

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.08.2018

PRONOUNCED ON: 31.08.2018

CORAM:

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

Crl.O.P. No.18924 of 2018 & Crl.M.P. No.9978 of 2018

D. Pandiraj

Petitioner

vs.

State represented by
the Deputy Superintendent of Police
CB-CID
Chennai

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking an order to transfer the investigation pertaining to Cr. Nos.6 and 595 of 2015 pending on the file of the respondent to the Central Bureau of Investigation, Chennai.

For petitioner Mr. A.V. Somasundaram

For respondent Mrs. M. Prabhavathi
Additional Public Prosecutor

For proposed Mr. N. Chandrasekaran

Intervener for Mr. V. Jayachandran

ORDER

This Criminal Original Petition has been preferred seeking an order to transfer the investigation pertaining to Cr. Nos.6 and 595 of 2015 pending on the file of the respondent, to the Central Bureau of Investigation ("the CBI" for short), Chennai.

2 For better understanding of the facts, the dramatis personae in this case will be referred to by their name.

3 The facts of the case, in a nutshell, are given as under:

3.1 On the complaint given by Pandiraj (de facto complainant/petitioner herein), the Central Crime Branch (for short "the CCB"), Chennai, registered a case in Cr. No.129 of 2015 on 02.04.2015 under Sections 406,420 and 506(I) IPC read with Section 34 IPC against Sujai Anand (A1), Shylaja Reddy (A2), S.V. Subramanian (A3) and others.

3.2 It is the case of Pandiraj that the trio represented to him that they are starting a new company by name South India Bottling Company Private Ltd. (for short "South India Bottling") in Chennai and induced him to invest money on the promise of giving him 25% equity shares; believing their promise, Pandiraj invested a sum of Rs.50 lakhs in his name and in the name of his wife Anithra, by issuing two cheques dated 19.10.2004 for a sum of Rs.12.50 lakhs and three cheques dated 20.10.2004 for a sum of Rs.12.61 lakhs (thus, totally Rs.25.11 lakhs in his name) and two cheques dated 19.10.2004 for a sum of Rs.12.50 lakhs and three cheques dated 20.10.2004 for a sum of Rs.12.39 lakhs (thus, totally Rs.24.89 lakhs in the name of his wife); business was commenced by the trio, but, the promised equity shares were not allotted to Pandiraj; on suspicion, when Pandiraj started enquiring with the office of the Registrar of Companies, he was shocked to learn that the investment made by him was not reflected in any records of South India Bottling and his name did not figure in the list of shareholders; when he approached the trio seeking return of his money or in the alternative, for giving him the promised shares, he was criminally intimidated by them and they also threatened him that with their influence in the high echelons of the Police Department, they would slap cases on him and have him arrested; hence, the complaint and the consequent F.I.R.

3.3 In connection with the investigation in the aforesaid case, Pandiraj was summoned to the office of the CCB located within the campus of the office of the Commissioner of Police and he attended the enquiry on 01.04.2015. After attending the enquiry, when he came out, one Ganapathy and ten hirelings attempted to abduct him. Sensing trouble, he ran into G-1, Vepery Police Station, to take refuge. There, he lodged a complaint alleging that one Sivanandi, I.P.S., who is close to Sujai Anand and group (accused in C.C.B. Cr. No.129 of 2015) has been pressurising him to withdraw the complaint given in C.C.B. Cr. No.129 of 2015 and that he has set up goondas to abduct him.

3.4 Initially, G-1, Vepery Police registered the complaint as C.S.R. and after some preliminary enquiry, registered a regular case in G-1, Vepery P.S. Cr. No.595 of 2015 for the offences under Sections 143,144,341,294(b) and 506(II) IPC against Ganapathy and 10 others on 02.04.2015. Though the name of Sivanandi, I.P.S. figures in the body of the complaint, yet,

the police did not include his name in Column No.7 of the FIR. As news spread that the CCB has registered a case in Cr. No.129 of 2015 and that G-1, Vepery Police Station has registered a case in Cr. No.595 of 2015, all the accused started moving heaven and earth to mute the cases, resulting in Pandiraj sending communications to the police stations in desperation withdrawing the complaints lodged by him. However, undeterred by Pandiraj's entreats, the police continued with the investigation and started taking steps to apprehend the accused involved in the two offences.

3.5 03.04.2015 was a Good Friday and naturally, followed by Saturday and Sunday which were holidays. Sensing imminent arrest of the accused involved in CCB Cr. No.129 of 2015 and G-1, Vepery P.S. Cr. No.595 of 2015, a group of around 70 lawyers headed by one Sridharan came to the house of the Hon'ble Mr. Justice Sanjay Kishan Kaul, the then Chief Justice, for a special motion to move anticipatory bail. The then Hon'ble Chief Justice was in New Delhi between 4th and 7th April 2015 for attending the All India Conference of Chief Justices chaired by the Hon'ble Chief Justice of India. The lawyers broke the police cordon and barged into the residence of the Hon'ble Chief Justice and created ruckus. They blocked the traffic on the main road demanding the Hon'ble Chief Justice's permission to move the anticipatory bail application. The guards in the residence of the Hon'ble Chief Justice were outnumbered by the lawyers and so, they called the local, E-5, Foreshore Estate P.S. for help. Seemingly, the lawyers broke the flower pots in the house of the Hon'ble Chief Justice. Getting wind of the siege, huge posse of policemen and Press men descended at the residence of the Hon'ble Chief Justice, thereby, averting pillage and loot of the Hon'ble Chief Justice's house by the lawyers headed by Sasikumar and Sridharan. Thanks to the lawyers of the Madras Bar, the reputation of the Madras High Court plummeted to the nadir. The only parallel to this, was the ransacking of the Supreme Court of Pakistan by lawyers in allegiance to Nawaz Sharif to remonstrate against the orders passed by the then Chief Justice Syed Sajjad Ali Shah against Nawaz Sharif.

3.6 In connection with this incident, E-5, Foreshore Estate Police Station half-heartedly registered a case in Cr. No.1077 of 2015 on 04.04.2015 for the offences under Sections 143,188,353,448 and 506(I) IPC against some lawyers.

3.7 While the aforesaid three cases were under investigation, from and out of the blues, three persons, viz., Mohamed Anzer, A. Paramasivan and Ganapathy Ramasubramaniam filed CrI.O.P. Nos.9923 of 2015, 11773 of 2015 and W.P. No.18023 of 2015 respectively. While CrI.O.P. Nos.9923 of 2015 and 11773 of 2015 were filed seeking quashment of the FIR in G-1 Vepery

P.S. Cr. No.595 of 2015, W.P. No. 18023 of 2015 was filed challenging the communication dated 09.04.2015 issued by the Deputy Superintendent of Police requesting the Chief Immigration Officer, Bureau of Immigration, to issue a Look Out Circular in order to prevent Ganapathy Ramasubramaniam from fleeing out of India and seeking permission to go abroad.

3.8 When the learned counsel for all the accused submitted in unison that the entire case against the accused had been fabricated by the police and that Pandiraj himself had withdrawn the complaints, Pandiraj also meekly joined chorus by contending that the matter has been amicably settled.

3.9 Yet, this Court went into the whole gamut of the facts obtaining in each of the cases and ultimately, by a detailed order dated 24.07.2015, dismissed all the petitions and transferred the investigation in all the three cases, viz., C.C.B. Cr. No.129 of 2015, G-1, Vepery P.S. Cr. No.595 of 2015 and E-5, Foreshore Estate P.S. Cr. No.1077 of 2015, to the CB-CID.

3.10 It may be apposite to extract paragraph no.18 of the order dated 24.07.2015 passed by this Court.

"18. This is a text book case which demonstrates the evil effects of an unholy nexus between a serving Senior Police Officer, Advocates, Business men and Goondas. Taking out a leaf from Chief Justice Syed Sajjad Ali Shah's autobiography, "Law Courts in a Glass House", nemesis caught up with Nawaz Sharif when he was arrested by Gen Pervez Musharraf and there was no independent judiciary to rescue him. In fine, the apprehension of the police that, if Ganapathy Ramasubramaniam flees India, he can never be secured, is indeed bona fide. Hence the look out circular cannot be quashed. This is surely not a fit case to quash the FIRs either on the ground that, the complainant and the accused have arrived at a settlement or on the ground that there is no prima facie material against the accused. With Sivanandi IPS continuing as Inspector General of Police, small wonder if the investigation by the local police would be free from interference. The Police have collected sufficient materials against Sivanandi IPS incriminating him in the offence which is available in the Case Diary, but which cannot be revealed. The very act of getting affidavit from Pandiaraj is a brazen attempt to impede the course of investigation which will entail cancellation of bail. This is in fact a fit case to be transferred to the CBI, but this Court does not want to take the extreme step as the State Government, by

opposing the petition of the accused tooth and nail, have manifestly demonstrated their sincerity. Therefore, this Court is of the view that it will serve the interest of justice if the investigation in all the three cases is transferred to the CB CID, in order to find out if there was a continuing conspiracy amongst the accused in all the three cases to perpetrate the offences by previous concert."

3.11 After transfer, the CB-CID completed the investigation in all the three cases, the details of which are as under:

a) As regards the case in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015), the same was closed as "mistake of fact" by filing a closure report before the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai;

b) As regards the case in CB-CID Cr.No.7 of 2015 (Old G1, Vepery P.S. Cr. No.595 of 2015) relating to abduction of Pandiraj, a final report was filed on 17.04.2017 against two persons viz., K.Muthuramalingam (A1) and Paramasivan (A2) under Sections 294(b) and 506(I) IPC read with Section 34 IPC before the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai; and

c) As regards the case in CB-CID Cr. No.8 of 2015 (Old E-5, Foreshore Estate P.S. Cr. No.1077 of 2015) in connection with the attack on the house of the Hon'ble Chief Justice, a final report was filed on 23.11.2016 for the offences under Section 147 IPC read with Sections 34, 153, 353 and 451 IPC read with Sections 34, 109 and 149 IPC before the XI Metropolitan Magistrate, Saidapet, Chennai and that case has now been transferred to the file of the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai.

3.12 Since the CB-CID had closed the case in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) as "mistake of fact", Pandiraj has filed his protest application and has thereafter, filed the present application before this Court for transferring the investigation in CB-CID Cr. No.6 of 2015 (old CCB Cr. No.129 of 2015) and CB-CID Cr. No.7 of 2015 (old G-1, Vepery P.S. Cr. No.595 of 2015) pending on the file of the respondent, to the file of the Central Bureau of Investigation (for short "the CBI"), Chennai.

4 On notice, Mr. R.Mathiazhagan, Deputy Superintendent of Police, CB-CID has filed a status report dated 16.08.2018,

explaining the circumstances under which the case in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) was closed as "mistake of fact".

5 In the status report, he has also stated that charge sheets have been filed in the other two cases, viz., CB-CID Cr. No.7 of 2015 (Old G-1, Vepery P.S. Cr. No.595 of 2015) relating to abduction of Pandiraj and CB-CID Cr. No.8 of 2015 (Old E-5, Foreshore Estate P.S. Cr. No.1077 of 2015) relating to the attack on the residence of the Hon'ble Chief Justice.

6 Heard Mr. A.V. Somasundaram, learned counsel for Pandiraj and Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the respondent police.

7 During the course of hearing on 16.08.2018, Mr.N.Chandrasekaran, learned counsel representing Mr.V.Jayachandran, learned counsel for the proposed Intervener, submitted that they are intending to file an application to implead Paramasivan, the accused in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) as a party. Therefore, this Court recorded the said submission and adjourned the case to 21.08.2018.

8 On 21.08.2018, Mr. N. Chandrasekaran, learned counsel, submitted a stamped petition for impleading in the open Court, which is not the practice in the High Court, inasmuch as the practice is to file such a petition in the Registry and have it numbered and posted before the Court. Of course, procedure is only a handmaid of justice and therefore, this Court did not insist upon following the said procedure. However, this Court heard Mr.N.Chandrasekaran, learned counsel for Paramasivan [accused in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015)].

9 The power of a Constitutional Court to order CBI investigation is no more *res integra* in the light of the Constitution Bench judgment of the Supreme Court in State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others [(2010) 3 SCC 571], wherein, it has been held that Constitutional Courts should not order CBI investigation as a matter of routine, but, only where it warrants. Bearing in mind, the said dictum of the Supreme Court, this Court carefully perused the status report and the case diaries submitted by the CB-CID.

10 The investigation conducted by the CB-CID disclosed the following facts:

a Pandiraj and his wife Anithra had invested a sum of Rs.50 lakhs with Sujai Anand and group;

b Anithra and one Kanakaraj are Partners in Balaji Garments, in which, Anithra holds 25% of shares and Kanakaraj holds 75% of shares;

c Kanakaraj is the brother-in-law of Sivanandi, IPS, the then Inspector General of Police;

d Sivanandi, IPS, is very close to Sujai Anand and group; and

e Balaji Garments, run by Kanakaraj and Anithra, had borrowed a sum of Rs.1.70 crores from Indian Bank, Tiruppur and since they were not able to repay the said loan, the bank had initiated recovery proceedings.

11 The CB-CID, having concluded that a sum of Rs.50 lakhs was given by Pandiraj to Sujai Anand group in the year 2004, has strangely inferred that the said amount was given as Caution Deposit for a contract to construct a building for South India Bottling.

12 In this context, it may be relevant to extract the following paragraph from the status report of the CB-CID:

"5 (i) Investigation revealed that Tr.D.Pandiraj/petitioner and his wife paid Rs.50 lakhs to M/s. South India Bottling Company. The complainant/petitioner claims that the above payment was made towards share capital. The alleged accused Sujai Anand states that Tr. D. Pandiraj approached them through known sources and asked for a contract to construct a building in the bottling company. As the estimated cost of construction was Rs.12 crores, Tr. D. Pandiraj was asked to furnish a bank guarantee of 25%. He expressed his inability to furnish bank guarantee and agreed to deposit Rs.75 lakhs towards Caution Deposit for a part construction contract. Accordingly, Tr. D. Pandiraj and his wife deposited Rs.50 lakhs during October 2004 and assured to pay the balance Rs.25 lakhs within a week to commence the development activity. The construction was supposed to start in the month of November 2004, the petitioner requested a part refund of Rs.5 lakhs due to personal financial crisis. Accordingly, Rs.5 lakhs was paid to Tr. D. Pandiraj vide cheque no.183421 of ICICI Bank, Mount Road Branch, Chennai on 20.12.2004. But, Tr. D. Pandiraj/petitioner claims that the amount is towards dividend. It revealed that both the parties did not dispute the payment. However, the reason for the

payment given by the complainant and accused are contradictory to each other and none of the parties has produced documentary evidence to support their contention."

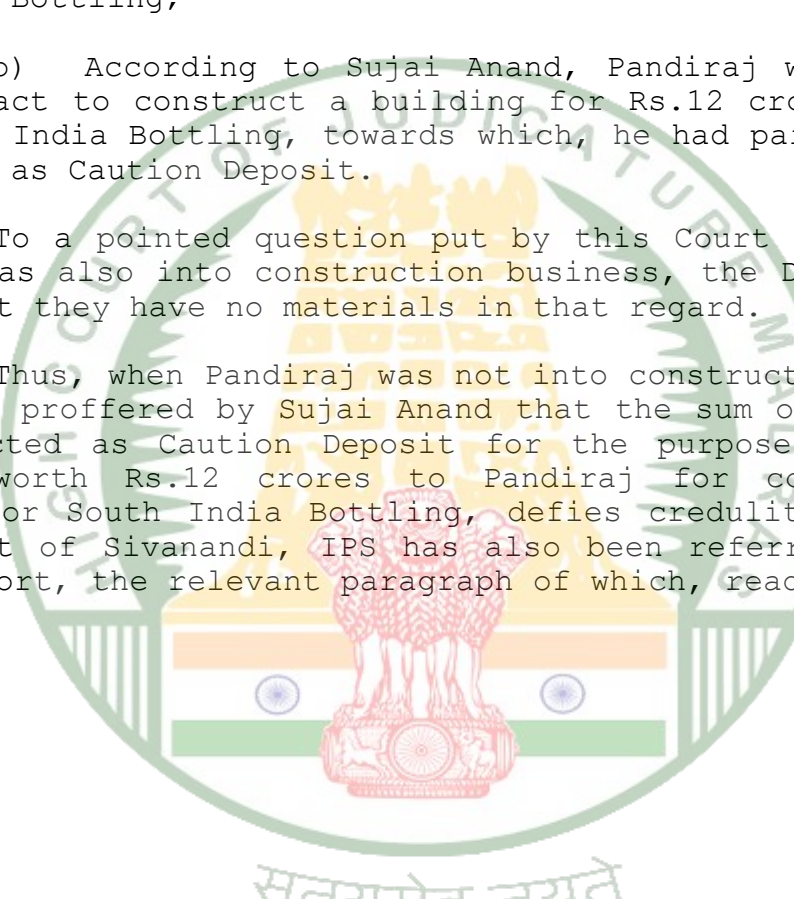
13 From the above, it is clear that two contradictory versions were put forward by the contesting parties before the CB-CID, viz.,

a) According to Pandiraj, the sum of Rs.50 lakhs was towards allotment of equity shares of South India Bottling;

b) According to Sujai Anand, Pandiraj wanted a contract to construct a building for Rs.12 crores for South India Bottling, towards which, he had paid Rs.50 lakhs as Caution Deposit.

14 To a pointed question put by this Court as to whether Pandiraj was also into construction business, the D.S.P., CB-CID stated that they have no materials in that regard.

15 Thus, when Pandiraj was not into construction business, the theory proffered by Sujai Anand that the sum of Rs.50 lakhs was collected as Caution Deposit for the purpose of giving a contract worth Rs.12 crores to Pandiraj for constructing a building for South India Bottling, defies credulity. But, the involvement of Sivanandi, IPS has also been referred to in the status report, the relevant paragraph of which, reads thus:



WEB COPY

"5 ii It is submitted that investigation revealed that during the year 2006, M/s. Balaji Garments, a company in which Tr. D. Pandiraj, his wife and one Tr. Kanagaraj, brother-in-law of Tr.P. Sivanandi were partners, suffered financial crisis. Tr. D. Pandiraj/petitioner herein approached South India Bottling company seeking financial assistance and as the company did not have sufficient funds, Tr. Sujai Anand, paid an amount of Rs.95 lakhs vide cheque no.460968 and Rs.2 lakhs vide cheque no.460969, both dated 31.07.2006. During the course of examination, Tr.D.Pandiraj/petitioner replied that he was given 8 cheques by Tr.Sivanandi which included the above two cheques issued by Tr.Sujai Anand and states that these cheques were given for other business transactions. It is submitted that Tr. Sujai Anand on being questioned as to why payment was made from his personal account, he stated that as South India Bottling Company did not have sufficient fund at that time and hence, he paid from his personal account."

16 Thus, the CB-CID had enough evidence to show that Sivanandi, IPS, was the conduit between Sujai Anand group and Pandiraj. However, it is the contention of the CB-CID that Pandiraj and Sivanandi's brother-in-law Kanakaraj were Partners in Balaji Garments. However, on a scrutiny of the case diaries, it is seen that Pandiraj was not a partner in Balaji Garments and that Kanakaraj, brother-in-law of Sivanandi, I.P.S. and Anithra, wife of Pandiraj, only were Partners in Balaji Garments.

17 The CB-CID investigation has revealed that the sum of Rs.50 lakhs that was paid by Pandiraj in 2004 was burked in the accounts of South India Bottling till 2013 and only in the accounts of 2013-2014, the said sum has been shown against the entry "Sundry Creditors". Notwithstanding this tell-tale evidence, the CB-CID has given a distorted version of the transactions between Sujai Anand group and Pandiraj and have tried to camouflage it with the transactions relating to Balaji Garments.

18 Therefore, this Court is clearly of the view that the investigation conducted by the CB-CID in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) is totally perfunctory and hence, a thorough re-investigation is required.

19 Now, it may be relevant to extract the following self-contradictory statement of the CB-CID in the status report:

"5 xii Investigation reveals that since Tr.D. Pandiraj was acquainted with Tr. P. Sivanandi for a long period, he was introduced to South India Bottling

Co. Directors by Tr. P. Sivanandi. Statements of witnesses and documents do not disclose any direct involvement of Tr. Sivanandi in the affairs of South India Bottling Company....."

20 A reading of the above extracted portion shows that in one breath, the CB-CID says that Sivanandi, IPS, had only introduced Pandiraj to Sujai Anand and others of South India Bottling. However, in the same breath, they say that Sivanandi, IPS, had no direct involvement in the affairs of South India Bottling.

21 The following portions extracted from the status report filed by the CB-CID also make an interesting reading:

"5 xiiiThroughout the crisis period, Tr. D. Pandiraj has called and received calls frequently from Tr. Sujai Anand. Likewise Tr. D. Pandiraj has called Tr. P. Sivanandi, during crisis period frequently. The pattern of call, the frequency and the mutuality of calls reveals that the concerned parties were in constant communication. It is pertinent to note here that Tr. D. Pandiraj himself has initiated 9 calls to Tr. Sivanandi and 26 calls to Tr. Sujai Anand. From the frequency of calls initiated by Tr. D. Pandiraj himself to the above two during the crucial period at which he is alleged to have been intimidated by these two leads to an inference that he could not have been intimidated by them since anyone intimidated will not initiate communication with the person intimidating.

5 xviHowever, investigation does not disclose that the payments were made on the inducement or on the advice of Tr. P. Sivanandi. His involvement in these transactions is not proved."

22 The above extracted portions clearly show that Sivanandi, IPS is in the eye of the storm and that is why, perhaps, Pandiraj has been speaking to him in desperation. Whereas, the CB-CID has interpreted this as if the assertion of Pandiraj that he was intimidated by Sujai Anand and Sivanandi, IPS, is not true. The question that this Court poses is what business does an Inspector General of Police have, to keep speaking to the lead actors in this play. Unless Sivanandi, IPS, was interested in the affairs, there was no reason whatsoever for him to have got himself involved in a private dispute between two businessmen.

23 On a perusal of the case diary, this Court found a statement of one V. Krishnakumar, S/o M. Venkataraman, who has stated that he was engaged by Sivanandi, IPS, to oversee the

withdrawal of the complaints by Pandiraj, pursuant to which, he went and met the advocates of Pandiraj and also went to the Magistrate Court to ensure that Pandiraj gave a petition withdrawing the complaint given by him and thereafter, collected the documents and returned the same to Sivanandi, IPS. This is exactly the reason why this Court dismissed the petitions in CrI.O.P. Nos.9923 of 2015, 11773 of 2015 and W.P. No.18023 of 2015 filed by the accused, for the aforesaid relief, to quash the proceedings on the ground that the parties had compromised, because, this Court had perused the case diary and had found that Pandiraj was forced by Sivanandi and Sujai Anand group to withdraw the complaints.

24 Mr. N. Chandrasekaran, learned counsel for Paramasivan, vehemently contended that Pandiraj is a person of questionable character, inasmuch as, he has himself given letters to the police and to the Court stating that he is withdrawing the complaints against Paramasivan and therefore, this Court should not act upon his version. He also contended that Pandiraj is an accused in C.C. No.6 of 2006 pending on the file of the Special Court for CBI Cases, Coimbatore.

25 It is true that Pandiraj had sent letters withdrawing the complaints, but, on a reading of the statement of Krishnakumar, it is limpid that undue force was put on Pandiraj by Sivanandi, IPS, to withdraw the cases and based on that, Sivanandi, IPS, obtained anticipatory bail from this Court in CrI.O.P. No.9062 of 2015 vide order dated 17.06.2015. That is why, in paragraph no.18 of the order dated 24.07.2015, this Court has held as under:

"18. The very act of getting affidavit from Pandiraj is a brazen attempt to impede the course of investigation which will entail cancellation of bail."

26 The CB-CID never took any steps to have the bail granted to Sivanandi, IPS, cancelled and instead, the D.S.P., CB-CID went about ritualistically interrogating Sivanandi, IPS, in a question-answer session which sounds like the nursery rhyme:

Ba! Ba! Black Sheep, have you any wool?
Yes Sir, Yes Sir, Three bags full.

At least, the sheep had the integrity to accept that it had 3 bags full of wool. But, the answers given by Sivanandi, IPS to the D.S.P.'s questions defy even the sheep's logic. For example, for the question, "What do you say about Pandiraj's allegation that only on your instigation, there was an attempt to abduct him?", the free translation of the answer given by

Sivanandi, IPS is as under:

"I came to know later, the detail regarding the registration of case against Ganapathy Ramasubramaniam, Muthu Ramalingam and 10 others, on the complaint given by Pandiraj. It is absolutely contrary to truth, if it had been stated that only on my instigation, Pandiarajan and Maheswaran were threatened. There is no necessity to do as such. It is nothing but the conspiracy hatched by Pandiraj to wantonly cause disreputation to me, and with an intention to extort money from others, making use of my name. Further, in the year 2008-2009, when I was the Deputy Inspector General of Police, Coimbatore, as I has received a complaint that Pandiarajan demanded money citing my name, I summoned Pandiarajan through my Office Assistant, warned him that I will arrest him under the Goondas Act and remand him, if I receive such a cheating complaint. He stated to many persons that he would lodge false complaint against me and wreak vengeance upon me and for the reason that Pandiarajan and his wife obtained bank loan by producing bogus documents and defrauded, CBI case was filed against them, and charge sheet laid against them, he approached me on several times, through his relative seeking my help, with regard to the said case, and as I refused stating that he should not approach me for such matters and that I would not help him, he deliberately lodged the false complaint, mentioning my name."

27 The above answer by Sivanandi, IPS, runs counter to Krishnakumar's statement, about which, this Court has already alluded to above. In fact, an officer of the rank of Inspector General or an officer superior to him should have interrogated Sivanandi, IPS, because at the time of interrogation, he was Inspector General of Police and the officer who interrogated him was merely a D.S.P., several ranks below him.

28 The statement of Sivanandi, I.P.S. shows as if Pandiraj was a stranger to him and that he had warned Pandiraj of dire consequences like detention under the Goondas Act. This answer of Sivanandi, I.P.S., by itself, shows to what extent, he would misuse his police power. To recollect, Pandiraj's wife Anithra and Sivanandi's brother-in-law Kanakaraj were Partners in Balaji Garments. It is true that Pandiraj is an accused in C.C. No.6 of 2006 on the file of the Special Court for CBI Cases, Coimbatore, but, that does not mean that he cannot maintain a complaint at all. If Pandiraj had approached Sivanandi, I.P.S. to help him come out of the CBI case, as a senior I.P.S. officer, Sivanandi should have reported the matter to the CBI.

He did not do that.

29 On a perusal of the CDR details of the mobile phone of Sivanandi, IPS, it is seen that he had been constantly in touch with Gowthaman and Sasikumar, advocates, who were involved in the attack of the residence of the Hon'ble Chief Justice. Dictates of common sense state that the attack would not have been made possible without the backstage support of a senior police officer like Sivanandi, IPS. Despite such overwhelming materials, the CB-CID has closed the case in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015). It is a trite law that conspiracies are hatched in secrecy and seldom will the police get direct evidence to nail all the conspirators [See Kehar Singh and others vs. State-Delhi Administration-(AIR 1988 SC 1883)]. To obviate this difficulty, Section 10 of the Evidence Act provides the panacea.

30 Though Pandiraj has filed a protest application challenging the closure report filed in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015), yet, this Court is of the view that this is a fit case, in which, the closure report deserves to be set aside, the case transferred to the CBI and re-investigation ordered, for the reason that, in the protest application, the Magistrate can, at the most, order further investigation by the same police officer and not re-investigation.

31 Therefore, this Court, being a Constitutional Court, has the power to order re-investigation. But, while exercising the said power, the question that emerges for consideration is whether an opportunity should be afforded to the accused before ordering transfer of investigation. Had the charge sheet been filed and some persons arraigned as accused, then, it is imperative for this Court to hear those accused before ordering re-investigation. In CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015), be it noted that, only closure report has been filed by the CB-CID and ergo, it is not necessary for this Court to hear any prospective accused. The CBI can also arrive at the same conclusion after a thorough probe.

32 In view of the foregoing reasons, the closure report filed by the respondent in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) is quashed and the said case is transferred to the file of the Special Crimes Branch, CBI, Rajaji Bhavan, Besant Nagar, Chennai, for re-investigation. As a sequel, the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai, is directed to hand over the closure report and the accompanying documents in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) to the Superintendent of Police, CBI, Chennai, as and when a request is made. The Superintendent of Police, CB-CID,

Chennai, is directed to hand over the case diary in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) to the Superintendent of Police, CBI, Chennai, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the said case diary, the CBI, Chennai, shall proceed with the investigation, uninfluenced by the observations made hereinabove.

33 It is open to the CBI to seek cancellation of the anticipatory bail that has been granted to some of the accused or inter alia, if during investigation by the CBI, the involvement of the accused in serious offences not covered by the anticipatory bail orders surface, it is open to the CBI to arrest the accused.

34 Coming to CB-CID Cr. No.7 of 2015 (old G-1, Vepery P.S. Cr. No.595 of 2015 relating to Pandiraj abduction case), it is seen that the final report has been filed by the CB-CID against two persons viz., K.Muthuramalingam (A1) and Paramasivan (A2) under Sections 294(b) and 506(I) IPC read with Section 34 IPC before the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai. As the CB-CID had not included the persons named by Pandiraj in his complaint, liberty is given to Pandiraj to file a protest application before the Magistrate concerned.

35 It is made clear that the transfer of investigation in CB-CID Cr. No.6 of 2015 (Old CCB Cr. No.129 of 2015) to the CBI, Chennai, will not, in any way, impede the judicial power of the Metropolitan Magistrate for CB-CID/CCB Cases, Egmore, Chennai, to deal with the charge sheets filed by the CB-CID in CB-CID Cr. No.7 of 2015 (old G-1, Vepery P.S. Cr. No.595 of 2015 - Pandiraj abduction case) and CB-CID Cr. No. 8 of 2015 (old E-5, Foreshore Estate P.S.Cr. No.1077 of 2015 - case qua attack on Chief Justice residence) without waiting for the outcome of the CBI investigation in CB-CID Cr. No.6 of 2015 (old CCB Cr. No.129 of 2015).

36 Now, coming to CB-CID Cr. No.8 of 2015 (old E-5, Foreshore Estate P.S. Cr. No.1077 of 2015 - case qua attack on the Chief Justice's residence), it is seen that the CB-CID completed the investigation and filed a final report as early as on 23.11.2016 before the XI Metropolitan Magistrate, Saidapet, Chennai, against 70 advocates. However, till date, the final report has not been taken on file. The case has been transferred from the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai, to the file of the Metropolitan Magistrate for CB-CID/CCB Cases, Chennai, where, it is still pending.

37 In the final report, the CB-CID have made damning disclosures demonstrating how money was distributed to the

lawyers for laying siege of the residence of the Hon'ble Chief Justice. The final report also speaks about the existence of two teams in the Saidapet Court campus, viz., Gate Team and Bike Team. This Court reliably understands that ordinary litigants and advocates from other Bars are required to pay protection money to the Gate Team for defending an accused. The services of the Bike Team are available for illegal dispossession of persons from disputed properties and for related attacks. When this has been happening right under the very nose of the High Court, we cannot afford to turn a Nelson's eye to these activities and choose to live in the comforts of the CISF cocoon. Perhaps, the fear of these gangs could also be one of the reasons for the Magistrates not even taking the charge sheets on file, each one hoping that, he can pass on the baton to his successor. When this is the plight of the Judicial Officers, it is not known as to how witnesses will come forward to give evidence against the accused in the case. It is time for the High Court to seriously explore the suggestions given in the Justice K. Chandru Committee report, wherein, the ills plaguing the Magistracy in the Chennai city have been set out and the remedies therefor have been prescribed.

38 The Registry is directed to place a copy of this order before the Hon'ble Chief Justice to consider all these aspects and if warranted, pass orders constituting a Special Bench for monitoring the trial in CB-CID Cr.No.8 of 2015 (old E-5, Foreshore Estate P.S. Cr. No.1077 of 2015 - case qua attack on the Chief Justice's residence) on the file of the Metropolitan Magistrate for CB-CID/CCB Cases, Chennai.

In fine, this Criminal Original Petition stands partly allowed. The order of stay granted in Crl.M.P. No.9978 of 2018 stands vacated.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Deputy Superintendent of Police
CB-CID
Chennai

2 The Superintendent of Police
Special Crimes Branch
Central Bureau of Investigation
Rajaji Bhavan
Besant Nagar
Chennai

3 The Metropolitan Magistrate
for CB-CID/CCB Cases
Egmore
Chennai

4 The Public Prosecutor
High Court of Madras
Chennai 600 104

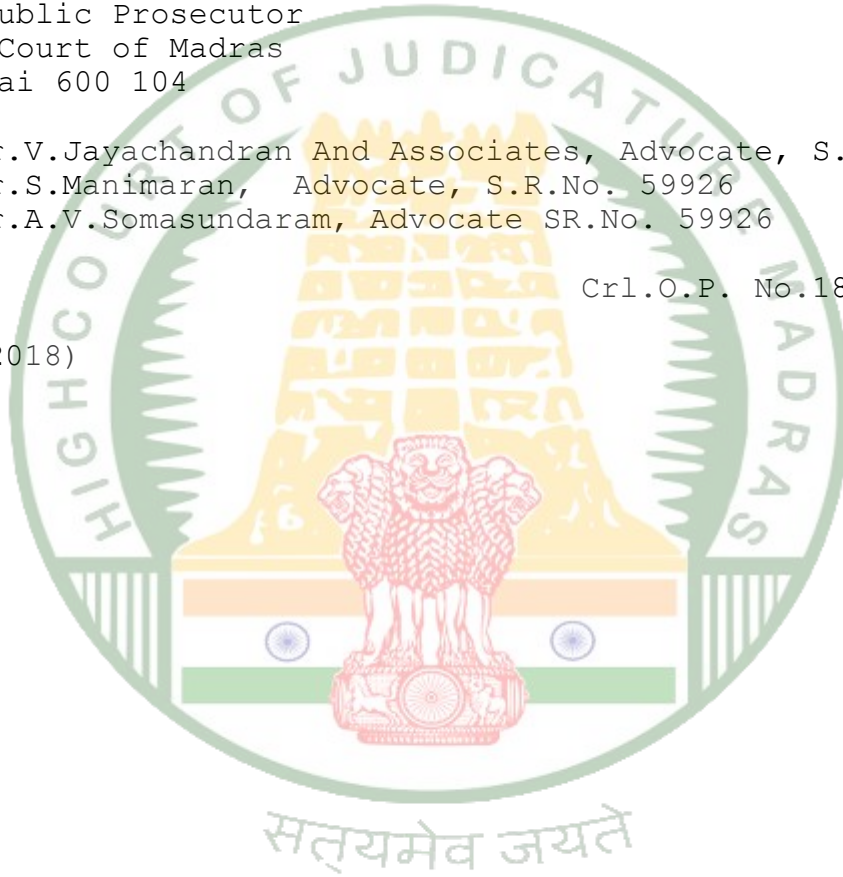
+1cc to Mr.V.Jayachandran And Associates, Advocate, S.R.No. 60541

+1cc to Mr.S.Manimaran, Advocate, S.R.No. 59926

+2cc to Mr.A.V.Somasundaram, Advocate SR.No. 59926

CrI.O.P. No.18924 of 2018

GN(04/09/2018)



WEB COPY