

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 15.04.2016****CORAM:****THE HONOURABLE MR. JUSTICE P.N. PRAKASH****CrI.O.P. (MD) Nos.4198 of 2016**

1. Iyyappan

2. Sankar

3. Chandran

... Petitioners

vs.

1. The State through
Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District

2. Santhi

... Respondents

PRAYER: This petition is filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in C.C.No.33 of 2015 on the file of learned Judicial Magistrate, Padmanathapuram and quash the same.

For Petitioner : Mr.S.J.Chakkaravarthy

For Respondents: Mr.C.Mayilvahana Rajendran for R1
Additional Public Prosecutor

ORDER

On 14.03.2016, this Court passed the following order:

"On a complaint lodged by one Santhi, the respondent police registered a case in Crime No.127 of 2013, on 06.03.2013, for the offence under Section 329 IPC. It is the case of Santhi, the defacto complainant, that she runs a textile shop in the market and when she was in the shop on 06.03.2013, two persons came at around 07.30 p.m. in the guise of purchasing handkerchief and when she was attending on to them, one of them, snatched away her 11 sovereign gold chain and ran away. The police proceeded with the investigation and on 11.12.2014, Iyyappan/A1, Sankar/A2 and Chandran/A3 were arrested by the police in connection with Cr.No.127 of 2013 and based on their disclosure statement, jewel was recovered from one Dilip in Trivanathapuram on 11.12.2014. After completing the investigation, the police have filed final report in C.C.No.33 of 2015 against A1, A2 and A3, before the Judicial Magistrate, Padmanabapuram. Challenging the same, the accused are before this Court.



2. The short point raised by the learned counsel for the petitioners is that the second petitioner/A2 was in jail from 12.06.2012 to 07.04.2013, in support which unimpeachable records given by the jail authorities that was obtained by him under Right to Information Act have been submitted and therefore, the learned counsel for the petitioners submitted that when Sankar/A2 was in jail from 12.06.2012 to 07.04.2013, he could not have been in the place of occurrence on 06.03.2013, as urged by the prosecution. Therefore, this Court feels that this matter requires a further enquiry. On 10.03.2016, this Court directed Mr. Vikranth Patel, I.P.S., Assistant Superintendent of Police, Thucklay Sub Division to be present before this Court. Today, he is present before this Court.

3. Mr. Vikranth Patel, I.P.S., Assistant Superintendent of Police, Thucklay Sub Division, is directed to conduct an enquiry on this aspect and submit a report before this Court. The learned Judicial Magistrate, Padmanathapuram, is also directed to conduct an enquiry on this aspect and send a report to this Court. The reports shall reach this Court, on or before 31.03.2016.

Post on 31.03.2016. Interim stay till then.

2. On 31.03.2016, this Court passed the following order:

"On the direction of this Court, learned Judicial Magistrate, Padmanabhapuram (FAC) has sent a report dated 29.03.2016, wherein in the last Paragraph, he has stated as follows:

"I humbly submit that I could not conduct enquiry with in short span of time since the investigation officer was not turned up even after phone message and the accused 1 to 3 have also been absconding. Thus, I humbly submit my Interim report before your Honour and if your grants further time I will do the full fledged enquiry and submit a Final Report and humbly seeks your Honours kind solicitation and advice."

2. From the above, it is clear that these petitioners are absconding and are not appearing before the learned Magistrate. This Court deprecates the practice and will not countenance such conduct on the part of the petitioners/accused.

3. Learned counsel for the petitioners submitted that NBW has been issued against these petitioners.

4. Under such circumstances, the following



directions are issued:

i) the petitioners are directed to surrender before the learned Judicial Magistrate, Padmanabhapuram within one week from the date of receipt of a copy of this order and file an application for recall of the warrant. On such application being filed, the same shall be considered on the same day.

ii) Learned Judicial Magistrate, Padmanabhapuram is directed to obtain a bond from the petitioners/accused under Section 88 Cr.P.C. with two sureties for Rs.10,000/- (Rupees Ten Thousand only) each to the satisfaction of the learned Magistrate.

iii) The petitioners/accused shall appear before the learned Magistrate as and when required and co-operate in the enquiry conducted by the Magistrate and furnish their full address, mobile numbers etc.

iv) The Investigating Officer is also directed to co-operate with the Magistrate in conducting enquiry.

v) The Petitioners are directed to appear before the Assistant Superintendent of Police, Thuckalay Sub-Division daily at 6.30p.m. until further orders.

vi) Two weeks' time is extended for the Magistrate to conduct enquiry and submit a report to this Court.

Call on 15.04.2016"

3. Today, when the matter was called, Mr. Vikrant Patil, IPS, Assistant Superintendent of Police, Thuckalay Sub Division, Kanyakumari District is present and he has filed a report dated 15.04.2016, in which, the contentions raised by the petitioners that they were in jail at the relevant point of time, when the said offence was said to have been committed, is correct, but, however, they had planned it in such a manner for creating a redherring for the purpose of deflecting the course of investigation. It may be relevant to extract paragraph Nos.19 to 24:

"19. It is submitted that, it is pertinent to note that in all the 3 cases, at least one of the charged accused does not claim to be falsely implicated i.e. for Cr.OP 4198 of 2016 for Cr.No.127/13 of Thiruvattar P.S., only A2 Sankar S/o.Ramasubramanian was in judicial custody at the time of occurrence but A1 Iyyappan S/o.Ramasubramanian and A3 Chandran s/o.Ponniyan were in Judicial Custody.

20. It is submitted that similarly in Cr1.O.P.4199 of 2016 for Thuckalay PS Cr.No.14/13 A2



Sankar and A3 Chandran were in judicial custody but A1 was not in judicial custody.

21.It is submitted that the similarly in CrI.O.P.No.4200/2016 in Nesamony Nagar Cr.No.240/13 only A1 Iyyappan was in judicial custody and others were not in Judicial custody.

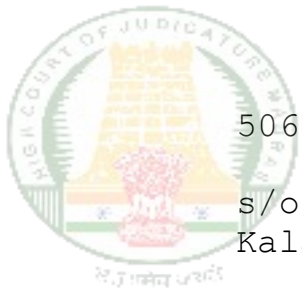
22.It is thus submitted that at the time of occurrence of each of the three crimes, at least one of the three alleged accused in question was not in judicial custody.

23.It is submitted that this lead to a reasonable suspicion that all the 3 alleged accused being repeated offenders might have given planned, misleading confession to derail the police investigation and put police in defensive mode. If they were being falsely arrested/charged by the police, they would have taken recourse to the Judicial Magistrate at the time of remand or at the time of questioning by Judicial Magistrate or inform the senior police officers in the due course at earliest point of time. So the possibility of the alleged accused wilfully giving wrong confession to mislead the police cannot be ruled out.

24.It is submitted that the all alleged accused are named in many previous crimes.

a.It is submitted that alleged accused Sankar s/o.Ramsubramaniyan is named in previous crimes namely V.K.Puram P.S.Cr.No.199/12 u/s 294(b), 341, 307 and 506(ii) of IPC, V.K.Puram P.S.Cr.No.198/12 u/s 457, 380 of IPC, V.K.Puram P.S.Cr.NO.182/12 u/s 457, 380 of IPC, V.K.Puram P.S.Cr.No.177/12 u/s 457, 380 of IPC, V.K.Puram Cr.No.176/12 u/s 379 of IPC, V.K.Puram P.S.Cr.No.59/12 u/s 457, 380 of IPC, V.K.Puram P.S. Cr.No.94/12 u/s 457, 380 of IPC, Perumalpuram PS Cr.No.581/12 u/s 379 of IPC, Radhapuram PS Cr.No.27/12 u/s 457, 380 of IPC, Vallioor PS Cr.No.487/12 u/s 457,380 of IPC, Tiruchendur Temple PS Cr.No.82/12 u/s 379 of IPC, Tiruchendur Temple PS Cr.No.83/12 u/s 379 of IPC, Kallidaikurichi PS Cr.No.193/12 u/s 457, 380 of IPC, Veeravanallur PS Cr.No.114/12 u/s 457, 511 of IPC, V.K.Puram P.S. Cr.No.295/11 u/s 457, 511 of IPC, Tiruchendur PS Cr.No.257/12 u/s 379 of IPC, Ambasamudram PS Cr.No.19/12 u/s 457, 511 of IPC, Suttamalli PS Cr.No.2/11 u/s 457, 380 of IPC, V.K.Puram P.S. Cr.No.108/12 u/s 457, 380, 511 of IPC.

b.It is submitted that alleged accused Iyyappan S/o.Ramsubramaniyan is named in previous crimes namely Surandai PS Cr.No.150/13 u/s 387, 506(ii) of IPC, Ambasamudram PS Cr.No.325/11 u/s 294(b), 307,



506(ii) of IPC.

c.It is submitted that alleged accused Chandran s/o.Ponnaiahyan is named in previous crime namely Kalakkad PS Cr.No.364/03 u/s 302, 379 of IPC."

4. The learned Judicial Magistrate, Padmanabhapuram has sent a report in C.C.No.33 of 2015, wherein it has been stated as follows:

"I humbly submit that our Honourable High Court of Madurai Bench in Cr1.O.P.(MD) No.4198/2016 has directed this Court to conduct further enquiry. I further humbly submit that as per the direction of Honourable High Court the accused in C.C.No.33/2015, so far have not appeared and not recalled the NBW pending against them and not executed any bond u/s 88 Cr.P.C. Hence, I could not conduct enquiry against the accused since they have been absconding still now.

Hence I humbly submit that the status of the case is for execution of NBW against the accused. Now the case is posted on 13.05.2016. Thus, I humbly submit my further report before your Honour and humbly seeking your Honours kind solicitation and advice for further enquiry in this case."

5. From the above reports sent by the Judicial Officers, it is apparent that the accused have not complied with the orders of this Court.

6. Mr.S.J.Chakkaravarthy, learned counsel for the petitioners, fairly submitted that he was not in a position to persuade the accused to comply with the order of this Court.

7. Under such circumstances, this Court is of the view that it is not a fit case to show any indulgence to the accused, when they have not bothered to comply with the orders of this Court, especially, when this Court was ready to afford its legal protection to them.

8. In the result, this criminal original petition is dismissed. This Court places on record the services rendered by Mr.Vikrant Patil, IPS, Assistant Superintendent of Police, Thuckalay Sub Division, Kanyakumari District, for conducting a fair and proper enquiry in order to assist this Court. The appreciation may be placed on record in his Service Register. Consequently connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AS)



To

1. The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District

WEB COPY

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. Mr.Vikran Patil, IPS.,
Assistant Superintendent of Police,
Thuckalay Sub Division,
Kanyakumari Division.

+1 CC to Mr.S.J.CHAKKARAVARTHY, Advocate, SR No.21219

Crl.O.P. (MD) No.4198 of 2016
15.04.2016

RR

SH/KBM/SAR-II:06.06.2016:6P/5C