

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.8121 of 2016

K.Neelavathi

..Petitioner

Vs.

1. The Assistant Commissioner of Police,
St.Thomas Mount,
Chennai - 600 016.
 2. The Inspector of Police,
S10, Pallikaranai Police Station,
Pallikaranai, Chennai - 600 100.
 3. The Sub- Inspector of Police,
S10, Pallikaranai Police Station,
Pallikaranai, Chennai - 600 100.
(Crime No.1261/2005)
- ..Respondents

PRAYER: This Criminal Original Petition has been filed to direct the respondents to file final report in regard to the complaint in Crime No.1261 of 2005 dated 24.09.2005 under Sections 415, 420, 465, 406 and 468 IPC.

For Petitioner:Mr.J.Saravana Sathieesh Kumar
for M/s.K.Bhuvaneswari &
T.Regupathi

For Respondents:Mr.C.Emalias
Additional Public Prosecutor

ORDER

This Criminal original Petition has been filed seeking a direction to the respondents to file final report in regard to the complaint in Crime No.1261 of 2005 dated 24.09.2005 under Sections 415, 420, 465, 406 and 468 IPC.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public prosecutor appearing for the respondents.

3. On 21.06.2016 in CrI.O.P.8121 of 2016, this Court passed the following order;

"It is seen that the FIR in this case has been registered in the year 2005 in Crime No.1261 of 2005. During the pendency of the investigation, the parties have arrived at a compromise, on account of which, the respondent police did not proceed with further investigation. However, M.Krishnan, defacto complainant filed a petition in CrI.OP.No.18058 of 2014, in which, this Court passed an order dated 04.08.2014 directing the Inspector of Police, S-10, Pallikaranai Police Station, Pallikaranai, Chennai, to re-open the case and investigate the same under the supervision of Assistant Commissioner of Police, St.Thomas Mount, Chennai. Despite the order dated 04.08.2014, the respondent police have not done anything till date.

2. Today, on the direction of this Court, the second respondent/Mr.K.Natarajan, Inspector of Police, S-10, Pallikaranai Police Station, Pallikaranai, Chennai, is present before this Court.

3. On instructions, the learned Additional Public Prosecutor submitted that the FIR in Crime No.1261/2005 is not available before the trial Court. Whereas, the learned counsel appearing for the petitioner/K.Neelavathi, who is the wife of M.Krishnan, defacto complainant (defacto complainant is said to have died on 05.05.2015) would submit that the petitioner was able to obtain the certified copy of FIR from the trial Court on 24.06.2014 and therefore, it cannot be said that records are not available. Except the complaint in original and FIR, the police have not filed any other documents in original before the jurisdictional Magistrate. If the original complaint and FIR is lost, that cannot be a reason to stop the criminal prosecution. It is always open to the trial Court to reconstruct the bundle.

Hence, Registry is directed to call for a report from the learned Judicial Magistrate, Alandur, as to why the original complaint and FIR in Crime No.1261 of 2005 are not available. The report shall reach this Court on 05.07.2016.

Post the matter on 05.07.2016"

4. Pursuant to the order passed by this Court dated 21.06.2016, the learned Judicial Magistrate, Alandur, has sent a report dated 05.07.2016, which reads as follows;

" I humbly submit that after receipt of the Hon'ble High Court's order in CO.No.290 of 2016, dated 29.06.2016, received by this Court on 01.07.2016, I have immediately given necessary instructions to the Head Clerk and FIR Clerk of this Court, to trace the original FIR and original complaint in connection with Crime No.1261 of 2005, on the file of Pallikaranai Police Station. Further I humbly submit that they could not able to produce the same, but had requested further more time to find out the original FIR and complaint. The copy of the memo issued to the concern staffs and reply submitted is herewith submitted for your honours kind perusal and consideration.

Hence, I humbly submit and request your honour that further more time may be granted to find out the original FIR and Complaint in Crime No.1261 of 2005 on the file of Pallikaranai Police Station."

A copy of the report has also been furnished to the learned Additional Public Prosecutor.

5. Today, when the matter is taken up for hearing, Mr.K.Natarajan, Inspector of Police, S10, Pallikaranai Police Station, Pallikaranai, Chennai - 600 100, is present and a copy of the report dated 05.07.2016 has been furnished to him to be kept in the CD file.

6. The learned Additional Public Prosecutor, on instructions, submitted that the respondent police has re-opened the case, pursuant to the direction of this Court dated 21.06.2016 in Crl.O.P.No.8121 of 2016, by re-constructing the FIR and proceeding with the investigation further. He also further submitted that the police has sent the signature of the defacto-complainant, which is obtained before his death, to the Expert for comparison with the disputed signature and the report is awaited.

7. Loss of the original complaint given by the petitioner cannot be a reason for the police not to proceed with the investigation as stated earlier. On that score alone, the criminal prosecution cannot be stifled, as that would lead to grave injustice to the defacto complainant.

In view of the above, the respondent police is directed to proceed with the investigation in Crime No.1261 of 2005 and take action in accordance with law expeditiously.

In the result, the criminal original petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Assistant Commissioner of Police,
St.Thomas Mount,
Chennai - 600 016.
2. The Inspector of Police,
S10, Pallikaranai Police Station,
Pallikaranai, Chennai - 600 100.
3. The Sub- Inspector of Police,
S10, Pallikaranai Police Station,
Pallikaranai, Chennai - 600 100.
(Crime No.1261/2005)
4. The Public prosecutor,
High Court, Madras.

+1cc to Mr.K. Bhuvaneswari, Advocate, S.R.No.38054

LRS (CO)
EU(04/08/2016)

Cr1.O.P.No.8121 of 2016

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