



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2017

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CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.(MD)No.3369 of 2017

T.Senthil Kumar

... Petitioner/Defacto Complainant

-VS-

1. The Commissioner of Police,
Madurai City.
2. The Inspector of Police,
Anti Land Grabbing Special Cell,
Madurai City.
(Crime No.143/2014)

... Respondents/Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to direct the 1st respondent to reinvestigate the case in Crime No.143 of 2014 by appointing any other competent investigation officer.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondents : Mr.A.P.Balasubramani
Govt. Advocate (Cr1.Side)

O R D E R

This petition has been filed seeking to direct the 1st respondent to reinvestigate the case in Crime No.143 of 2014 by appointing any other competent investigation officer

2. It is the case of Senthil Kumar that sometimes in the year 2010, he was introduced to Subramanian (A1) through one Nagarajan (A3), who represented that Subramanian (A1) is a Power of Attorney Holder in respect of land measuring 1 acre 30 cents in S.No.1057/123 in Murapadam Bathiri and that he is willing to sell the land to prospective purchasers. On the strength of his representation, Senthil Kumar got in touch with Subramanian (A1) and his wife Chitra (A2). Thereafter, Senthil Kumar entered into a sale agreement with Subramanian (A1), which was registered as



Doc.No.3686 of 2010 on 11.10.2010, in which, Nagarajan (A3) had signed as a witness. In the said sale agreement, Subramanian (A1) had agreed to sell the property for Rs.1,47,15,000/- towards which Senthil Kumar is said to have paid Rs.40,00,000/- on 11.10.2010 at the time of registration of the sale agreement. It is further case of Senthil Kumar that so far he had totally paid Rs.92,00,000/- to Subramanian (A1). While so, when Senthil Kumar demanded Subramanian (A1) to register the property in his name, Subramanian (A1) was evading. Senthil Kumar learnt that Subramanian (A1) does not have the title to the property and therefore, he made a search with the official authorities, he learnt that the said property belongs to one K.M.Alavudeen Trust and that Subramanian (A1) had cheated him, as if he is Holder of Power Attorney. Senthil Kumar gave a complaint on 15.07.2014 and since no action was taken, Senthil Kumar had filed CrI.M.P.No.131 of 2014 before the learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Madurai, who had directed the respondent police to register an FIR under Section 156(3) Cr.P.C. Based on the orders of the Magistrate, the respondent police registered a case in Crime No.143 of 2014 on 27.12.2014 under Sections 120(b), 406 and 420 IPC against Subramanian (A1), Chitra (A2) and Nagarajan (A3). The 2nd respondent conducted investigation in Crime No.143 of 2014 and after a long lapse of two years, filed a closure report dated 22.09.2016. After serving the same on Senthil Kumar, the said closure report has also been filed before the learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Madurai. Aggrieved by the closure report, Senthil Kumar is before this Court for setting aside the closure report and for ordering reinvestigation.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side).

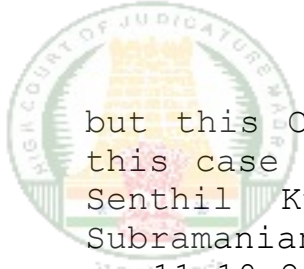
4. Learned counsel for the petitioner contended that this Court has wide powers to order further investigation, re-investigation and denova investigation and this is a fit case in which this Court can exercise its powers. In support of this contention, he placed strong reliance on the judgment of a Single Judge of this Court in **G.Rajkumar vs. The State [CrI.R.C. (MD) No.183 of 2015] decided on 29.04.2015.**

5. Per contra, learned Government Advocate (CrI.Side) refuted the contention.

6. This Court gave its anxious consideration to the rival submissions.

7. This Court does not have any quarrel with the proposition of law decided on the power of this Court to order further investigation, re-investigation and denova investigation,

<https://hcservices.ecourts.gov.in/hcservices/>

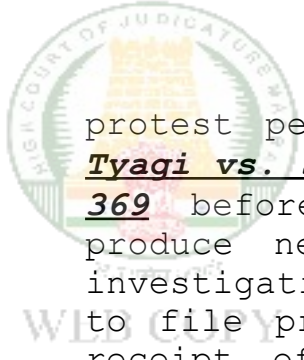


but this Court should have to see whether the facts obtaining in this case warrants such an order. In this case, even according to Senthil Kumar, he had entered into a sale agreement with Subramanian (A1), which has been registered as Doc.No.3686 of 2010 on 11.10.2010. At the time of entering into the sale agreement, a duty is cast upon Senthil Kumar to verify the title and other documents on the principle of caveat emptor. Even in the complaint that forms the basis for FIR, Senthil Kumar has stated that Subramanian (A1) was only a Power of Attorney Holder in respect of the said land, but has not stated as to who is the Principal. This Court is unable to fathom as to how a purchaser of a property would not have even cared to find out who the Principal is before entering into a sale agreement with the Power of Attorney Holder. That apart, the complaint does not disclose as to the date on which the said sum of Rs.92,00,000/- were paid by Senthil Kumar to Subramanian (A1). The Police have closed the investigation on the ground that Senthil Kumar did not supply the necessary documents for the Police to conduct investigation. Therefore, in the absence of materials, they had closed the case as action dropped. They have not given a finding that no offence has been committed in the transaction, but have only closed the case on the ground that Senthil Kumar failed to co-operate with the Police for investigation.

8. Learned counsel for the petitioner submitted that Police ought not to have closed the case on this ground, because they have sufficient means to call for records in the manner known to law. In this regard, he placed strong reliance on the judgment of this Court stated supra. The facts of the case in that judgment differs from the one obtaining in this case. In that case, the allegation was that the accused forged the signature of the defacto complainant therein and had submitted a letter to the Collegiate Department and had obtained certain orders from the authorities surreptitiously. In that context, learned Single Judge has stated that the Police cannot close the case as action dropped for want of documents, as the Police could have easily obtained the same from the Collegiate Department.

9. In this case, a duty is cast upon Senthil Kumar to produce all the necessary records that are relevant for the investigation to go on, like the date on which he paid the amount and the copy of the sale agreement dated 11.10.2010 etc. In the absence of these records, the Police had no option, but to close the petition as action dropped and that cannot be faulted.

10. In the facts and circumstances of the case, even assuming that there are loose ends, the judicial conscience of this Court does not permit the setting aside of the order of closure and for transfer of investigation to any other agency. Now, closure report has been filed before the jurisdictional Magistrate and it is open to Senthilkumar to file



protest petition in accordance with the law laid down in **Vinay Tyagi vs. State of U.P. and others**, reported in **Laws (All)-2010-8-369** before the learned Magistrate. Senthil Kumar shall also produce necessary documents and make out a case for further investigation. Therefore, this Court grants leave to Senthil Kumar to file protest application within four weeks from the date of receipt of a copy of this order before the learned Judicial Magistrate, Special Court for Anti Land Grabbing Cases, Madurai and on such application being filed, the same shall be considered in the light of the law laid by the Hon'ble Supreme Court in **Vinay Tyagi vs. State of U.P. and others**.

With the above observation and direction, this petition is disposed of.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate,
Special Court for Anti Land Grabbing Cases,
Madurai.
2. The Commissioner of Police,
Madurai City.
3. The Inspector of Police,
Anti Land Grabbing Special Cell,
Madurai City.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Karuppasamy Pandiyan, Advocate Sr.No.50465

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