

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

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

Cont.P.No.2307 of 2017

Raja .. Petitioner

vs.

Sardar
Inspector of Police
Kanakammachatram Police Station
Tiruttani Taluk
Thiruvallur District. .. Respondent

Contempt Petition filed under Section 11 of Contempt of the Courts Act, 1971 to punish the respondent for wilful disobedience of the order dated 19.07.2017 passed in Crl.O.P.No.2358 of 2017.

For petitioner

Mr.C.D.Johnson
for Mr.R.Ramesh

For Respondent

Mr.C.Raghavan
Govt. Advocate [Crl.Side]

ORDER

This petition has been filed to punish the respondent for disobeying the order dated 19.07.2017 passed by this Court in Crl.O.P.No.2358 of 2017.

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2. On the complaint lodged by Raja, the petitioner herein, the respondent police registered a case in Cr.No.476 of 2016 on 11.10.2016 under Sections 147, 148, 341, 294(b), 324 and 307 IPC against Jothy, S/o Subramani [A1], Venkatesan, S/o Subramani [A2] and Manikandan, S/o Venkatesan [A3] and took up investigation of the case. Apprehending arrest, Jothy [A1] and Manikandan [A3], along with 12 others,

filed CrI.O.P.No.23361 of 2016 for anticipatory bail, in which, this Court granted them anticipatory bail on 09.11.2016 on condition that they should surrender before the Judicial Magistrate, Tiruttani within 15 days from the date of receipt of a copy of the order and execute a bond for Rs.10,000/- each with two sureties and thereafter, appear before the Magistrate everyday at 10.30 a.m. until further orders.

3. On the complaint given by Venkatesan [A2] in Cr.No.476 of 2016, the respondent police registered a case in Cr.No.475 of 2016 under Sections 147, 148, 294(b), 324 and 307 IPC against V.M.Venkateshwaran [A1], Pichamuthu [A2], Raja [A3]/de facto complainant in Cr.No.476 of 2016 and took up investigation of the case. Thus, there are two cases, viz., Cr.Nos.475 and 476 of 2016 that were taken up for investigation.

4. Raja, the de facto complainant in Cr.No.476 of 2016 filed CrI.O.P.No.2358 of 2017 for cancellation of the anticipatory bail granted to Jothy [A1], Manikandan [A3] and 12 others on the short ground that they had not surrendered before the Judicial Magistrate, Tiruttani, in compliance with the earlier order dated 09.11.2016.

5. This Court, called for a report from the Judicial Magistrate, Tiruttani. The Judicial Magistrate, Tiruttani sent a report dated 14.07.2017 stating that only Jothy [A1] and Manikandan [A3] surrendered and furnished sureties and the other 12 accused did not surrender. Recording the same, this Court disposed Crl.O.P.No.2358 of 2017 on 19.07.2017 by issuing the following directions:

"7. Recording the same this petition is closed with further direction to the Judicial Magistrate, Tiruttani, to take action for cancellation of bail against those of the accused who are not complying with the orders passed by this Court in Crl.O.P.No.23361 of 2016 dated 09.11.2016, as if the bail has been granted by learned Judicial Magistrate, Tiruttani, in terms of the law laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560]**."

6. In view of the above directions, the Judicial Magistrate, Tiruttani, has passed the following docket order:

"Order of Hon'ble High Court at Madras dated 09.11.2016 in Crl.O.P.No.23361 of 2016 not complied with by petitioners 4, 6 to 15 in Cr.O.P.No.2358 of 2017. Hence, issue non bailable warrant as against petitioners 4, 6 to 15 in Cr.O.P.No.2358 of 2017 as per the direction of Hon'ble High Court at Madras in Crl.O.P.No.2358 of 2017 order dated 19.07.2017."

7. Under such circumstances, Raja is before this Court alleging that Mr.Sardar, the Inspector of Police, Kanakammachatram Police Station has committed civil contempt by not executing the Non-Bailable Warrant issued by the Judicial Magistrate, Tiruttani. This Court issued notice to

Mr.Sardar on 16.04.2018 to appear before this Court in person and on 19.06.2018, he appeared.

8. Mr.Sardar has filed an affidavit explaining the reasons for not arresting the 12 persons against whom Non-Bailable Warrant had been issued by the Judicial Magistrate, Tiruttani and who were the petitioners before this Court in Crl.O.P.No.23361 of 2016. It may be relevant to extract paragraph nos.7 to 10 of the affidavit dated 18.06.2016 filed by Mr.Sardar, the Inspector of Police.

"7. I submit that based on the order in Crl.O.P.No.2358 of 2017 dated 19.07.2017 passed by this Hon'ble Court, the learned Judicial Magistrate, Tiruttani issued warrant against the remaining 11 accused on 26.09.2017. I also submit as per my investigation I have not mentioned the 11 others as accused and also no material was unearthed against the 11 others during investigation.

8. I submit that during investigation, the petitioner/Raja had filed a direction petition before this Hon'ble Court in Crl.O.P.No.14568 of 2017 in Crl.M.P.No.9296/2017 seeking prayer to transfer the investigation in Cr.No.476/2016 from the 4th respondent to any other IPS officer or any other agency.

"The said direction petition was allowed and directed to be transferred to some other investigating officer not less than the rank of Deputy Superintendent of Police, Tiruvallur. Such investigating officer shall be appointed by the 2nd respondent/Inspector General of Police, St.Thomas Mount, North Zone, Chennai."

9. I submit that, based on the order of this Hon'ble Court dated 23.10.2017, the Superintendent of Police directed the Additional Superintendent of Police, Tiruvallur Head Quarters, Tiruvallur District for conducting further investigation of this case on 23.11.2017. Accordingly the said case

in Crime No.476 of 2016 and 47 of 2017 was taken by the Additional Superintendent of Police, Tiruvallur Head Quarters, Tiruvallur District for further investigation. During the course of his investigation, the Additional Superintendent of Police has arrested one more accused by name Tirumalai on the basis of eye witness and also witnesses statements. After completion of his detailed and elaborated investigation, he fixed only 4 accused viz., Jothi, Manikandan, Venkatesan and Thirumalai in Crime No.476 of 2016 and dropped action Crime No.47 of 2017. Subsequently, he sent a requisition to Deputy Director of Prosecution, Kancheepuram for draft and approval.

10. I submit that as far as the allegations made in para No.2 is concerned, after completion of detailed and elaborate investigation conducted by the Additional Superintendent of Police, Tiruvallur District, he concluded that there only 4 accused were arrayed as an accused in this case and none of other accused involved in this case as alleged by the petitioner in this petition."

9. On a careful reading of the affidavit of Mr. Sardar, it is seen that on the petition filed by Raja in Crl.O.P.No.14568 of 2017, this Court had transferred the investigation in Cr.No.476 of 2016 to the Additional Superintendent of Police, Tiruvallur Head Quarters for further investigation. The Additional Superintendent of Police has arrested one accused by name Thirumalai, who is petitioner no.6 in Crl.O.P.No.23361 of 2016 and who had not surrendered before the Judicial Magistrate, Tiruttani and against whom, the Judicial Magistrate, Tiruttani has issued Non-Bailable Warrant. However, the Additional Superintendent of Police had come to the conclusion that except Jothy, S/o Subramani [A1], Venkatesan, S/o Subramani [A2], Manikandan, S/o Venkatesan [A3] and Thirumalai, others were not involved

in the offence in Cr.No.476 of 2016 and he has accordingly, completed the investigation and dropped action against others.

10. Mr.C.D.Johnson, took serious exception to Mr.Sardar filing the counter affidavit, when admittedly, he is not the investigating officer in Cr.No.476 of 2016. In the contempt petition, Mr.Sardar has been shown by name as the alleged

contemnor and this Court had taken cognizance on the contempt application and had issued statutory notice to Mr.Sardar. When once statutory notice is issued by this Court, it becomes the duty of Mr.Sardar to explain all the facts and circumstances of the case. This contempt petition could have been dismissed by this Court on the short ground that since the investigation has been changed from the file of the Inspector of Police to the file of the Additional Superintendent of Police, Mr.Sardar could not have been held guilty of civil contempt.

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11. Be that as it may, in **M.C.Abraham vs. State of Maharashtra [(2003) 2 SCC 649]**, the Supreme Court has held that even if anticipatory bail of an accused is dismissed, it does not mean that he should have to be arrested by the police. In **Joginder Kumar vs. State of Uttar Pradesh [(1994)**

4 SCC 260], the Supreme Court has held that the power of the arrest is one aspect and the exercise of the power is yet

another aspect. In this case, just because 11 persons whose name did not figure in the FIR apprehending arrest got anticipatory bail from this Court and if, later on, they felt that they will not be made as accused in the case and on account of that, if they did not surrender and execute the bond, they cannot be arrested as a matter of routine. When a person is arrested, his right under Article 21 is first infringed, though in the manner known to law. Therefore, this Court does not find that the police have committed any act of contempt by not arresting those 11 persons despite the warrant issued by the Judicial Magistrate, Tiruttani. At the most, the police could have filed a closure report before the Judicial Magistrate, Tiruttani, explaining to the Magistrate that they have dropped action against those 11 persons, in which event, the Magistrate would have withdrawn the Non-Bailable Warrant.

12. Mr.C.D.Johnson, submitted that this Court should protect the Judicial Magistrate, Tiruttani, by punishing the alleged contemnor for not executing the warrant against 11 persons. The institution of Court is intended to protect the rights of the common man against tyranny of the State. In fact, the police requires appreciation for withstanding the pressure and not executing the warrant blindly by arresting the 11 persons, who in their opinion were not involved in the offence. It would have been a travesty of justice to force the police to arrest innocent persons on threat of contempt action. Contempt is a matter between the Court and the

contemnor and cannot be used as a tool to settle private vendetta.

In the result, this contempt petition is closed and the alleged contemnor is discharged.

SD/

ASSISTANT REGISTRAR (COMM. CASES)

gms

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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One CC to Mr.R.Ramesh, Advocate, SR.9597



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