

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

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

CrI.O.P.No.15268 of 2018

T.S. Krishnan

.. Petitioner

vs.

1 V. Patrick Kennady

2 The Inspector of Police
B-3, St. George Fort Police Station
Chennai

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to the Magistrate for payment out of the sum of Rs.4 lakhs with interest now lying in Court deposit to the credit of Cr. No.34 of 2016 to the petitioner/de facto complainant.

For petitioner : Mr.G.Radhakrishnan

For R1 : Mr.J.Vivekanandhan
(Enrolment No.325 of 2014)

For R2 : Mr. C. Iyappa Raj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking the following prayer:

"a direction to the Magistrate for payment out of the sum of Rs.4 lakhs with interest now lying in Court deposit to the credit of Cr. No.34 of 2016 to the petitioner/de facto complainant."

2 For the sake of convenience, the parties are referred to by their name.

3 On the complaint lodged by Krishnan, the petitioner herein, the second respondent police registered a case in Cr. No.34 of 2016 on 13.03.2016 under Section 420 IPC against Patrick Kennady, the first respondent herein.

4 It is alleged by Krishnan that Patrick Kennady represented that he knows some Ministers in the Secretariat and that he would get employment in the Education Department for the son of Krishnan's friend. Believing the said representation, Krishnan is said to have parted with a sum of Rs.8.50 lakhs. However, Patrick Kennady failed to keep up his word. When Krishnan started pressurising Patrick Kennedy, the latter is said to have repaid Rs.1.49 lakhs. Thus, a sum of Rs.7.01 lakhs is due from Patrick Kennady to Krishnan.

5 Patrick Kennady filed Crl.O.P. No.4201 of 2016 under Section 438 Cr.P.C. for anticipatory bail, in which, this Court granted him relief on 06.04.2016 on condition that he should deposit Rs.4 lakhs to the credit of Cr. No.34 of 2016 before the VII Metropolitan Magistrate, George Town, Chennai. Accordingly, Patrick Kennady deposited Rs.4 lakhs. Krishnan filed Crl.M.P. No.1842 of 2016 under Section 451 Cr.P.C. before the VII Metropolitan Magistrate, George Town, Chennai, for disbursal of Rs. 4 lakhs to him, which was dismissed by the Magistrate, aggrieved by which, Krishnan filed Crl.O.P. No.20875 of 2016 before this Court. This Court, by order dated 16.09.2016 in Crl.O.P. No.20875 of 2016, issued the following direction:

"6. This Court does not find any infirmity in the order passed by the VII Metropolitan Magistrate, George Town, Chennai. However, it is open to the petitioner to file a miscellaneous petition in Crl.O.P.No.4201 of 2016, praying for a direction to this Court for disbursement of Rs.4,00,000/- (Rupees Four lakhs only) to him and workout his remedy in the manner known to Law. Until then, the VII Metropolitan Magistrate, is directed to invest the sum of Rs.4,00,000/- (Rupees Four lakhs only) in a fixed deposit account in a Nationalised Bank, so that, the money could accrue some interest instead of money lying idle in the treasury."

6 Krishnan is once again before this Court with the above prayer.

7 On notice, Patrick Kennady is present before this Court and is represented by Mr. J. Vivekanandan (Enrolment No.325 of 2014).

8 The learned Additional Public Prosecutor appearing for the second respondent State submitted that the investigation in Cr. No.34 of 2016 has been completed; charge sheet has been filed before the VII Metropolitan Magistrate in C.C. No.1558 of 2018 against Patrick Kennady; Patrick Kennady has appeared before the Trial Court; charges have also been framed against

him and the case is posted for trial on 28.08.2018.

9 The learned counsel for Patrick Kennady submitted that the sum of Rs.4 lakhs is a disputed amount and that it should not be disbursed to Krishnan before the culmination of trial, in which submission, this Court finds force.

10 Hence, this Court cannot direct disbursement of Rs.4 lakhs to Krishnan at this juncture.

11 In the final report, the prosecution have cited the names of only nine witnesses. Considering the facts and circumstances of the case, this Court directs the VII Metropolitan Magistrate, George Town, Chennai, to complete the trial in C.C. No.1558 of 2018 within a period of six months from the date of receipt of a copy of this order. Patrick Kennady shall cooperate with the Trial Court by cross-examining the witnesses on the date they are examined in chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab [(2015) 3 SCC 220]. If Patrick Kennady adopts any dilatory tactics, the Trial Court can remand him to custody in the light of the law laid down by the Supreme Court in State of Uttar Pradesh v. Shambhu Nath Singh [JT 2001 (4) SC 319]. If Patrick Kennady absconds, a fresh FIR can be registered against him under Section 229-A IPC.

12 After the culmination of the trial, depending upon its outcome, the sum of Rs.4 lakhs, along with interest, may be disbursed either to Krishnan or Patrick Kennady, as the case may be, by the VII Metropolitan Magistrate, George Town, Chennai, irrespective of the parties filing an appeal.

This Criminal Original Petition stands disposed of in the above terms.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The VII Metropolitan Magistrate
George Town, Chennai
2. -do-Thro' Chief Metropolitan Magistrate,
Chennai.

3. The Inspector of Police
B-3, St. George Fort Police Station
Chennai

4 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.J.Vivekanandhan, Advocate, S.R.No.53815
+1cc to Mr.G.Radhakrishnan, Advocate, S.R.No.36388

Cr1.O.P. No.15268 of 2018

CP(CO)
CS/16/08/18



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