



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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Cr1.O.P.(MD)No.13191 of 2017

S.Raja Poorna Chandran

... Petitioner

Vs.

The Inspector of Police,
Thirunagar Police Station,
Madurai,
in crime No.169/2011

... Respondents

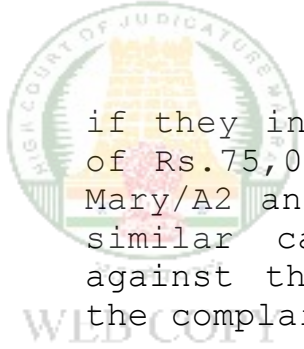
Prayer: Petition is filed under Section 482 of Cr.P.C., to direct the respondent and the learned Judicial Magistrate to commence the Trial in C.C.No.339 of 2013 on the file of the learned Judicial Magistrate No.VI, Madurai, and record all the evidence under Section 299 of Cr.P.C, enabling the petitioner to receive the money deposited in the property Register in R.P.R.No.178 of 2011, on the file of the learned Judicial Magistrate No.VI Madurai and conclude the same within a time prescribed by this Court.

For petitioner	: Mr.M.Gururaj
For respondents	: Mr.K.Anbarasan
	Govt. Advocate (crl.side)

O R D E R

The petitioner has come up with a prayer seeking a direction to direct the respondent and the learned Judicial Magistrate to Commence the Trial in C.C.No.339 of 2013 on the file of the learned Judicial Magistrate No.VI, Madurai and record all the evidences under section 299 of Cr.P.C, enabling the petitioner to receive the money deposited in the property Register in R.P.R.No.178 of 2011, on the file of the Learned Judicial Magistrate No.VI, Madurai and conclude the same within a time prescribed.

2. A perusal of the records would indicate that the petitioner along with his friends is said to have been allegedly cheated by three persons, who were all arrayed as A1 to A3 in Crime No.169 of 2011 on the file of the respondent police for an offence under section 420 of IPC dated 20.04.2011. Earlier one Vivekanandhan/A1 in the instant case had got introduced to the petitioner and his friends as a dealer in gold and had promised to give huge returns,



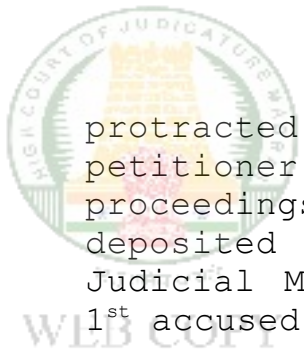
if they invested in gold trade and lured them to part with a sum of Rs.75,00,000/- and escaped along with his wife Brindha @ Rose Mary/A2 and Kevin @ Bejoi/A3. It is also to be noted that eight similar cases were also registered in the respondent police against the same accused persons jointly and severally based on the complaints given by other persons.

3. The respondent police herein having registered the case had taken steps to arrest the accused persons and after a long search the 1st accused had been arrested on 01-05-2011 and the respondent herein had recovered a sum of Rs.1,22,00,000/- and when the 1st accused was being taken, to be produced before the learned Judicial Magistrate, Panaji, he had escaped from the police custody by pushing down the Police officials and speeded away in a car. A case has been registered on the file of the Inspector of Police, Panaji in Crime Number 138/2011 for offences under section 224, 332, 506 (i) IPC, based on the complaint lodged by the then Inspector of Police, Thirunagar, who had headed the team to secure the accused in the case. The incident had taken place just in front of the Panaji, Police station and from then on the 1st accused is at large without even a trace of his existence.

4. Subsequently, the 2nd accused had been arrested and remanded to Judicial Custody, wherein she was remanded in Central Jail (Women), Trichy. On 05-07-2011, when the 2nd accused was an inmate at the Central Prison, Trichy, was admitted in Government Hospital, Trichy for medical treatment, while under the custody of Police in the Government Hospital, the 2nd accused had somehow managed to escape from the judicial custody and a case has been registered in Cr.No.152/2011 on the file of the G.H.Police Station, Woraiyur Circle, for offences under sections 223 and 224 IPC and so far, she is also not secured and nothing is heard about the 1 and 2 accused, who had escaped from the custody under suspicious circumstances.

5. Since the date of Complaint the 3rd accused is not at all traceable and his whereabouts is still a mystery as that of the other 2 accused.

6. Under these Circumstances, the charge sheet has been placed before learned Judicial Magistrate No.VI, in C.C.No.339 of 2013, wherein the accused persons, who face charges for offences under Section 420 r/w 120 IPC are still absconding and proceedings under section 82 Cr.P.C had been initiated and the accused persons 1to 3 in the instant case had been declared as Proclaimed offenders by the Judicial Magistrate No.VI, Madurai and the plight of the petitioner is that nothing had marched with respect to the case ever since 2013 and nothing had turned up. The only ground raised is that the complaint was of the year 2011. The Calendar Cases have been filed in the year 2013 and that there is no progress at all in the criminal case. Therefore, in view of the



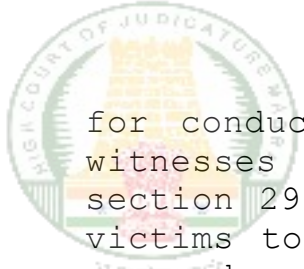
protracted delay in proceeding with the criminal case, the petitioner has filed the petition to expedite the trial proceedings with an intention to recover the money that had been deposited in R.P.R.No.178 of 2011 on the file of the learned Judicial Magistrate No.VI, Madurai, which was recovered from the 1st accused in the instant case.

7. Our Constitution does not expressly declare that right to speedy trial as a fundamental right. The right to a speedy trial was first recognised in the **Hussainara Khatoon's case, AIR 1979 SC 1360**, wherein, the Court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India, subsequently, in a series of judgments, this Court has held that 'reasonably' expeditious trial is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21 of the Constitution of India.

8. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.

9. No doubt that the guarantee of a speedy trial is for the accused persons in all the instances and here in the present state of affairs the petitioner is under grave necessity to record the evidences of the witnesses giving way to the 3rd purpose mentioned supra. The concern given to an accused for speedy disposal is squarely applicable to the victims of like cases of the petitioner herein and the case on hand deserves such attention of this court using its power under section 482 of Cr.P.C.

10. The power possessed by the High Courts under Section 482 of the Code is undoubtedly very wide but it has to be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist, the ends of justice require that the proceedings to be speeded up



for conduction of the Trial by recording the statements of the witnesses in the absence of the accused persons as provided under section 299 of the Code for enabling the petitioner and the other victims to get back their money that had been recovered from the accused persons who had vanished in thin air for more than 7 years where according to section 108 of the Indian Evidence Act, they are presumed to be dead as on this date and the contrary is to be proved by the respondents who had so far not even taken a step forward to secure the accused persons.

11. The money recovered from the accused had been deposited and the same does not warrant to be produced for the trial as the same currency notes are no more available for the proof and the secondary evidence that the money had been recovered from the accused is more than sufficient to prove by the mere production of the deposit details of the money in the bank, in a case reported in **2013 (2) LW (Cr1) 754**, this Court had stated that "*the production of Property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence is permitted in law*", thus in a situation that the exact currency notes that were recovered from the accused is not available holding back the money in bank deposit would no way render justice to the petitioner. The findings of this Court in **2009 (1) MLJ 892**, that "*the Magistrate, while dealing with the petition filed under section 451 of Cr.P.C. for return of Properties, namely Valuable Articles, currency notes and the vehicle, should give effect to the principles and guidelines stipulated by the Hon'ble Apex Court (in the decision in its letter and spirit*", reported in **(2003 (1) CTC 175)**

12. It is evident from the facts of the case that the petitioner and the similarly placed persons in the instant case are having a tough ordeal to get in hand their money that had been recovered from the accused 1st accused immediately after registering the case by the respondent. The petitioners had made several attempts in recovering the money under section 451 of Cr.P.C and the same had been rendered futile only for the reason that there is no evidence as to proof of the money recovered to be that of the petitioner and his friends. It is clear that no specific opportunity had been given to the petitioner and had the accused had not evaded from the clutches of law, it is pertinent that the petitioner would have made out the case in his favour and would have recovered his money, but in the absence of the accused persons the only option available to the petitioner to prove his claim over the money is to record evidences under section 299 of the Cr.P.C. which would enable him to recover his money under section 451 of the code, for which so far only the petitioner and



his friends had been filing petitions over petitions and no other rival claim is made by any of the accused persons or other third parties or by the prosecution.

13. It is to be noted that the petitioner herein has been claiming only for the amount that he had been cheated by the accused and no claim is made with respect to the other jewels or articles that had been recovered from the accused persons. Had the accused persons have other story to narrate over the huge amount recovered from them, would not have escaped from the clutches of law and instead they would have fought for their money and would have defended their case in a fair manner. The mere escapade of the accused stands for their illegitimate attitude towards the case, towards the petitioners, towards this Court and towards the law of the land.

14. This Court finds that the deprivation of a speedy trial in the given circumstances would perish the right of the petitioner to seek for a prayer under section 451 of Cr.P.C to recover his money by set procedure as enunciated by various judgements of this Court and that of the Hon'ble Apex Court in various incidental cases dealt above. The remedy under section 451 of Cr.P.C and a remedy for a speedy trial go hand in hand in the instant case and this Court finds no hurdle in directing the Judicial Magistrate No.VI, Madurai, to record the evidence of the witnesses sponsored by the prosecution and that of the petitioner under section 299 of Cr.P.C in the absence of the accused persons, with in a period of three months from the date of receipt of the copy of this order and pass appropriate orders to disburse the money to the petitioner over the petition filed under section 451 of Cr.P.C. by the petitioner, seeking return of the money deposited in R.P.R.No.178 of 2011 along with the accrued interest by obtaining proper surety bonds for such disbursement to the petitioner and other similarly placed claimants within a period not exceeding 4 weeks from the date of such application made, without necessitating the presence of the accused persons who have been declared as proclaimed offenders.

In the result,

(a) this criminal original petition is allowed.

(b) the learned Judicial Magistrate No.VI, Madurai is directed to record the evidence of the witnesses by the prosecution and that of the petitioner under Section 299 of Cr.P.C in the absence of the accused persons.

(c) the learned Judicial Magistrate No.VI, Madurai to complete the trial proceedings within a period of three months from the date of receipt of a copy of this order.



(d) the learned Judicial Magistrate No.VI, Madurai is directed to pass appropriate orders on the petition filed under Section 451 of Cr.P.C.

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(e) the learned Judicial Magistrate No.VI, Madurai is directed to dispose of the said petition for return of the money deposited in R.P.R.No.178 of 2011 along with the accrued interest by obtaining proper surety bonds for such disbursement to the petitioner and other claimants, within a period of four weeks from the date of filing of such application made by them.

Sd/-

Assistant Registrar (CO)/
Vacation Officer

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate VI,
Madurai.
2. The Inspector of Police,
Thirunagar Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.M.Gururaj, ADVOCATE IN SR No.81324

skn

MK/SV MMS/SAR-4/03.10.2017/6P/5C

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