

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Cont.P.No.1368 of 2016

Ekambaram

.. Petitioner

Vs.

1. Mr.T.Gurumoorthy,
Inspector of Police,
D-2 Tiruvalangadu Police Station,
Tiruvallur District.

2. Mr.D.Muthu @ Nelson Muthu

3. Mr.V.V.Kathiresan

4. Mr.D.Ravi

5. Mr.C.Prabakaran

(Respondent No.3 impleaded as per order
dated 19.08.2016 in Sub.A.No.437 of 2016
in Cont.P.No.1368 of 2016)

(Respondents 4 and 5 impleaded Suo Motu
as per order dated 26.10.2016 in Cont.P.No.1368
of 2016)

.. Respondents

Contempt Petition filed under Section 11 of the
Contempt of Courts Act to punish the respondents for
disobeying the order of this Court dated 19.08.2015
granting anticipatory bail in CrI.O.P.No.19626 of 2015.

For petitioner : Mr.Yashod Vardhan, Senior Counsel
for Mr.D.S.Ramesh

For respondents : Mr.Md.Riyaz, Govt. Advocate

Mr.R.Sankara Kutra Lingam for R-3

Mr.S.Angamuthu for R-4

Mr.V.Anand for R-5

R-2 - appeared as party-in-person

ORDER

This Contempt Petition has been filed by the petitioner/de-fact complainant/intervenor, alleging fraud played upon this Court by getting anticipatory bail in CrI.O.P.No.19626 of 2015, dated 19.08.2015 to the second respondent/accused - D.Muthu @ Nelson Muthu.

2. Admittedly, there is suppression of fact with regard to the pendency of the earlier anticipatory bail petition by the accused. On account of the erroneous and wrong statement made by the accused, the counsels are also made as respondents to the contempt proceedings Suo Motu by this Court. On going through the papers, it is found that there is suppression of fact by the accused D.Muthu @ Nelson Muthu, for which the other respondents cannot be blamed. Though the said accused has attempted to take the Court for ride, for which, serious punishment could be imposed in the Contempt Petition, taking note of the judgments of the Apex Court reported in 1995 (3) SCC 757 (Dhananjay Sharma Vs. State of Haryana) and 2000 (2) SCC 367 (Murray and Co. Vs. Ashok KR.Newatia) and a decision of a Division Bench of this Court reported in 1995 (2) LW 556 (Seetharami Reddi Vs. Joseph Vilangadhan), it has to be

held that for making false statements, if found later, the Contempt Petition is maintainable.

3. The petitioner in the Contempt Petition also submitted that the accused has assaulted the victim and the victim was in the hospital/ICU for more than two months and the victim is now no more.

4. The second respondent/accused has obtained an order of anticipatory bail in Crl.O.P.No.19626 of 2015, dated 19.08.2015 in the second petition filed by him, when the first petition filed by him was pending. Suppressing the pendency of the first petition filed by him, the second petition has been filed by him. Only after obtaining anticipatory bail in the second petition, the accused has chosen to withdraw the first petition. When these facts came to the light of the de-facto complainant, he has initiated these Contempt proceedings stating that the second respondent/accused has played fraud upon the Court.

5. After statutory notice in this Contempt Petition, the second respondent/accused appeared before this Court and submitted that he has instructed the original counsel to withdraw the first petition and he has instructed another counsel to file the second petition, despite pendency of the first petition. The second respondent-accused has stated that he has informed the subsequent counsel and in the second anticipatory bail, the counsel did not state that the earlier petition of the accused was filed and the same was pending. Learned counsel who

appeared for the accused, has also been made as a respondent in this Contempt Petition, and he submitted that the first bail petition was pending and the counsel also submitted that had it been brought to his knowledge, he would not have filed the second petition and that he filed the second petition as if it is a regular anticipatory bail petition, and hence, there is no need for him to file a wrong petition.

6. It is better to have a glance of the affidavits fled by the accused and counsel and they would make it clear that the fault is only on the part of the accused, who had tendered unconditional apology and informed the Court that he would not involve in such practice in future. It is worthwhile to quote the relevant portions of the affidavits filed by the accused and counsel, as follows:

Affidavit of Muthu @ Nelson Muthu: (second respondent) dated 29.04.2016:

"2. In view of the said apprehension I have instructed the counsel namely Thiru V.V.Kathiresan to file anticipatory bail in the above case. Accordingly CrI.O.P.No.19487 of 2015 was filed on 08.07.2015 and as the time being consumed and I could not get the result about the anticipatory bail, I instructed the said counsel not to proceed the case and requested to withdraw. Therefore I am under the impression that the counsel has withdrawn the case and I have instructed the present counsel to file the anticipatory bail and the same has been filed on 31.07.2015 in CrI.O.P.No.19626 of 2015 and the same was granted on 19.08.2015. I am not aware of the fact that the earlier filing of anticipatory bail is need to be informed by the present counsel and I have not informed about the earlier O.P. filed before this Hon'ble Court.

3. I further submit that based on the said order myself and other persons are executed sureties before the Judicial Magistrate Court, Tiruttani and complied the conditions imposed thereon. At this juncture the present contempt application was moved by the defacto complainant on the ground that the anticipatory bail order was obtained by playing fraud on Court which is not correct to the best of my knowledge.

4. I respectfully submit that I am a person of agriculturist and the Village Panchayat President of Lakshmivilasapuram and I have no bad antecedents in fact the incident under the present crime number have also took place only due to the dispute over a burial ground for the Village Panchayat. I have no legal knowledge about the Court proceedings and my only endeavour is to get anticipatory bail to avoid threat from the police. Only with a view to get an order of anticipatory bail as expeditiously as possible I have instructed the earlier counsel to withdraw the bail application and instructed the present counsel to file the anticipatory bail.

5. I humbly submit that I have not committed any mistake or fraud intentionally or wilfully and I am tendering my unconditional apology before this Hon'ble Court if any mistake or wrong seems to have committed by me. I further submit that I will not indulge further in any such type of activities at any point of time. Therefore I am seeking indulgence of this Hon'ble Court to pardon me about my innocent act and to drop the proceedings. . . ."

Affidavit of Muthu @ Nelson Muthu: (second respondent) : dated 26.10.2016

"3. I humbly state that when the case has been registered against me along with others, I have apprehension of arrest by the police, therefore I have approached one Mr.Rajkumar belongs to Perambakkam, who introduced Mr.V.V.Kathiresan, Advocate 3rd respondent herein through phone. Thereafter I have explained to Mr.V.V.Kathiresan, Advocate what happened in this case, thereafter he assured that he will get bail for us within 15 days. Therefore I have contacted Mr.V.V.Kathiresan after 15 days but he informed that he is not

in the court due to some other work and further directed me to contact his junior Mr.Prem, accordingly I have contacted him but he replied that our anticipatory bail application has been already dismissed and they will get another Anticipatory bail as soon as possible. Therefore after one week I was called Mr.V.V.Kathiresan, Advocate and he informed that anticipatory bail was granted to me but his junior Mr.Prem informed me that anticipatory bail was not granted to me. Therefore there is contradiction between them and I have confused over their information whether anticipatory bail was granted to me or not.

4. Thereafter again I have contacted Mr.V.V.Kathiresan, Advocate and requested him he need not get any anticipatory bail for me and further requested him to withdraw the case if any filed by him because he has not furnished any true information, whether anticipatory bail has been granted to me or not.

5. I humbly state that I have contacted Mr.Prabakar, Advocate and given all details about the earlier bail petition and he assured to get anticipatory bail for me, accordingly he got anticipatory for me.

6. I humbly state that Mr.V.V.Kathiresan, Advocate has not get any anticipatory bail for me and I have requested him to withdraw the case if any filed by him because of the wrong information given to me as stated above. Therefore I have engaged another counsel Mr.Prabakar to get anticipatory bail and given all details about the earlier bail petition and he got anticipatory bail for me. Therefore I did not commit any contempt of court as alleged by the petitioner herein."

Affidavit of C.Prabakaran: (fifth respondent) : dated: 02.08.2016:

" and the second respondent herein was arrayed as accused in the above case. Therefore I have been instructed to file the anticipatory bail application before this Hon'ble Court in the above mentioned crime number through my feeder advocate Mr.D.Ravi, practising at Thiruthani.

2. I respectfully submit that based on

the said instruction I have filed the Crl.O.P.No.19626 of 2015 for 5 petitioners on 31st July 2015 and the same was ordered by this Hon'ble Court on 19.08.2015. I submit that subsequently the defacto complainant herein have filed the present contempt petition alleging that by suppressing the earlier anticipatory bail petition in Crl.O.P.No.19847 of 2015 was also filed by the same petitioner/the second respondent herein which was pending before this Hon'ble Court. I submit that I have no knowledge about the pendency of the case with regard to the very same petitioner in the same crime number. But my feeder advocate Mr.D.Ravi have stated that he has informed to me about the pendency of the case. Whereas I am unable to recollect under remembrance about the said information. Therefore I have not wilfully and intentionally suppressed any fact about the earlier anticipatory bail petition filed by the second respondent herein. The said mistake have crept due to inadvertence and not by intentional. In any event the said mistake have occurred from my office, therefore I must take the responsibility for the said mistake and I tender my unconditional apology before this Hon'ble Court and I hereby undertake and ensure that I will not indulge in such activities in future."

Affidavit of V.V.Kathiresan (Third respondent) dated 30.09.2016:

"2. I humbly submit that one Mr.Rajkumar from Perambakkam approached me to file the Anticipatory Bail Petition for the Respondent No.2 herein, and, the Respondent No.2 had given the case details to my office to file an Anticipatory Bail Petition before this Hon'ble Court for the alleged offence in Crime No.111 of 2015 on the file of Thiruvelangadu Police Station, Thiruvallur Dist, and also stated that he had already filed the first Anticipatory Bail Petition in Crl.O.P.No.13950 of 2015, which was dismissed by this Hon'ble Court on 29.06.2015.

3. I humbly submit that on the instruction of the 2nd respondent herein, the Anticipatory Bail Petition was prepared detailing the facts and submitting about the dismissal of first Anticipatory Bail petition

and the same was filed before this Hon'ble Court on 08.07.2015, and the same was returned on 15.07.2015, and Re-presented on 28.07.2015. I humbly submit that the Anticipatory Bail Petition was numbered on 28.07.2015 as Crl.O.P.No.19487 of 2015, and the same was listed for hearing on 03.08.2015, and the case was posted to 05.08.2015, 07.08.2015, 18.08.2015, 20.08.2015, 26.08.2015 and 31.08.2015. But during the course of the hearing, we have not received any instruction from the 2nd respondent herein, for that reason, we could not assist this Hon'ble Court, and in the meantime, the Anticipatory Bail Petition was dismissed on 31st day of August 2016. On knowing the same, we have informed about the dismissal to Mr.Rajkumar, who has introduced the 2nd Respondent to us, but, even then we have not received any response or instructions with respect to the same, for that reasons, we could not proceed with the matter.

4. I humbly submit that in the meantime we have received a Contempt Notice from this Hon'ble Court, on receiving the notice and on going through the affidavit filed by the 2nd respondent herein, I came to know the real issue, and the filing of the another Anticipatory Bail, by the 2nd respondent. I further submit that if I had the knowledge of the same, I could have withdrawn the Petition filed by us. I further submit that I had filed the Anticipatory Bail Petition, narrating all the facts and including the dismissal of the previous Anticipatory Bail Petition.

5. I submit that I had acted in a bona fide manner, and at no time in my practice, I had not even thought of wantonly suppressing any materials facts. I further submit that as the 2nd respondent herein is not in direct contact with me, as he was a referred through one Mr.Rajkumar, I do not have or had any communication at all from the 2nd respondent with respect to the withdrawal of Crl.O.P.No.19487 of 2015.

6. I humbly and respectfully submit that I have not committed any mistake or error or suppressed any material facts in respect of the case.

7. I humbly and respectfully submit that I tender and render my unconditional apologies to this Hon'ble Court, and regret, in the

event of any mistake unknowingly occurred/caused by me. I solemnly undertake that I will faithfully obey and follow the Principles and Procedures of Law and maintain the prestige of Advocacy. "

Affidavit of D.Ravi, (fourth respondent), dated 02.08.2016:

.... I tender my unconditional apology before this Hon'ble Court for having been filed the Crl.O.P.No.19626 of 2015. I submit that the 1st respondent police registered a case in Crime No.111 of 2015 for the offences under Sections 147, 148, 448, 294(b), 323 and 506 (ii) of IPC for the alleged offences said to have took place on 06.06.2015 and the second respondent herein was arrayed as accused in the above case. Therefore the second respondent approached me for getting anticipatory bail in the above crime number and he has stated that there is an urgency to get an order of anticipatory bail for him and also he has stated that he had filed application before this Hon'ble Court in Crl.O.P.No.19487 of 2015 and no progress was intimated. Therefore the said application was asked to not to proceed further to his counsel in Crl.O.P.No.19487 of 2015 and therefore he approached me to get the anticipatory bail to him and other persons in the above said crime.

2. I submit that in view of the request of the 2nd respondent I have instructed Mr.C.Prabakaran, Advocate to file anticipatory bail on 30.07.2015. Accordingly the Crl.O.P.No.19626 of 2015 was filed before this Hon'ble Court on 31.07.2015. While so, I have also informed about the filing of the earlier case by the petitioner to Mr.C.Prabakaran, Advocate. But it seems that due to the urgency and inadvertence it was not taken into consideration and filed the anticipatory bail and obtained an order. I have not aware of the happenings before this Hon'ble Court as well as the contempt proceedings initiated by the petitioner herein.

3. I submit that I have not committed any mistake or suppressed any material fact relating to the anticipatory bail. I further submit that the information was through a phone message and no written message has been sent to my referring counsel. Therefore the

mistake would have been occurred by inadvertence and pressure of work. I am tendering my unconditional apology before this Hon'ble Court if any mistake committed by me. . . . "

7. Ultimately, it is a contempt between the Court and the contemnor and the Court may take note of the facts and pass appropriate orders. The action of the accused in not intimating about the factum of pendency of first anticipatory bail petition, by the accused Muthu @ Nelson Muthu, in the subsequent petition, cannot be taken lightly. From the affidavits filed by the accused D.Muthu @ Nelson Muthu, narrating the events, as quoted above, it is clear that the accused was aware of both the CrI.O.Ps. and he has not evinced any interest to instruct or ensure about the pendency of the earlier anticipatory bail petition, which was not mentioned in the subsequent anticipatory bail petition. Hence, the accused has to be punished to pay costs of Rs.2,500/-, failing which, he should have been directed to undergo simple imprisonment for a period of two days. Though this Court could have remanded him to prison, and that if no punishment is imposed, it would give a wrong signal to the public that any person can take the Court for a ride, and in order to give him an opportunity to correct himself, while holding him guilty for committing contempt of Court, in order to admonish the accused, this Court, instead of directing the accused to pay costs, directs the

said accused D.Muthu @ Nelson Muthu (second respondent herein), to buy and distribute the book "Thirukkural" with short meanings in Tamil, to fifty school students of the two schools which are stated to be in his area, within one month from the date this order copy is made ready.

8. The presence of the other respondents is dispensed with in the Contempt Petition.

9. With the above observations and direction, the Contempt Petition is closed.

10. Post the Contempt Petition under the caption "for reporting compliance" on 26.04.2017 at 2.15 p.m., on which date, the accused D.Muthu @ Nelson Muthu shall appear before this Court to inform the Court about the compliance of the above direction.

SD/-

JOINT REGISTRAR(OS)

CS

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

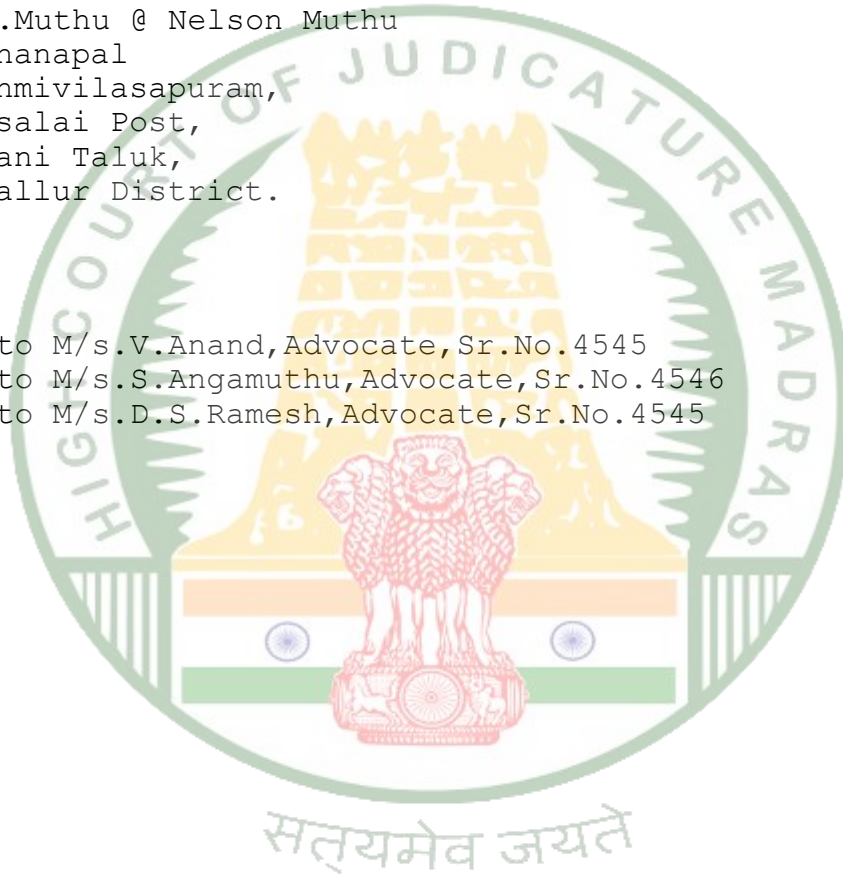
from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

SS/CO/20/04/2017

Copy to:

- 1.Mr.T.Gunamoorthy
The Inspector of Police,
D-2 Tiruvalangadu Police Station,
Tiruvallur District.
- 2.The Public Prosecutor, High Court, Madras.
3. Mr.D.Muthu @ Nelson Muthu
S/o.Dhanapal
Lakshmivilasapuram,
Pagasalai Post,
Tirutani Taluk,
Tiruvallur District.

one cc to M/s.V.Anand,Advocate,Sr.No.4545
one cc to M/s.S.Angamuthu,Advocate,Sr.No.4546
one cc to M/s.D.S.Ramesh,Advocate,Sr.No.4545



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