

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.490 of 2016

S.Mathiyazhagan

.. Petitioner

Vs.

1.State rep. by
The Inspector of Police,
District Crime Branch,
Tiruppur District.

2.State rep. by
The Inspector of Police,
C.B., C.I.D.,
Tiruppur District.

3.Ashok Chand Bhansali

4.Ashok Chand

5.S.Ramamurthi

... Respondents

(R3 to R5 impleaded as per the order of this Court dated 28.04.2017 in Crl.MP. No.6364/2017 in Crl.OP.490 of 2016)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to withdraw the case in Crime No.2 of 2014 on the file of the first respondent and transfer the investigation of the same to the second respondent and consequently direct the second respondent to conduct further investigation of the case in Crime No.2 of 2014 and to file a final report.

For Petitioner : Mr.S.Thangavel

For Respondents :Mrs.P.Karthikakamal, GA (Crl.Side)
Nos.1 & 2

For Respondent :Mr.T.Aravind Subramanian
Nos.3 to 5

O R D E R

Being aggrieved against the non inclusion of certain named persons who may have possibly involved in the offences made out in the petitioner's complaint dated 24.12.2013, the present petition has been filed seeking for transfer of investigation from the first respondent to the second respondent and for consequential further investigation.

2.Heard Mr.S.Thangavel, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondents 1 and 2 as well as Mr.T.Aravind Subramanian, learned counsel for the respondents 3 to 5.

3.The grievance of the petitioner is that he had specifically implicated the names of Kalangal Ramamurthy, Vellakoil Manickam, Kumar, A.Chandrasekaran, Ashokchand Bhansali and Ashokchand in his complaint and their names have been purposefully omitted to be shown as accused and since the petitioner/defacto complainant was not issued with prior notice at the time of filing of the final report, the entire investigation is vitiated and hence requires to be transferred.

4.The learned counsel for the petitioner submitted that in view of the dispute between the petitioner and his father, he had resigned from the Directorship of two Spinning Mills on 03.04.2002. His father, who was the Managing Director of both the companies had availed certain loan for the companies for which purpose he had given certain properties as collateral security and had created an equitable mortgage by way of deposit of title deeds relating to the properties. While that being so, the petitioner's parents, under coercion from one Ramasamy and kalangal Ramamurthi were forced to execute two sale deeds dated 23.12.2013 in favour of Ashokchand Bhansali and Ashokchand, who were alleged to have supplied cotton to the said companies. The registration was done by the aforesaid person in collusion with each other with the help of one K.Rajasekar, the then Sub Registrar. Hence the petitioner had lodged a complaint at Vellakoil Police Station which came to be registered as Cr.No.407 of 2007 for the alleged offences under Sections 420 & 468 IPC. When the petitioner had also realized that a bogus non traceable certificate was created and issued with the help of one A.Chandrasekaran, the then SSI of Police, Vellakoil Police Station and Kalangal Ramamurthi, by forging the signature of the petitioner's late father, the petitioner found that no such complaint was given by his father on 18.12.2013 and consequently the said A.Chandrasekaran, the then SSI of Police, Vellakoil Police Station came to be suspended from his services on 27.12.2013. Hence, the petitioner implicated his father

Subramaniam, Dharapuram Ramasamy, Sulur Kalangal Ramamurthy, Vellakoil Manickam and document writer Kumar as the persons of having criminally conspired to cheat the petitioner as well as the bank which has assigned the loan. On 06.01.2014, the investigation of the case came to be transferred to the District Crime Branch from Vellakoil Police Station. The accused persons namely, P.Ramasamy, Kalangal S.Ramamurthi and the petitioner's father had also obtained anticipatory bail from this Court on 03.02.2014 in CrI.O.P.Nos.989, 1022 and 1021 of 2014. In the meantime, since the names of the aforesaid persons were not included in the FIR, the petitioner herein had filed CrI.O.P.No.308 of 2014 before this Court seeking for inclusion of their names and the same came to be closed on 31.07.2014 by recording the submission of the learned Additional Public Prosecutor that the investigation has been transferred to the District Crime Branch, Tiruppur and the complaint has been assigned as Cr.No.2 of 2014. In view of the delay on the part of the District Crime Branch, Tiruppur to file a final report, the petitioner had filed CrI.O.P.No.30325 of 2014 before this Court to expedite the investigation and by an order dated 18.11.2014, a direction was issued to file a final report within a period of 4 months.

5. Pursuant to the order of this Court, the petitioner had also filed an additional statement on 27.01.2015 and in view of the non compliance of the earlier order of this Court by filing the final report within the stipulated time, the petitioner had filed CrI.O.P.No.27154 of 2015 for a direction to complete the investigation. On 18.11.2015, when the aforesaid petition came up for hearing, the learned Additional Public Prosecutor reported that a charge sheet had already been laid in Cr.No.2 of 2014 and the same has been taken on file in C.C.No.270 of 2015 by the learned Judicial Magistrate, Kangeyam. On verification, the petitioner realized that the names of the persons, who may have possibly involved in the crime and whose names were referred to in the complaint, have not been included in the charge sheet. The learned counsel for the petitioner submitted that the learned Judicial Magistrate, Kangeyam ought not to have taken cognizance of the final report, without issuing any notice to the defacto complainant, which is mandatory as per the ruling of the Hon'ble Supreme Court in the case of Bhagwant Singh Vs. Commissioner of Police and another reported in 1985 (2) SCC 537. As such, the learned counsel submitted that not only is the investigation vitiated, but the procedure adopted by the learned Judicial Magistrate in taking cognizance of the complaint is also illegal. Hence, he seeks for transfer and for further investigation.

6.The learned Government Advocate submitted that there was no infirmity in the investigation. According to her, in order to conduct a fair investigation, the case was transferred to the District Crime Branch, Tiruppur from Vellakoil Police Station and based on the statement of the witnesses recorded under Section 161 (3) of Cr.P.C., the persons against whom overt acts has been established were shown as accused.

7.The learned counsel for the respondents 3 to 5 reiterated the submissions of the learned Government Advocate.

8.I have given careful consideration to the submissions made by the respective counsels.

9.Though the learned counsel for the petitioner raised various grounds touching upon the facts pertaining to the complaint, I do not want to go into such facts which is the subject matter of the investigation. Nevertheless, it would be appropriate to address the legal propositions raised by the petitioner alone for the purpose of deciding the relief sought for.

10.In the complaint, the petitioner had specifically implicated various persons with overt acts for the offences of 'cheating' and 'forgery'. He had further strengthened the averments through an additional statement dated 27.01.2015. In view of the specific overt acts raised by the petitioner against the named persons/respondents 3 to 5 herein, they had also filed petitions seeking anticipatory bail before this Court. The sum and substance of the complaint is that all the named persons have colluded together, forged and cheated the petitioner as well as the bank which had advanced the loan. By non inclusion of the named persons, the complainant would certainly be prejudiced since the purpose of the complaint itself fails.

11.The scope of Sections 154(2), 157(2) & 173(2)(ii) of Cr.P.C., came up for consideration before the Hon'ble Apex Court, with regard to the powers of the Magistrate to take cognizance of a final report. While deciding the powers vested with the learned Jurisdictional Magistrate, the Hon'ble Apex Court held that the complainant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. The relevant portions of the order of the Hon'ble Supreme Court in 1985 (2) SCC 537 [Bhagwant Singh Vs. Commissioner of Police and another] reads as follows:

4.Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i)

of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him

is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the

difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

The said proposition has been reiterated in a subsequent judgment of the Hon'ble Apex Court in Gangadhar Janardan Mhate Vs. State of Maharashtra and others reported in AIR 2004 SC 4753.

12. It is not in dispute that the Magistrate had not issued any notice to the petitioner herein while taking cognizance. The petitioner herein had all along been implicating various persons in the complaint and while the final report had dropped certain names in the complaint, he certainly would have been prejudiced. As observed by the Hon'ble Apex Court in the aforesaid judgments, it is mandatory on the part of the Magistrate to have extended an opportunity to the petitioner while taking cognizance of the complaint since certain named persons in his complaint have been omitted to be included in the final report. In view of the aforesaid propositions, taking of cognizance by the learned Judicial Magistrate itself is illegal.

13. While that being so, it would not be appropriate to permit the trial Court to proceed against such a charge sheet and it would also be equally necessary that a further investigation should be conducted by some other Investigating Agency.

14. The learned Government Advocate as well as the counsel appearing for the respondents 3 to 5 had also made other submissions to the effect that the High Court exercising its powers under Section 482 Cr.P.C., may not be justified in ordering the investigation after charge sheet has been filed and that it would be impediment to permit the trial Court to conduct a proper trial. The Hon'ble Apex Court in a judgment in Rubabbuddin Sheikh Vs. State of Gujarat & others reported in 2010 (2) SCC 200 had an occasion to deal with the scope of transferring the investigation for the purpose of further investigation. The relevant portion of the judgment reads as follows:

60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior Counsel appearing for the state of Guj. that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this Court or even for the High Court to direct

investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the Court feels that the investigation by the Police Authorities is not in the proper direction and in order to do complete justice in the case and as the High Police Officials are involved in the said crime, it was always open to the Court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the Court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI.

15. The judgment of the Hon'ble Supreme Court in 1999 (5) SCC 740 [Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanadha Maharaj V. State of Andhara Pradesh and others] also fortifies the aforesaid proposition which is extracted herein:

10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173 (8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) (AIR 1979 SC 1791). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173 (8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation.

16.In the light of the above judicial pronouncements and the observations made by this Court, the final report in C.C.No.270 of 2015 on the file of the learned Judicial Magistrate, Kangeyam is quashed. Consequently, the investigation in Cr.No.2 of 2014 is directed to be transferred to the second respondent herein, namely, the Inspector of Police, CBCID, Tirupur for further investigation, along with Cr.No.3 of 2015. The second respondent shall complete such investigation and file a final report as expeditiously as possible.

17.In the result, the Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Judicial Magistrate,
Kangeyam.

2.The Inspector of Police,
District Crime Branch,
Tiruppur District.

3.The Inspector of Police,
C.B., C.I.D.,
Tiruppur District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.THANGAVEL, Advocate, S.R.No. 21057

+1cc to Mr.M.ARAVIND SUBRAMANIAM, Advocate, S.R.No.20209

Order made in
Cr1.O.P.No.490 of 2016

TR(27/06/2018)