

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.18315 of 2016

S.Kulandaivel

Petitioner

Vs

The Inspector of Police
B-4, Esplanade Police Station
Broadway, Chennai 600 001.

Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent to investigate and file a final report in Cr.No.15 of 2015 for the offences u/s 419, 465, 468 & 471 IPC pending on the file of respondent police.

For petitioner : Mr.M.Elango
For Respondent : Mr.C.Emalias
Addl.Public Prosecutor

O R D E R

This petition has been filed to direct the respondent to investigate and file a final report in Cr.No.15 of 2015 for the offences u/s 419, 465, 468 & 471 IPC pending on the file of respondent police.

2. On 24.08.2016, this Court passed the following order:
"Mr.M.Vijayanand, learned counsel
appearing for Mr.M.Elango sought adjournment.

2.The respondent-Police is directed to produce Mr.S.Kulandaivel/petitioner herein and Ms.G.Ambika, Ms.Monisha and Mr.M.Elango, Advocates before this Court on 26.08.2016.

3. Since the respondent-police have registered a case in Crime No.15 of 2015 in connection with the alleged impersonation before the Mediation Centre, the Police are in need of the original Mediation Report dated 18.12.2014 for the purpose of investigation.

4. Under such circumstances, Registry is directed to take a photocopy of the Mediation Report dated 18.12.2014 and after certifying the same, hand over the original Mediation

Report to the respondent-Police under due acknowledgment. It is seen that the original Mediation Report is available in CrI.OP.No.7587 of 2014 and the same may be handed over to the Inspector of Police, B-4, Esplanade Police Station, Broadway, Chennai-1 under due acknowledgment as stated above.

5. Post on 26.08.2016."

3. Today, when the matter was taken up for hearing, the following persons were present:

1. Mr.Kulandaivel/petitioner
2. Ms.Ambika/Advocate
3. Ms.Masani Monisha/Advocate
4. Mrs.Geetha, Inspector of Police, B-4, High Court Police Station.

Kulandaivel is represented by Mr.Elango, Advocate.

4. The point that falls for consideration is, as to who had appeared before the Tamil Nadu Mediation and Conciliation Centre [for short "the Mediation Centre"] on 18.12.2014 and signed the Mediation Agreement.

5. According to Kulandaivel, he did not appear before the Mediation Centre and that someone was set up to impersonate him and sign the Mediation Report dated 18.12.2014. It may be relevant to state here that on the complaint lodged by Kulandaivel, the Inspector of Police, Taramangalam Police Station, registered a case in Cr.No.524 of 2013 and after completing the investigation, filed a Final Report in C.C.No.21 of 2014 before the Judicial Magistrate, Omalur for offences u/s 294-B, 323 and 324 IPC against Ambika, Gopal and Baby, challenging which the trio filed CrI.O.P.No.7587 of 2014.

6. It was represented on behalf of the accused that the matter is a family dispute and therefore, this Court referred CrI.O.P. No.7587 of 2014 to the Mediation Centre. At the Mediation Centre, Ambika appeared and the Mediation Report dated 18.12.2014 was signed, wherein it is averred that Kulandaivel had agreed to transfer certain properties to Ambika.

7. CrI.O.P.No.7587 of 2014 was posted before R.S.Ramanathan, J. [since retired] on 06.01.2015. On 06.01.2015, Ramanathan, J. dictated the order based on the Mediation Report. Thereafter, one counsel claiming to be the counsel for Kulandaivel [de facto complainant] had mentioned that the matter was not settled in the Mediation Centre and therefore, the learned Judge did not sign the order, but again posted it on 07.01.2015. It is now admitted by Mr.Elango, Advocate, that it was he who mentioned before R.S.Ramanathan,

J. on 06.01.2015 on behalf of Kulandaivel, that the matter was not settled. On 07.01.2015, Mr.Elango did not appear before R.S.Ramanathan, J. in Crl.O.P.No.7587 of 2014 and one Ms.Masani Monisha, a counsel appeared before the learned Judge claiming herself to be the junior of Mr.Elango and represented that the matter has been amicably settled before the Mediation Centre.

8. On the strength of the Mediation Report dated 18.12.2014 and the representation made by Masani Monisha, Crl.O.P.No.7587 of 2014 was allowed on 07.01.2015. Later Kulandaivel, through Advocate Mr.Elango, filed Crl.O.P.SR.No.2203 of 2015 for recalling the order dated 07.01.2015 passed by this Court in Crl.O.P.No.7587 of 2014. The matter was posted "For Maintainability" before R.S.Ramanathan, J. on 16.02.2015. Mr.Sathyaseelan for Mr.Elango, Advocate appeared before R.S.Ramanathan, J. on 16.02.2015 and contended that Kulandaivel had not signed the Mediation Agreement and that someone had impersonated him. Recording the submission, R.S.Ramanathan, J. refused to interfere and dismissed the petition in Crl.O.P.SR.No.2203 of 2015 at the stage of maintainability with the following observation:

"6. Whether there was fraud practiced or not, cannot be decided by me. On the basis of the representation made by the learned counsel appearing for the parties, the order was passed. The learned counse, who is no complaining about fraud, was not present on 06.01.2015 and on 07.01.2015 when the order was passed. Therefore, at this juncture, I do not want to entertain the application to recall the order passed by this Court on 07.01.2015. However, it is made clear that if on the basis of the complaint given by the defacto complainant to the police or the Registrar General of this Court, if any enquiry is conducted and if it is found that there was impersonation of the defacto complainant before the mediation, it is open to petitioner to approach this Court for appropriate orders.

7. In the result, this petition is not maintainable and hence, it is dismissed."

9. From a reading of the above, there is still room left for Kulandaivel to establish through police investigation that he has been impersonated before the Mediation Centre and thereafter, he can still approach this Court for recalling the order dated 07.01.2015 in Crl.O.P.No.7587 of 2014 on the ground of fraud. It is trite that fraud vitiates all proceedings and the power of this Court, as a Court of record, to recall an order which has been obtained by fraud, inheres.

10. On the strength of the order passed by R.S.Ramanathan,J., Kulandaivel gave a complaint to the Inspector of Police, B-2 Esplanade Police Station and filed CrI.O.P.No.4127 of 2015 for a direction to the Inspector of Police, B-2 Esplanade Police Station, to register an FIR on his complaint dated 08.01.2015, in which he has alleged that he was impersonated before the Mediation Centre and that someone had signed the Mediation Agreement dated 18.12.2014. CrI.O.P.No.4127 of 2015 came up before R.S.Ramanathan,J. on 05.03.2015 and a direction was issued on 05.03.2015 to follow the law laid down by the Supreme Court in Lalita Kumari vs. Govt. of U.P. & others [(2014) 4 SCC 1].

11. In the light of the above directions, the Inspector of Police, B-2 Esplanade Police Station has registered a case in Cr.No.435 of 2015 on 07.04.2015 for offences u/s 419, 465, 468 and 471 IPC against Ambika, Gopal, Baby and Masani Monisha. The said case has now been transferred to the file of the Inspector of Police, B-4, High Court Police Station for territorial reasons by the Assistant Commissioner of Police and now, the case has been re-registered as Cr.No.15 of 2015 for the same offences and investigation is in progress.

12. Kulandaivel has now filed the present petition in CrI.O.P.No.18315 of 2016 for a direction to the Inspector of Police, B-4 High Court Police Station to expedite the investigation in Cr.No.15 of 2015 [old Cr.No.435 of 2015]. In the meantime, Ambika has lodged a fresh complaint before the Inspector of Police, W-5, All Women Police Station, Vepery, based on which a fresh FIR in Cr.No.5 of 2016 has been registered for offences u/s 498-A, 417 and 506(ii) IPC.

13. In the considered opinion of this Court, it will be in the fitness of things if that FIR is also investigated by the same police, viz., the Inspector of Police, B-4 High Court Police Station, who is seized of Cr.No.15 of 2015.

14. In view of the above, I am of the considered opinion that it will be in the interest of justice, if the case in Cr.No.5 of 2016 on the file of W-5 All Women Police Station, Vepery, is transferred to the file of the Inspector of Police, B-4 High Court Police Station, to be investigated along with Cr.No.15 of 2015.

15. I am of the further opinion that it will serve the interest of justice if the Assistant Commissioner of Police himself investigates both the cases and therefore, this Court directs the Assistant Commissioner of Police, High Court Range to be the Investigating Officer in Cr.No.15 of 2015 and transferred the case in Cr.No.5 of 2016 from the file of W-5, All Women Police Station, Vepery to the file of B-4 High Court Police Station, Chennai.

16. Learned Additional Public Prosecutor submitted that the police need free access to the records in the Mediation Centre as well on the file of this Court.

17. There is much force in the submission of the learned Additional Public Prosecutor. Therefore, this Court permits the Investigating Officer to approach the Assistant Registrar, Mediation Centre, for inspection of records. Thereafter, if the police want any particular record, they shall issue a summons u/s 91 Cr.P.C. to the Assistant Registrar, Mediation Centre, who is directed to take photocopies of the record sought by the police and after certifying the photocopies, hand over the originals to the Investigating Officer, under due acknowledgment, for the purpose of investigation. Similarly, the Assistant Registrar (Criminal Side), shall permit the Investigating Officer to inspect the records in this Court concerning these cases and if the police require any particular record or records, they shall issue a summons u/s 91 Cr.P.C. through the Registrar General of this Court and on such summons being given, the photocopy of the record may be taken and after certifying the same, the originals shall be handed over to the police under due acknowledgment, for the purpose of investigation. For signature comparison, the police require the signatures of Kulandaivel, of the period when the Mediation Report dated 18.12.2014 was signed. Kulandaivel is directed to co-operate with the police in this regard and furnish necessary particulars if available.

The Assistant Commissioner of Police, High Court Range, Chennai is directed to expeditiously conduct the investigation and take action in accordance with law.

With the above direction, this petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Registrar General
High Court, Madras.

2.The Assistant Commissioner of Police
High Court Range, Chennai.

3.The Assistant Registrar,
Tamil Nadu Mediation and Conciliation Centre, High Court,
Madras.

4.The Assistant Registrar,
Criminal Section, High Court, Madras.

5.The Inspector of Police
B-4, High Court Police Station
Broadway, Chennai 600 001.

6.The Inspector of Police
B-2, Esplanade Police Station
High Court, Chennai.

7.The Inspector of Police
W-5 All Women Police Station
Vepery, Chennai.

8.The Public Prosecutor
High Court, Madras.

9.The Inspector of Police, Taramangalam Police station.

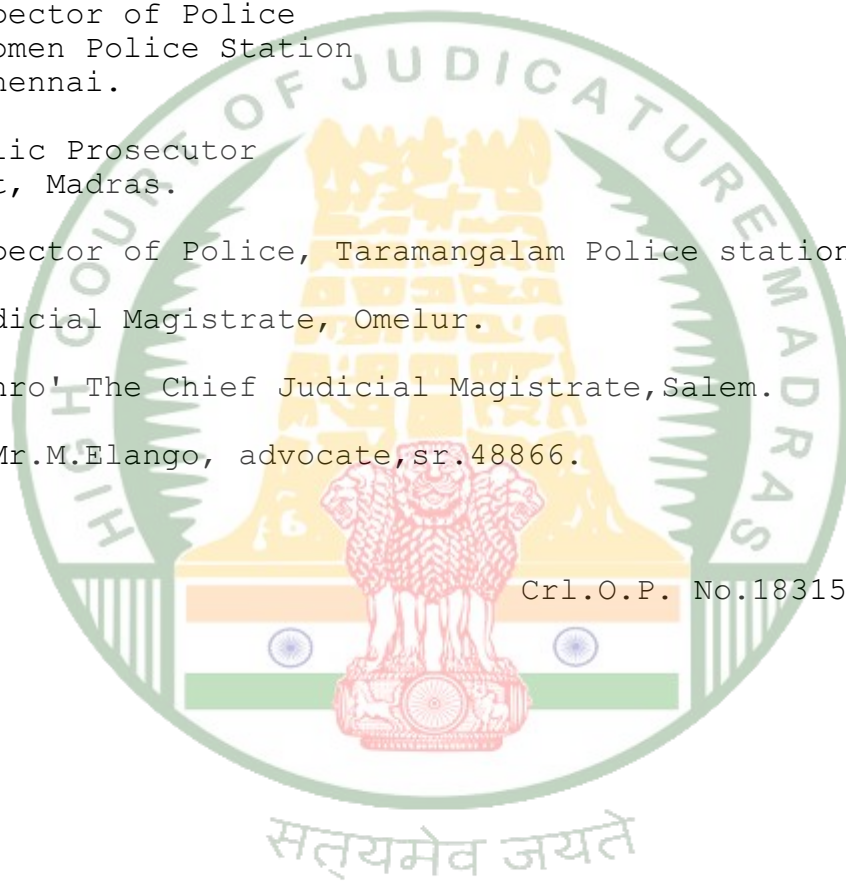
10.The Judicial Magistrate, Omelur.

11.-do- thro' The Chief Judicial Magistrate, Salem.

+1 cc to Mr.M.Elango, advocate, sr.48866.

skv(co)
krd 12/9

Crl.O.P. No.18315 of 2016



WEB COPY