

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.08.2016

PRONOUNCED ON: 18.08.2016

CORAM:

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

CrI.O.P. No.17909 of 2016

G.Pasupathi

Petitioner

vs.

1 State represented by
the Inspector of Police
Central Crime Branch
Chennai Metropolitan Police
Egmore, Chennai 600 008
(Crime No.114/2010)

2 T. Elangovan

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the records and quash the proceedings in
C.C. No.357 of 2012 on the file of the Judicial Magistrate
Court, Alandur as an abuse of process of law.

For petitioner Mr. T.R. Sivaram

For R1

Mr. C. Emalias

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to
call for the records and quash the proceedings in C.C. No.357 of
2012 on the file of the Judicial Magistrate Court, Alandur, as
an abuse of process of law.

2 For the sake of convenience, the parties will be
referred to by their name.

3 On the complaint lodged by Elangovan, the second
respondent herein, the first respondent police registered a case
in Crime No.114 of 2010 on 17.07.2010 and after completing the
investigation, has filed a final report in C.C. No.357 of 2012
before the Judicial Magistrate Court, Alandur, against one
Thenmozhi, Pasupathi (the petitioner herein) and Rajappan, for

offences under Section 420 IPC, challenging which, Pasupathi is before this Court.

4 It is the case of the prosecution that Thenmozhi was working in Annamalai University and that she had promised Elangovan that she would get a job in Annamalai University for the latter's son and on that promise, she has received a sum of Rs.5,50,000/- from Elangovan and thereafter, she neither got the job for his son nor returned the money to him.

5 Mr. T.R. Sivaram, learned counsel for Pasupathi submitted that in 161 Cr.P.C. statement, Elangovan has stated that Pasupathi was with Thenmozhi when the money was handed over. He further contended that in the F.I.R., there is no reference to Pasupathi and therefore, the inclusion of his name in the 161 Cr.P.C. statement is an after-thought. In support of this contention, he has placed strong reliance on the following judgments:

a judgment of this Court in B. Jagadeesh and others vs. The Deputy Superintendent of Police, EOW-II, Namakkal [2011-2-L.W. (Cri.) 421];

b judgment of the Supreme Court in Maharashtra State Electricity and Distribution Company Ltd. and another vs. Datar Switchgear Ltd and Others [(2011) 1 SCC (Cri.) 68; and

c judgment of the Supreme Court in Suresh and another vs. State of U.P. [2001 SCC (Cri) 601].

6 This Court has no quarrel with the proposition laid down in the aforesaid judgments. Those judgments were given in the facts and circumstances of those cases. Whereas, in this case, Thenmozhi was working in Annamalai University and Pasupathi was working as a Typist in the polytechnic college run by Annamalai University. It is to be borne in mind that the F.I.R. is not an encyclopedia of the prosecution case and therefore, just because Elangovan had not named Pasupathy in the F.I.R., that does not mean Pasupathy is totally innocent.

7 On a reading of the 161 Cr.P.C. Statement of Elangovan, it could be seen that he has clearly stated that on 02.03.2008, Thenmozhi came along with her husband Siva, Pasupathy, Karunanidhi and Padmanabhan to his residence and received Rs.5,50,000/- and that, at that time, Thenmozhi introduced Pasupathy as the person through whom the job in Annamalai University would be got. Thus, there are sufficient materials to show the presence of Pasupathi with Thenmozhi when the amount was received by Thenmozhi.

8 The learned counsel for Pasupathi submitted that to attract the provisions of Section 34 IPC, mere presence of the accused is not sufficient and something more should have been done by the accused.

9 In this context, this Court is constrained to quote the classic words of the Privy Council in Barendra Kumar Ghosh vs. the King-Emperor [AIR 1925 PC 1]:

"They also serve who only stand and wait"

The aforesaid expression has been taken taken from John Milton's sonnet "On his blindness" and has been quoted by the Privy Council to explain the contours of Section 34 IPC.

10 Thus, since there are sufficient materials against the petitioner, this is not a fit case to quash the prosecution against Pasupathi, in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 Supp. (1) SCC 335].

Resultantly, this Criminal Original Petition is dismissed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1 The Inspector of Police
Central Crime Branch
Chennai Metropolitan Police
Egmore, Chennai 600 008

2 The Judicial Magistrate
Alandur, Chennai

3 The Public Prosecutor
Madras High Court
Chennai 600 104

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