

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

W.P.No.38903 of 2015  
and  
M.P.No.1 of 2015

A.P.Murugan

... Petitioner

Vs.

1. The State of Tamil Nadu rep. by its Secretary to Government, Home Department, Fort St.George, Chennai-600 009.
2. The Director General of Police, Kamarajar Road, Mylapore, Chennai-600 004.
3. The Registrar, Vigilance, High Court, Madras-104.
4. The learned Sub-Judge, Subordinate Court, Dharapuram, Tiruppur District.
5. The Inspector of Police, Dharapuram Police Station, Crime No.951 of 2015, Tiruppur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the case in Crime No.951 of 2015 on the file of the 5<sup>th</sup> respondent-Police and to quash the same insofar as the petitioner is concerned, or in the alternative to direct the respondents 1 & 2 to withdraw the investigation in Crime

No.951 of 2015 from the file of the 5<sup>th</sup> respondent and to transfer the same, either to CBI or CB CID for fair and impartial investigation, by considering the representation dated 20.11.2015.

For Petitioner : Mr.N.Manokaran

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

#### ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the case in Crime No.951 of 2015 on the file of the 5<sup>th</sup> respondent-Police and to quash the same insofar as the petitioner is concerned, or in the alternative to direct the respondents 1 & 2 to withdraw the investigation in Crime No.951 of 2015 from the file of the 5<sup>th</sup> respondent and to transfer the same, either to CBI or CB CID for fair and impartial investigation, by considering the representation dated 20.11.2015.

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

2(1)The petitioner joined as an Advocate Clerk in the office of one late Mr.S.S.Thangavelu, Advocate, Dharapuram, in the year 1979. Thereafter, in the year 1990, the petitioner joined the office of Mr.S.Balasubramaniam, Advocate, Dharapuram, in the year 1991. Simultaneously, the petitioner has been attending the clerical work of one Mr.S.Palanisamy, Advocate, who is junior to Mr.S.Balasubramaniam. While so, during April 2015, the said advocates S.Palanisamy and one Mr.V.Sekar prepared and handed over five money suits for filing. The petitioner verified the bundles, carried out the clerical works and filed the following five suits before the Sub-Court, Dharapuram, against one K.Sivasamy

| Name of the plaintiff | Name of the defendant | Date of pronote and its value | Suit number (O.S.Nos .) | I.A.No. For attachment before judgment (I.A.Nos.) |
|-----------------------|-----------------------|-------------------------------|-------------------------|---------------------------------------------------|
| Rajitham              | K.Sivasamy            | 14.09.2012 for Rs.5 lakhs     | 170/2015                | 317/2015                                          |

| Name of the plaintiff | Name of the defendant | Date of pronote and its value | Suit number (O.S.Nos.) | I.A.No. For attachment before judgment (I.A.Nos.) |
|-----------------------|-----------------------|-------------------------------|------------------------|---------------------------------------------------|
| Ashok Kumar           | K.Sivasamy            | 10.09.2012 for Rs.5 lakhs     | 171/2015               | 318/2015                                          |
| Nallasamy             | K.Sivasamy            | 10.09.2012 for Rs.5 lakhs     | 172/2015               | 319/2015                                          |
| Sathishkumar          | K.Sivasamy            | 14.09.2012 for Rs.5 lakhs     | 173/2015               | 320/2015                                          |
| Bharani Raja          | K.Sivasamy            | 10.09.2012 for Rs.5 lakhs     | 174/2015               | 321/2015                                          |

The above suits were filed on 23.04.2015. Within a few days from the date of filing the said suits, the Sheristadhar of the Sub-Court, by name V.Baskaran (now retired) contacted the petitioner through his cell phone around 6.00 am, and informed about missing of the original pro-notes relating to the above said five suits. Immediately, the petitioner told him to come and report the matter to the advocates concerned at 9.00 am. The said Sheristadhar came around 10.40 am., to inform the matter to Mr.S.Palanisamy, Advocate, and requested to give some other blank pro-notes to replace them in the bundle; but, the advocate stoutly denied his request and instructed him to trace the missing documents. Immediately, the said S.Palanisamy, Advocate has reported the matter to the Sub-Judge, Dharapuram; but, no action was taken.

2(2) Again the said Advocate S.Palanisamy, along with his senior Mr.S.Balasubramaniam and the Additional Government Pleader Mr.N.Anandan, met the 4<sup>th</sup> respondent (Sub-Judge) and reported the above matter. In view of the inaction on the part of the 4<sup>th</sup> respondent (Sub-Judge), both the Advocates gave two complaints, dated 06.04.2015 to the learned Sub-Judge, Dharapuram, for taking necessary action. The plaintiffs in the said suits have also gave their complaint in the form of a representation to the District Judge and the Sub-Judge, Dharapuram.

2(3) It is further stated by the petitioner that the above said occurrence is not an isolated incident, whereas the advocates and litigants have already given many complaints in respect of missing of more than 100 bundles in the Sub-Court, Dharapuram. Therefore, the Advocates Association had declared indefinite boycott of Court till the bundles are located in

the Court; subsequently, pursuant to the suggestion given by the Registrar of this Court, boycott was withdrawn and the said dispute was entrusted to one Mr.S.K.Karvendan, Advocate / former M.P, for amicable solution. During the course of enquiry, the above named Sheristadhar Baskaran gave a statement in writing to Mr.S.K.Karvendan stating that one Ponmurthy, Advocate Cleark attached to the office of Mr.K.M.Manivannan, was responsible for the above mischief. The said Mr.K.M.Manivannan, Advocate is the counsel for the above said K.Sivasamy (defendant in the said suits), and the said counsel is the brother-in-law of Mr.S.K.Karvendan and as such, a report has been sent to this Court to suit the convenience of the defendant K.Sivasamy and his associates.

2(4)While so, the 4<sup>th</sup> respondent (Sub-Judge, Dharapuram), has sent a letter in D.No.407/2015, dated 29.07.2015 to the 3<sup>rd</sup> respondent-Registrar Vigilance, High Court, Madras, seeking permission to lodge a police complaint against the Sheristadhar V.Baskaran. However, in response to the said letter dated 29.07.2015, the 3<sup>rd</sup> respondent has sent a communication in Roc.No.385/2015/VC and Roc.No.430/2015/VC-C.No.41/2015/VC, dated 20.10.2015 to the learned Principal District Judge, Tirupur, which reads as under

"As directed, the Principal District Judge, Tiruppur is informed that criminal complaint shall be lodged against Thiru.V.Baskaran, Sheristadhar (Retired) and Thiru.A.P.Murugan, Advocate Clerk immediately before the police of competent jurisdiction. It is expected that the police investigation will surely unearth the complicity of the advocate Thiru S.Palanisamy, if any."

Pursuant to the above proceedings dated 20.10.2015, the learned District Judge, Tirupur has issued direction to the 4<sup>th</sup> respondent to give a police complaint against the petitioner and the said Sheristadhar V.Baskaran. Accordingly, the 4<sup>th</sup> respondent has lodged a complaint dated 03.11.2015 before the 5<sup>th</sup> respondent and it was registered as Crime No.951 of 2015 under Section 380 IPC. As per the complaint dated 03.11.2015, the petitioner's name has been implicated as 2<sup>nd</sup> accused on the ground that the Sub-Judge has issued instruction to lodge the complaint as against the petitioner herein also. But, absolutely no allegation was made and no incriminating materials have been produced against the petitioner herein. The petitioner's name appears to have been added along with the retired Sheristadhar to divert the issue and to protect the real accused persons from the clutches of law. Hence, the petitioner has come forward with the present writ petition before this Court.

3.It is the submission of the learned counsel appearing for the petitioner that in the complaint, absolutely no allegation has been made against the petitioner. The present complaint has been filed only because, the 3<sup>rd</sup> respondent-Registrar Vigilance directed to lodge the complaint as against the Sheristadhar and the petitioner herein. Further, the learned counsel for the petitioner submitted that the occurrence is not an isolated incident, whereas the Advocate and litigants have given several complaints about the missing of records/bundles. The petitioner is having apprehension that he would be made responsible for the missing of bundles. Further, the name of the clerk who was attached to the office of the Advocate for the defendant in the said suits, whose name has been mentioned in the statement of the Sheristadhar, has been purposely suppressed in the FIR, to protect the others who were responsible for the said misdeeds. If the 5<sup>th</sup> respondent-police is allowed to continue the investigation, there will not be any fairness in the investigation. Thus, the learned counsel for the petitioner sought for quashing the complaint or in the alternative, to transfer the investigation from the 5<sup>th</sup> respondent to CBI or CB CID.

4.The learned Additional Public Prosecutor, by filing a counter, has opposed to grant the relief sought for the petitioner. The learned Additional Public Prosecutor has produced a copy of the letter dated 28.07.2015 given by the Sheristadhar Bhaskaran to the President of the Advocate Associates, Dharapuram, and submitted that in the said letter the said Sheristadhar Baskaran (A1) has clearly stated that 2<sup>nd</sup> accused/petitioner herein is responsible for missing of documents. Further, so far, the 5<sup>th</sup> respondent-Police has examined 29 witnesses and all the witnesses corroborated their version that they all know about the missing of original pro-notes with regard to the above O.S.Nos.170 to 174 of 2015. The investigation so far conducted would show that the petitioner/A2 took Sheristadhar/A1 on 03.05.2015 from his office at evening hours to TASMACH Shop and asked him to consume liquor and after consuming liquor, A2 to took A1 back to his office and left in his office and at that time, the 1<sup>st</sup> accused was semi-unconscious. After few hours, Sheristadhar/A1 noticed that the pro-notes from the documents were missing. Immediately, the Sheristadhar/A1 called the petitioner/A2 over phone to inform about the missing documents. But, petitioner/A2 did not pick up the call. The learned Additional Public Prosecutor would further submit that the investigation is at crucial stage and at this juncture, the prayer of the petitioner cannot be entertained. Thus, he sought for dismissal of the writ petition.

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

6.In my considered opinion, the petitioner has not made out any case, to quash the FIR. It is well settled legal principal that while the investigation is pending, the question of quashing the FIR is very narrow. The present writ petition has been filed by the petitioner only with a bald and vague allegations. I do not find any merit in the writ petition either to quash the FIR or to transfer the investigation to some other agency. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv

To

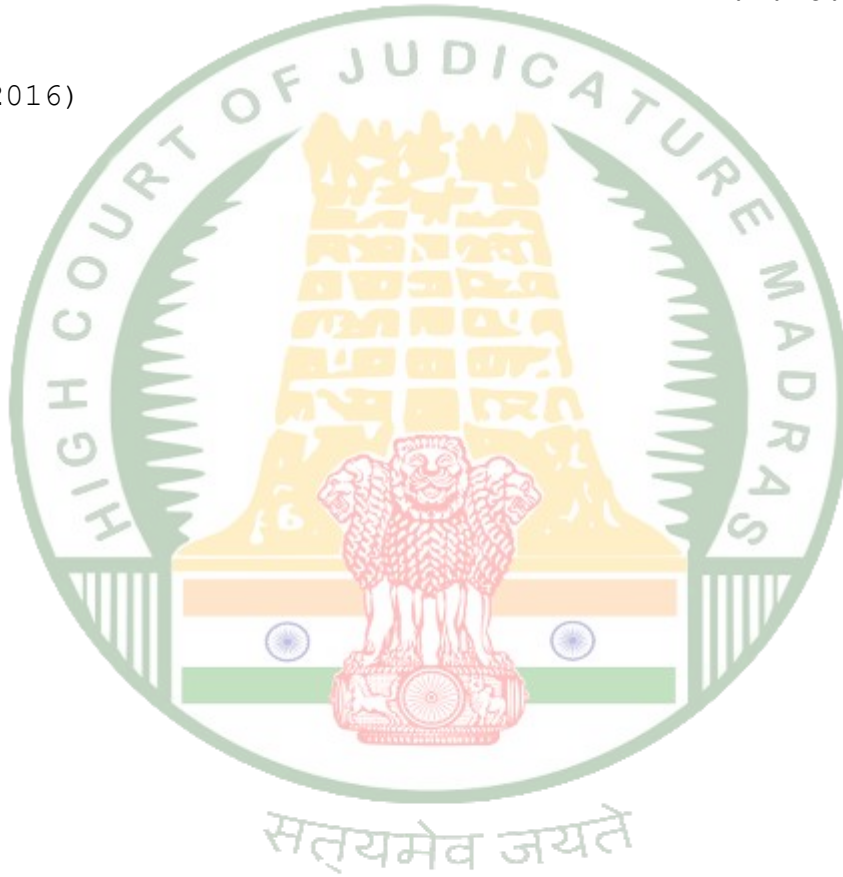
1. Secretary to Government,  
Home Department,  
Fort St.George, Chennai-600 009.
2. The Director General of Police,  
Kamarajar Road,  
Mylapore,  
Chennai-600 004.
3. The Registrar, Vigilance,  
High Court,  
Madras-104.
4. The learned Sub-Judge,  
Subordinate Court,  
Dharapuram,  
Tiruppur District.

5. The Inspector of Police,  
Dharapuram Police Station,  
Crime No.951 of 2015,  
Tiruppur District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.2911

W.P.No.38903 of 2015  
and  
M.P.No.1 of 2015

SVI (CO)  
CA(01/02/2016)



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