

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.OP.No.23712 of 2016

R.Dharmalingam

... Petitioner

Vs.

The State rep.by

1. The Inspector of Police
Sulur Police Station
Sulur, Coimbatore District.

2. The Assistant Commissioner of Police
Central Crime Branch, Coimbatore.

3. The Inspector of Police
O/o.The CBCID, No.800,
Avinashi Road, Coimbatore-18.

... Respondents

Petition filed under Section 482 Cr.P.C., to transfer the investigation of the case in Cr.No.306/2016 from the file of the 2nd respondent to the file of the 3rd respondent.

For Petitioner : Mr.N.Anand Venkatesh

For R1 to R3 : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

The above Criminal Original Petition has been filed by the petitioner to transfer the investigation of the case in Cr.No.306/2016 from the file of the 2nd respondent to the file of the 3rd respondent.

2. This case has a chequered history. In stead of repeating the facts once again, it would suffice, if the order passed by this Court, in Crl.OP.No.15758/2016 dated 10.08.2016 is extracted verbatim:-

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

4. One N.J.Subramaniam, filed a suit in O.S.No.438 of 2009 against one Ganesamoorthy, Dharmalingam and four others before First Additional District Judge, Coimbatore, for

specific performance of a contract dated 15.03.2016. In the suit, it was pleaded by N.J.Subramaniam that Ramukutty Gounder, father of Dharmalingam, had entered into a sale agreement on 15.03.2006, under which, he had agreed to sell his property to him. After the death of Ramukutty Gounder, the suit has been filed for specific performance against his legal heirs as stated above. Dharmalingam entered appearance and found that, the agreement dated 15.03.2006 is a forged document, inasmuch as the stamp paper for the document itself was purchased only on 23.12.2008 in the name of N.J.Subramaniam, which is much after the death of Ramukutty Gounder on 11.08.2007.

5. Thus, it was prima facie clear that the agreement dated 15.03.2006, purported to have been signed by Ramukutty Gounder is a false document. In this regard, Dharmalingam lodged a complaint dated 02.08.2014 with the Inspector of Police, Sulur Police Station, Coimbatore. Based on the complaint, petition enquiry was conducted in CSR No.555 of 2014 and the same was perfunctorily closed on 10.08.2015. Dharmalingam filed Crl.O.P.No.15024/15 seeking for a direction to the respondent police to conduct proper enquiry on his complaint dated 02.08.2014. This court passed the following order in Crl.OP.No.15024 of 2015 on 15.10.2015:

" 4. The crux of the allegation in the complaint is that the opposite parties had forged a sale agreement dated 15.03.2006, based on which, they have filed a suit for specific performance against the family members of the petitioner herein.

5. The learned counsel appearing for the petitioner submits that the stamp papers, on which the sale agreement dated 15.03.2006 was prepared itself, came into existence only on 23.12.2008. In support of this plea, the petitioner has obtained a letter dated 31.10.2014 from the concerned treasury. According to the petitioner, his father died on 11.08.2007 and the stamp papers came into existence only in the year 2008, with which, the sale agreement dated 15.03.2006 has been fabricated.

6. Since there are prima facie materials, this Court sets aside the closure report dated 10.08.2015 and directs the respondent police to conduct fresh enquiry on all these aspects and take action in accordance with law and the investigation shall be monitored by the Deputy Superintendent of Police, Sulur Sub Division.

In view of the above, the criminal original petition is closed."

Since no proper enquiry was conducted, despite the order passed by this Court, Dharmalingam filed a contempt petition in Cont.P.No. 2768/15, which came up for hearing before this court and this court has observed and passed the following order:

" 4. This Court, in order to give an opportunity to the contemnor, directed the respondents to enquire in to the matter on 22.03.2016 and further the petitioner was directed to appear before the respondent police on that day along with relevant documents.

5. It was also admitted that on 22.03.2016, the petitioner has appeared before the respondent police and since on that day, another party has come forward to produce the original alleged sale agreement entered into between the petitioner and the proposed accused, the respondent police are not in a position to ascertain as to whether the sale agreement is true or genuine. Hence, they have closed the case.

6. Further on perusal of typed set of papers produced before this Court, it is seen that on the basis of alleged sale agreement, the proposed accused has filed O.S.No.438 of 2009 for specific performance, in which, this petitioner has filed a written statement stating that the sale agreement is a forged one. Immediately, the accused want for withdrawal of the suit, in which the petitioner has also made an objection. Meanwhile, the complaint has also been given. Hence, the learned Additional District Judge passed an order that without prejudice to the right of the defendant, he was permitted to withdraw the suit.

7. In such circumstances, the counter petitioner herein has not produced the

original alleged sale agreement before the respondent police even though he was called for enquiry. Further, the activities of the counter petitioner itself prima facie made out the ingredients of forgery. Therefore, unless First Information Report is registered, the police has no authority to search the same and investigate the matter and so it is a fit case to give a positive direction to register a case and accordingly, the closure report is set aside. The respondent police are directed to register an FIR and produce the same before this Court on or before 12.04.2016. Call on 12.04.2016 for reporting compliance"

Pursuant to the contempt order passed by this Court in Cont.Petition No.2768 of 2015 on 04.04.2016, the Inspector of Police, Sullur Police Station, registered a case in Crime No.306 of 2016, on 10.04.2016 and served notice dated 05.08.2016 on the petitioner stating " further action dropped".

6. The learned Additional Public Prosecutor submitted that N.J.Subramaniam withdrew the case in O.S.No.438/09 and the Original Sale Agreement dated 15.03.2006 has also been collected by his advocate from the Court on 03.12.2014 and therefore, the police, despite their best efforts, were not able to recover the same.

7. The fact remains that the police did not even choose to arrest N.J.Subramaniam for effecting recovery under Section 27 of the Indian Evidence Act. That apart, even if the suit was withdrawn by the plaintiff, the bundle will not be handed over by the court to the parties. The same will be available in the record room of the court. Even if a document is obtained, the court will take the photocopy of the same and then only, it will return the original document.

8. In this case, the respondent police have not taken any steps to find out whether the documents are available in the court records. They have simply obtained the opinion from the Assistant Public Prosecutor, who has stated that:

3. The explanation of the accused cannot be brushed aside easily.

4. The alleged sale Agreement was unregistered and hence no chance of obtaining any copies or to compare the

signatures in it through the Registration office.

9. This Court is unable to countenance this argument. Under such circumstances, this court is totally unhappy in the manner, in which, Mr. Shanmugam, Inspector of Police, Sulur Police Station has conducted investigation in Crime No.306 of 2016 and closed the case.

10. In the result, the closure report in Crime No.306 of 2016 is hereby set aside. The case in Crime No.306/16 is hereby transferred to the file of the Central Crime Branch, Coimbatore for re-investigation.

11. With the above direction, this criminal original petition is ordered accordingly. The Inspector of Police, Sulur Police Station is directed to hand over the entire case records to the Central Crime Branch, Coimbatore to assign the case to the competent officer.

12. At this juncture, the learned Additional Public Prosecutor submitted that the closure report has been filed before the Judicial Magistrate No.VII, Coimbatore. Under such circumstances, the Judicial Magistrate No.VII, Coimbatore is directed not to close the case in Crime No.306 of 2016, in view of the order passed by this Court.

3. Despite the order passed by this Court as early as on 18.06.2016, it appears that the Central Crime Branch [CCB], Coimbatore, had not taken any steps to proceed further with the investigation. Therefore, the defacto complainant was constrained to file the present petition seeking transfer of investigation to CBCID. सत्यमेव जयते

4. In order to give an opportunity to the police to explain their inaction, this Court directed the Inspector of Police, Sulur Police Station and the Inspector of Police, CCB, Coimbatore, to be present before this Court.

5. Accordingly, Mr.G.Gunasekaran, the Special Sub Inspector of Police attached to Sulur Police Station, Coimbatore and Mr.K.Kaliannan, Inspector of Police, attached to the City Crime Branch, Coimbatore City, are present before this Court today.

6. The learned Additional Public Prosecutor on instructions, would submit that the City Crime Branch Police [CCB] had not collected the Case Diary from the Sulur Police Station in connection with the case in Cr.No.306/2016, on the ground that that the transfer of the case from one District to

the other District can be done only through the Office of the Director General of Police.

7. Heard Mr.N.Anand Venkatesh, learned counsel appearing for the petitioner on the submissions made by the learned Additional Public Prosecutor appearing for the respondents.

8. This Court is unable to countenance this explanation of the learned Additional Public Prosecutor because ;

[a] The Sulur Police Station lies within Coimbatore Rural Police District and the City Crime Branch Police lies within Coimbatore City Police District. Therefore, it is too technical to say that the files have to go all the way to the office of the Director General of Police for transfer of the Case Diary from Sulur Police Station to CCB, Coimbatore ; and

[b] That apart, when this Court has directed transfer of investigation, the police cannot take such a specious plea for justifying their inaction.

9. In this case, an Advocate is an accused. He has collected the alleged forged documents from the learned I Additional District Judge, Coimbatore, after withdrawing the suit in OS.No.438/2009 on 03.12.2014. Taking into consideration the gravity of the allegations and the status of the people allegedly involved in the offence, this Court is of the view that in the interest of justice, the investigation is to be transferred to CBCID, Coimbatore.

10. Accordingly, the Criminal Original Petition is allowed and the case in Cr.No.306/2016 is transferred from the file of the 2nd respondent [Sulur Police Station] to the 3rd respondent [CBCID]. The Inspector of Police, Sulur Police Station, Coimbatore, is directed to transfer the Case Diary in Cr.No.306/2016 to the Superintendent of Police, CBCID, Coimbatore, who shall assign the case for investigation to the officer of the rank of the Inspector of Police in CBCID. The Inspector of Police, Sulur Police Station, Coimbatore, shall hand over the Case Diary relating to Cr.No.306/2016 to the Superintendent of Police, CBCID, Coimbatore, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
Sulur Police Station
Sulur, Coimbatore District.
2. The Assistant Commissioner of Police
Central Crime Branch,
Coimbatore.
3. The Inspector of Police
O/o.The CBCID, No.800,
Avinashi Road, Coimbatore-18.
4. The Public Prosecutor
High Court, Madras.

Copy to :

The Superintendent of Police
CBCID, Coimbatore.

+1cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.67943

Cr1.OP.No.23712 of 2016

SV(CO)
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