

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 30.09.2016
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
CRL.OP.No.21148 of 2016
and
Crl.M.P.Nos.9797 and 9798 of 2016

Govindaraj .. Petitioner

Vs.

1. State by The Inspector of Police,
Tholasampatty Police Station,
Tholasampatty, Omalur,
Salem District.
Crime No.72/2008
2. Shanmugam .. Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to quash the proceedings in C.C.No.03 of 2013 pending on the file of the District Munsif cum Judicial Magistrate at Omalur, in respect of this petitioner, by allowing this criminal original petition.

For Petitioner : Mr.R.Marudhachalamurthy
For Respondent : Mr.C.Emalias,
No.1 Additional Public Prosecutor

O R D E R

This Criminal original petition has been filed to quash the proceedings in C.C.No.03 of 2013, in respect of the petitioner, which is pending on the file of the District Munsif cum Judicial Magistrate at Omalur

2. On a complaint lodged by one Shanmugam, the respondent police registered a case in Crime No.72 of 2008 and after completing the investigation, they have filed a final report, which is now pending in C.C.No.3 of 2013 on the file of the District Munsif -cum-Judicial Magistrate, Omalur, for offences under Sections 147, 148, 447, 341, 324, 326 and 506(ii) IPC against 11 accused, including the petitioner herein, who has been arrayed as A7, challenging which, the petitioner is before this Court.

3. This Court had issued notice to the defacto complainant, but the same could not be served as he was found not available

in the given address.

4. Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

5. The learned counsel for the petitioner contended that Govindaraj (A7), the petitioner herein is an employee of BSNL and on the alleged date and time of the incident, he was not in the place of occurrence, but he was in his office. To be more precise, the FIR shows that the incident had taken place on 13.04.2008 (Sunday) at 6.50p.m. In this regard, the then Sub-Inspector of Police appears to have addressed a communication to the Sub-Divisional Engineer, BSNL, Mettur, calling for information as to whether Govindaraj was in office at the relevant point of time. In respect of the communication, the Sub-Division Engineer, BSNL, Mettur, has sent a reply dated 05.07.2008 to the Sub-Inspector of Police, Tholasampatty Police Station, wherein, it is categorically stated that the petitioner was in the Erumapatti Exchange from 12.45 to 21.30 hours on 13.04.2008. In support of this, the Log sheets were also annexed. Despite the receipt of such material, strangely, the petitioner has been arrayed as an accused in the final report.

6. The issue of alibi is a question of fact and the same cannot be decided under Section 482 Cr.P.C. However, the petitioner cannot be left without any remedy. Under such circumstances, this Court, in exercise of power under Section 482 Cr.P.C., directs the Inspector of Police, Tholasampatty Police Station, Omalur, to conduct further investigation in terms of Section 173(8) Cr.P.C in C.C.No.3/2013 in Tholasampatty Police Station in Crime No.72 of 2008 with regard to the aspect of alibi and complete the same within a period of three months and submit supplementary report to the Judicial Magistrate, Omalur. Until the supplementary report is filed before the Judicial Magistrate, Omalur, proceedings in C.C.NO.3 of 2013 shall stand stayed. The Inspector of Police shall conduct an unbiased and fair investigation and if it is found that the petitioner was not in the place of occurrence and he was in office, it is needless to state that he should be deleted from the array of accused in the supplementary report. The Judicial Magistrate, Omalur is directed to monitor the further investigation that has been ordered by this Court.

With the above direction, this criminal original petition is closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Inspector of Police,
Tholasampatty Police Station,
Tholasampatty, Omalur,
Salem District.
 2. The District Munsif cum Judiciall Magistrate,
Omalur.
 3. The Public Prosecutor,
High Court, Madras.
- +3 CC to M/s. R. Marudhachakmurthy, Advocate Sr.No.56992,56992

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RP (CO)
MD : 06/10/2016

सत्यमेव जयते

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