside the order dated 10.5.2016 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in M.P.No.1188 of 2016 in C.C.No.4228 of 2015 by dismissing the petition filed under Section 70(2) Cr.P.C.

Prayer in Crl.R.C.No.55 of 2016: This petition is filed under Section 397 Cr.P.C., praying to set aside the order of proclamation passed by the XVIII Metropolitan Magistrate, Saidpet, Chennai in C.M.P.No.3938 of 2015 in C.C.No.1725 of 2013

For Petitioner : Mr.S.Vinothkumar
in both Crl.O.Ps.&
Crl.R.C.

For Respondent No.1 : Mr.C.Emalias,
Addl.Public Prosecutor

For Respondent No.2: Mr.K.Subramaniam, SC
for Mrs.S.Punniyakodi

COMMON ORDER

Crl.O.P.17852 of 2016 has been filed by the petitioner, namely, S.Ramesh, praying to recall for the records relating to the case in C.C.No.4228 of 2015 on the file of XVIII Metropolitan Magistrate, Saidapet and quash the same.

2. Crl.O.P.10999 of 2016 has been filed by the very

same petitioner, praying to set aside the order dated 10.5.2016 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in M.P.No.1188 of 2016 in C.C.No.4228 of 2015 by dismissing the petition filed under Section 70(2) Cr.P.C.

3. CrI.R.C. 55 of 2016 has been filed under Section 397 Cr.P.C., praying to set aside the order of proclamation passed by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.M.P.No.3938 of 2015 in C.C.No.1725 of 2013

4. Since the subject matter of these cases pertains to the accused, S.Ramesh, who is the petitioner herein, is common and the facts and circumstances are inter-linked, these matters are taken up together and being disposed of by this common order. For the sake of convenience, the parties will be referred to by their names.

5. Dr.Sethuraman, founder of S.R.Trust, has lodged a complaint before the jurisdictional police, i.e. J-1 Police Station, Saidapet, Chennai on 11.6.2012 against one Arun, S.Ramesh,

Dr.Bratiya and others, alleging that he registered a Document relating to Meenakshi Mission Hospital and in the said Deed at 2nd page, his signature has been forged by Arun, who signed as a witness, made it as if Sethuraman had joined Ramesh, Brathiba and others as trustees in Meenakshi Mission Hospital and Research Centre and removed the trustees who were already there. Based on the said complaint, a case in Crime No.3752/12 was registered on 13.07.2012 and after completing the investigation, the respondent police have filed a final report before the IX Metropolitan Magistrate, which was taken on file vide C.C.No.1725 of 2013 for the offences under Sections 420, 465, 468, 471 r/w 34 IPC against Arun, S.Ramesh, Dr.Brathiba, B.Mariyappa Sairam, Ganesh, Ganeshkumar, S.Jeyaraj and Vinupandiyan.

6. The crux of the allegation in the final report is that Dr.Seethuraman floated a trust by name S.R.Trust which was registered in the year 1985, for which, he was the Managing Trustee. The said S.R.Trust runs Meenakshi Mission Hospital and Research Centre. His son, S.Ramesh and daughter

Dr.Brathiba approached Dr.Sethuraman and requested him to induct them as trustees in the said Trust, for which, he agreed, but with a caveat that they will be included as Trustees only after his life time. S.Ramesh and Dr.Brathiba agreed to the said proposal and prepared a Document dated 5.12.2011, in which, it was initially averred that S.Ramesh and Dr.Brathiba will become Trustees after the life time of Sethuraman. Accordingly, Sethuraman signed all the pages of the document and handed over it for registration. He also followed them to the Sub Registrar's Office. En route, it appears that Ramesh and Brathiba and others had removed the 2nd page of the document and inserted a separate page incorporating the recitals which are convenient to them, to the effect that Ramesh and Brathiba are included as Trustees in presenti in the place of the existing trustees, viz., Dr.Sethuraman and others. Thiru Sethuraman did not suspect his children at that juncture and he went to the Sub Registrar Office and presented the document. Presumably, he also did not read the entire document there again. After the document was registered as Document No.880 of 2011 on the file of Sub Registrar Office, T.Nagar, Ramesh and Brathiba filed a

civil suit in O.S.No.9503 of 2011 before the VII Assistant City Civil Court, Chennai praying for permanent injunction restraining Dr.Sethuraman and the existing trustees from interfering with and preventing them from their official function. In the said suit, Dr.Sethuraman received summons from the Civil Court and only thereafter, to his shock and surprise, he realized that his children had removed the 2nd page in the Deed and inserted a new page by forging his signature, thereby making the document, convenient to their illegal purpose to the effect that they are the present trustees and that the erstwhile trustees were removed.

7. During the course of investigation, the respondent police sent the disputed document to the Forensic Expert and the opinion of the Expert also fortifies the allegations made by Sethuraman. However, the respondent police did not arrest any of the accused and none of the accused moved a petition for grant of anticipatory bail. After completion of investigation, the respondent police filed a charge sheet against the accused, showing all of them as absconding accused. The said final report was taken on file vide C.C.No.1725 of 2013 by the learned IX

Metropolitan Magistrate. Since the accused S.Ramesh did not appear before the trial Court despite issuance of summons, N.B.W. was issued against him. It appears that the proceedings in C.C.No.1725 of 2013 were administratively transferred from the file of IX Metropolitan Magistrate to the file of XVIII Metropolitan Magistrate under Section 410 Cr.P.C. While so, since the accused Ramesh did not appear before the trial Court, proclamation proceedings were initiated against him, declaring him as 'proclaimed offender' vide order dated 7.3.2015 in C.M.P.No.757 of 2015 in C.C.No.1725 of 2013 by the learned XVIII Metropolitan Magistrate and issued proclamation proceedings under Section 82 Cr.P.C., directing the police to publish proclamation for the appearance of Ramesh before the Court on 18.5.2015. Being aggrieved by this, Ramesh filed a criminal revision case before this Court vide CrI.R.C.No.457 of 2015 under Section 397 Cr.P.C. When the matter came up before this Court on 26.6.2015, this Court directed Ramesh to appear before the trial Court on 2.7.2015, though the slated date was 18.5.2015 as per the proclamation proceedings. He was also directed to file an affidavit to the effect that he will regularly

appear before the trial Court on all the hearing dates. It appears that Ramesh appeared before the trial Court on 2.7.2015 and thereafter, he did not choose to appear before the trial Court. Since Ramesh had appeared before the trial Court on 2.7.2015, this Court, by order, dated 18.7.2015 closed CrI.R.C.No.457 of 2015 as infructuous, with the following observation.

"3. Today when the matter is taken up, it is brought to the notice of this Court that subsequent to the order of this Court, the revision petitioner appeared before the Court below on 02.7.2015 but he did not appear thereafter in the next hearing. Therefore, the Court below has dismissed the surrender application and also the application recalling the warrant.

4. In view of the same, the present Criminal Revision Case has become infructuous. Accordingly, the Criminal Revision is dismissed as infructuous. Consequently, connected miscellaneous petition is closed. It is open to the revision petitioner to file appropriate petition in the manner known to law, if he is so advised."

8. In the meanwhile, Dr.Sethuraman moved an application under Section 156(3) Cr.P.C. before the learned XVIII Metropolitan Magistrate, contending that since Ramesh was a proclaimed offender, an FIR should be registered under Section 174(A) IPC. Subsequently, pursuant to the orders of the XVIII Metropolitan Magistrate, the Inspector of J-1 Police Station registered a case in Crime No.1815 of 2015 on 6.7.2015 under Section 174(A) IPC not only against Ramesh, but also against Brathiba and her husband Mariyappa Sairam. It may be relevant to state here that even as against Brathiba and Mariyappa Sairam, separate proclamation proceedings were initiated, declaring them as proclaimed offenders by the learned XVIII Metropolitan Magistrate, however, they did not choose to challenge the same as was done by Ramesh. After completion of the investigation in crime No.1815 of 2015, the respondent police have filed a final report which was taken on file vide C.C.No.4228 of 2015 by the learned Metropolitan Magistrate for the offence under Section 174(A) IPC against Ramesh, Dr.Brathiba and Mariyappa Sairam. Challenging the said proceedings, Ramesh has come forward with the present Criminal Original Petition in

Crl.OP No.17825 of 2016.

9. At this juncture, it may be necessary to state yet another subsidiary story. After having appeared before the learned XVIII Metropolitan Magistrate on 2.7.2015, the accused Ramesh, however, continued to remain himself absent. On account of this, a fresh proclamation proceedings under Section 82 Cr.P.C. were issued against Ramesh by order dated 25.11.2015 in C.M.P.No.3938 of 2015 in C.C.No.1725 of 2013 by the learned XVIII Metropolitan Magistrate and directed Ramesh to appear before on 5.2.2016. Aggrieved by this, again Ramesh commenced second round of litigation, challenging the second proclamation proceedings by filing Crl.R.C.No.55 of 2016. When the said Criminal Revision Case came up before this Court for hearing on 12.1.2016, this Court directed Ramesh to appear before the trial Court on 19.1.2016 with the following observation:

"There shall be an order of interim stay on condition that the petitioner shall appear before the Court below on 19.1.2016.

"Post on 21.01.2016. Non Bailable Warrant issued by the Court below shall be kept in abeyance."

10. In compliance with the above order, Ramesh once again appeared before XVIII Metropolitan Magistrate on 19.1.2016, thereby, making the proclamation non est in law. Now, Ramesh is an absconder and an N.B.W. is pending against him.

11. A short point that falls for consideration, is, whether final report filed in C.C.No.4228 of 2015 for the offence under Section 174(A) IPC against Ramesh, requires to be quashed?

12. Learned counsel appearing for the accused Ramesh submitted that by appearance of Ramesh before the trial Court on 02.07.2015, the proclamation issued on 07.03.2015 would become non est in law and therefore, the very FIR and consequential final report is abuse of process of law. In support of his contention, learned counsel relied upon the decision of this Court reported in "**Anandan @ Douglas Devanandha versus**

The State, by Inspector of Police, K-3 Police Station, Aminjikarai, Madras” reported in 2011(1) MWN(Cr.) 214.

13. Per contra, Mr.K.Subramaniam, learned senior counsel appearing for the defacto complainant Dr.Sethuraman and learned Additional Public Prosecutor would contend that Ramesh has been playing a cat and mouse game with the Judiciary by absconding and appearing before the Court frequently, in order to frustrate the very process of criminal law. It may be relevant to state here that the petition filed by Ramesh for grant of anticipatory bail in CrI.O.P.No.27604 of 2015 was dismissed by this Court on 11.12.2015. What is really infuriating is that when Ramesh appeared before the trial Court twice, viz., on 2.7.2015 and 19.1.2016 in connection with proclamation proceedings pursuant to the directions of this Court, the trial Court did not choose even to obtain a bond from him under Section 88 Cr.P.C. nor release him on bail under Section 437 Cr.P.C. It may be necessary to note here that Ramesh is facing allegations of serious offences punishable under Sections 420, 463, 465, 467, 468, 471 r/w 34 IPC in C.C.No.1725 of 2013

for which, Ramesh ought to have been remanded to judicial custody immediately on his appearance and released him on bail thereafter if he makes out a case. However, peculiar methods were adopted by the Courts below *albeit* Code of Criminal Procedure. This Court would have certainly examined the contention of the learned counsel appearing for Ramesh, had Ramesh not been an absconder. Relying upon the Judgment of the Hon'ble Supreme Court in "**Niranjan Singh & Another versus Prabhakar Rajaram Kharote & Others**" reported in AIR 1980 SC 785, this Court, in "**Gladys Lily versus Superintendent of NCB**" reported in 1999(4) Crime 189 HC, has held that an absconder, who is an outlawed, cannot be given any privilege of law.

14. The fact remains that Ramesh is an absconder and being outlawed, cannot claim any privilege of law and as such, no indulgence can be shown to him. Therefore, the challenge made by Ramesh to the proceedings in C.C.No.4228 of 2015 as well as to the order of proclamation, is not maintainable. Accordingly, the Criminal O.P.17825 of 2016 and Crl.R.C.55 of

2016 are liable to be dismissed.

15. As regards the challenge to the proceedings dated 10.05.2016 made in CrI.O.P.No.10999 of 2016 is concerned, since an N.B.W. was issued against the petitioner/Ramesh in C.C.No.4228 of 2015 which was pending for trial for the offence under Section 174(A) IPC, he moved a petition under Section 70(2) Cr.P.C., to recall the NBW, which was dismissed by the Court below by order, dated 10.05.2016.

16. Challenging the said order, learned counsel for Ramesh would submit that Ramesh was implicated in another crime No.573 of 2016 on the file of K.Pudur Police Station, for the offences under Sections 447 and 506(i) IPC, in which, he was granted anticipatory bail by the Madurai Bench of this Court in CrI.OP (MD) No.6730 of 2016 on 26.4.2016 subject to condition that he shall report before the learned Judicial Magistrate No.VI, Madurai on every working day between 10.30 a.m. and 4.45 p.m., therefore, Ramesh was unable to surrender in person before the Court below in order to seek recalling of the NBW.

However, the fact remains that the warrant against Ramesh in C.C.No.4228 of 2015 has been pending even prior to 26.4.2015. If a person wants to recall NBW, he should have physically surrendered before the concerned Court and pray to recall the warrant. Of course, in extraordinary circumstances, the Court can entertain the petition and recall the warrant even without physical surrender of the accused. Having regard to the entire facts and circumstances, this Court is of the view that this is not an extraordinary case, for which, this Court can give privilege to Ramesh since his conduct shows his scant regard for law. In fact, by taking note of the fact that this Court already directed the trial Court to complete the trial and dispose of C.C.No.1725 of 2013 as expeditiously as possible and further, if the petition is allowed, the trial of the case would be affected, the Court below has rightly declined to recall the warrant issued against Ramesh and consequently, dismissed the petition filed under Section 70(2) Cr.P.C. In such view of the matter, this Court does not find any scope to interfere with the same. Hence, the Criminal O.P.10999 of 2016 is also liable to be dismissed.

In the result, both the Criminal Original Petitions as well as Criminal Revision Case, are dismissed. Consequently, all connected CrI.M.Ps. are closed. Since this Court already rejected grant of anticipatory bail to the petitioner, as and when the petitioner/S.Ramesh surrenders, the trial Court is directed to first remand him to judicial custody and thereafter proceed in accordance with law. The Deputy Commissioner of Police, South is directed to form a special team to apprehend Ramesh and produce him before the trial Court, expeditiously.

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20.09.2016

P.N.PRAKASH, J.

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CRL.O.P.Nos.17852 &
10999 of 2016 and
Crl.R.C.No.55 of 2016

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