



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2017

CORAM:

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

CrI.O.P.(MD)No.22347 of 2016
and
CrI.M.P(MD)Nos.11630 of 2016

Sundari Annadurai Selvan

: Petitioner

vs.

1.The Principal Secretary,
Home Department (Courts),
Secretariat,
Chennai.

2.The Director General of Police,
Office of DGP, Santhome High Road,
Law and Order,
Chennai.

3.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

4.The Inspector of Police,
Srivilliputhur Town P.S.
Srivilliputhur Sub Division,
Srivilliputhur,
Virudhunagar.(Crime No.121/2007)

5.The Special Public Prosecutor,
VI Additional Sessions Court,
Madurai,
in charge of SC 375/2013

: R1 to R5/Respondents

6.Murugesaraja @ Rayagiri Murugesan

7.Mariappan

8.Madasamy @ Thangaraj @ Arakkan @ Karuvayan

9.Ravikumar @ Naicker Ravi @ Naina Ravi

10.Vairam @ Vairamuthu

11.Ramar

12.Murali

13.Inbathamilan

14.Veera @ Veeraselvam

<https://hcservices.asanots.in/gates/>

16.Thangamangkani

17.Kannan @ Minnal Kannan

: R6 to R17/A1 to A12



(RR-6 to 17 impleaded as per Order of the Court in CrI.MP(MD) No.12177/2016 in CrI.OP(MD)No.22347/16, dated 9.12.2016)

Prayer: This petition is filed under Section 482 of Cr.P.C., to direct the 5th respondent to take necessary steps to call for the video recordings collected by the 4th respondent during investigation in respect of the statement of witnesses and to recall PW1 to 8, 20, 21, 31 and 47 for effective cross examination in pursuance of direction of this court in CrI.O.P(MD) No.7331 of 2015, dated 10.12.2015.

For Petitioner : Mr.Veera Kathiravan
Senior counsel
for Mr.G.Mariappan

For R1 to R4 : Mr.A.P.Balasubramani
Government Advocate (CrI. side)

For 5th respondent : Mr.Kamalendran,
Special Public Prosecutor

For R6 to R11 and R17 : Mr.S.Palanivelayutham

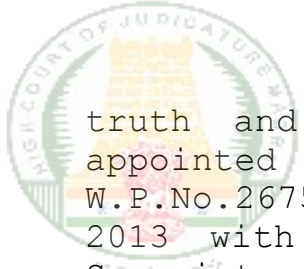
For 12th Respondent : Mr.V.Kathirvelu
Senior Counsel for Mr.K.Prabhu

For 13th respondent : Mr.A.Thiruvadi Kumar
For R14 to R16 : Mr.M.Sarangan

O R D E R

This petition is filed to direct the 5th respondent to take necessary steps to call for the video recordings collected by the 4th respondent during investigation in respect of the statement of witnesses and to recall PW1 to 8, 20, 21, 31 and 47 for effective cross examination in pursuance of direction of this court in CrI.O.P(MD)No.7331 of 2015, dated 10.12.2015.

2.Mr.Veera Kathiravan, learned Senior counsel appearing for the petitioner would submit that a case in Crime No.121 of 2007 was registered by the 4th respondent police and charge sheet was filed under sections 147, 148, 302, 307, 379, 109, 120(B), 149 and 212 IPC and the case was committed to the Principal Sessions Judge, Srivilliputhur, in S.C.No.150 of 2008 and subsequently, it was transferred to the 1st Additional Sessions Judge, Madurai and renumbered as S.C.No.375 of 2013 and the same is pending for adjudication. It is further submitted that the Accused 8 to 11 are persons in that area and they are having political reputation and thereby creating apprehension and fear in the minds of witness, which will prevent them from deposing the



truth and that in this case, Special Public Prosecutor was appointed for conducting a trial and that the petitioner filed W.P.No.2675 of 2014 to entrust the case pending in S.C.No.375 of 2013 with the higher police officers not below the rank of Superintendent of Police, Virudhunagar District, for the purpose of assisting the 5th respondent in conducting the prosecution and the same was disposed of directing the Superintendent of Police, Virudhunagar to monitor the prosecution and he is also directed to depute a Deputy Superintendent of Police to attend the trial proceedings and that CrI.O.P(MD)No.7331 of 2015 was filed for a direction to initiate appropriate proceedings against the witnesses in S.C.No.375 of 2015 to punish them under the relevant process of law Court for committing perjury and that the previous Special Public Prosecutor who was earlier appointed had resigned from his post for some reasons and thereafter, the 5th respondent was appointed on 03.10.2016 and after the appointment of the 5th respondent, PW47 was examined and the case was posted for questioning the accused under Section 313 of Cr.P.C. and now, PW1 to PW8, who are the occurrence witnesses and injured witness had not supported the prosecution case and they were declared hostile and that in this case, the Investigation Officer had recorded all the statements of the above witnesses by videography method and they are keeping in their documents in their custody. Hence, the petitioner has come forward with this court seeking the relief as stated above.

3.The Government Advocate (Criminal side) appearing for the respondents 1 to 4 would submit that during trial, witnesses were examined and some of the witnesses turned hostile and some of the witnesses spoken to the prosecution and the Special Public Prosecutor has conducted the case properly and it is further contended that no video clippings supplied to the petitioner and there is no material available to show that there is statement to that effect and no video copies were supplied to the respondents/accused and that this petition is filed only to drag on the trial and hence, he prayed for the dismissal of the petition.

4.The learned Special Public Prosecutor appearing for the 5th respondent would submit that the Special Public Prosecutor diligently prosecuting the case with a proper care, according to the evidence and statements recorded on the side of the prosecution and hence, the petition filed by the petitioner has to be dismissed.

5.The learned counsel appearing for the respondents 6 to 12 would submit that in this case, most of the witnesses were examined and the case was posted for questioning the accused under Section 313 of Cr.P.C. and now, at this stage, the petition filed by the petitioner is not at all maintainable and they prayed for the dismissal of the petition.



6. It is seen from the records that Crime No.121 of 2007 was filed by the 4th respondent police and charge sheet was filed before the Judicial Magistrate, Srivilliputhur and the case was taken on file as S.C.No.150 of 2008 by the Principal Sessions Judge, Srivilliputhur and subsequently, on application of the petitioner, the case was transferred to the 1st Additional District Judge, Madurai, and the case was renumbered as SC No.375 of 2013.

7. It is also admitted on either side that in this case, Special Public Prosecutor was appointed for conducting a trial. Subsequently, the present petitioner filed another writ petition in W.P(MD)No.2675 of 2013 before this court to entrust the case pending in S.C.No.375 of 2013 in Crime No.121 of 2007 with a higher police officer not below the rank of Superintendent of Police for the purpose of assisting the 5th respondent in conducting the prosecution. In that petition, this court has passed order, dated 07.03.2014, which reads as follows:-

4. Considering the submissions made by both sides, this court is constrained to direct the Superintendent of Police, Virudhunagar, Virudhunagar District, to monitor the prosecution and he is also directed to depute a Deputy Superintendent of Police to attend the trial proceedings.

8. In this case, on the side of the prosecution, PW1 to PW28 were examined before the 1st Additional District Judge, Madurai, in S.C.No.375 of 2013. Further, it is admitted that PW1 to PW8 turned hostile, including the injured witnesses. The present petitioner also filed CrI.O.P(MD)No.7331 of 2015, to direct the respondents 3 to 5 to initiate appropriate proceedings against the witnesses in S.C.No.375 of 2013 on the file of the 1st Additional Sessions Court, Madurai, to punish them under the relevant process of law and this court passed an order, dated 10.12.2015, which reads as follows:-

"8. A careful scrutiny of the affidavit and other documents would disclose that a criminal case has been pending in Crime No.121 of 2007 and at the instance of the petitioner, numerous petitions were filed for appointment of Special Public Prosecutor and for transfer of the case. At last, the case has been transferred to the file of 1st Additional Sessions Court, Madurai on the orders of this Court and the trial of the case is on its regular way. While so, the petitioner has filed this petition, for initiation of action against the witnesses owing to withdrawal of their previous statements in



respect of the case in S.C.No.375 of 2013, pending on the file of 1st Additional Sessions Court, Madurai, under Section 195 r/w 340 Cr.P.C.

9. The Hon'ble Supreme Court in the case of Iqbal Sing Marwah and another vs. Meenakshi Marwah and another, reported in (2005) 4 SCC 370, has made it very clear that the course of making complaint regarding commission of an offence referred to under Section 195(1)(b) will have to be adopted only if the interest of justice requires and not in every case. The relevant observation made in the judgment is extracted as under:

"23. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.



24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b) (ii)."

10. If the contention of the petitioner is accepted, then there is likelihood of Sessions case getting prolonged indefinitely. Moreover, the commission of offence for perjury to misguide the Court will be unearthed only at the end of the trial. It is not the real spirit of the legislature that each and every witness, who turns hostile or gives different versions, has to be punished under the penal provisions of law. In case the submission of the petitioner is accepted, there is every possibility of the accused coming forward with the similar petition and in that event, there could be no finality



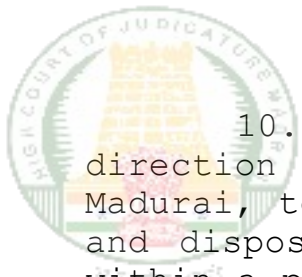
attained in the real issue and there will certainly be a total chaos and confusion in the administration of the justice. As held by the Hon'ble Supreme Court, only after the final verdict, action could be initiated against the witnesses, who give false statements during Trial and therefore, I find that there is no substance in the contention raised by the petitioner.

11. Hence, I am not inclined to grant the relief sought by the petitioner and the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

12. However, this Court expects the Trial Court to conduct the case on day today basis and expedite the Trial so as to bring the issue to a logical end as expeditiously as possible. The Trial Court shall not adjourn the matter beyond five working days at any point of time.

13. It is pertinent to mention that the Special Public Prosecutor has been appointed by the Government at the request of the petitioner to conduct the trial without any favour or bias and it is the bounden duty of the Special Public Prosecutor to unravel the real truth at the time of cross-examination, act impartially and present the full facts, witnesses and evidence before the Court to enable the Court to decide the issue. Whenever the witnesses turn hostile, the petitioner also cannot say that they give contrary statement in the cross examination against the one given earlier under Section 164 Cr.P.C., as the same falls within the wisdom of the Special Public Prosecutor to elucidate the real truth from the mouth of the witnesses, who turn hostile, through his/her vast experience, during the cross examination."

9. In view of the above circumstances, this court is of the considered view that the petitioner has taken diligent steps in conducting the case. In this case, on reading of the entire materials, there is no iota of material available to show that the statements were recorded from the witnesses in the presence of video, by the Investigation Officer. Further, the petition filed by the petitioner is a belated one and hence, this court is of the view that the present petition filed by the petitioner is not at all maintainable in law. Hence, the relief sought for by the petitioner cannot be granted at this later stage.



10. In the result, this petition is dismissed with a direction to the I Additional District and Sessions Judge, Madurai, to post the case in S.C.No.375 of 2013 on day today basis and dispose of the same, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order and report the same to the Registry without fail. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To,

1. The 1st Additional District and Sessions Judge,
Madurai.
 2. The Principal Secretary,
Home Department (Courts),
Secretariat,
Chennai.
 3. The Director General of Police,
Office of DGP, Santhome High Road,
Law and Order,
Chennai.
 4. The Superintendent of Police,
Virudhunagar,
Virudhunagar District.
 5. The Inspector of Police,
Srivilliputhur Town P.S.
Srivilliputhur Sub Division,
Srivilliputhur,
Virudhunagar.
 6. The Special Public Prosecutor,
VI Additional Sessions Court,
Madurai, (in charge of SC 375/2013)
- +One cc to Mr.A.Thiruvadikumar, Advocate, SR.No.15322
+One cc to Mr.G.Mariappan, Advocate, SR.No.14793
+One cc to Mr.S.Palanivelayutham, Advocate, SR.No.15684
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RL/10C/8P/SKN/RSK/SAR3/23.3.2017

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15.03.2017