

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.09.2018

DELIVERED ON: 05.10.2018

CORAM:

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

Crl.O.P. No.18624 of 2017 & Crl.M.P. Nos.11326 & 11327 of 2017

N. Sivagurunathan

...Petitioner

vs.

- 1 The Station House Officer
Vadalur Police Station
Cuddalore District
(Cr. No.243 of 2015)

- 2 S. Dhanasekaran

...Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the entire records pertaining to P.R.C. No.42 of 2017 on the file of the Judicial Magistrate Court No.III, Cuddalore and quash the same in respect of the petitioner alone.

For petitioner Mr. R. Muralidharan

For R1 Mrs. Kritika Kamal, P.
Govt. Advocate (Crl. Side)

For R2 Mr. C.D. Johnson

ORDER

This Criminal Original Petition has been preferred seeking to call for the entire records pertaining to P.R.C. No.42 of 2017 on the file of the Judicial Magistrate Court No.III, Cuddalore and quash the same in respect of the petitioner alone.

2 This is a textbook case to demonstrate as to how a member of the legal profession can exploit the flaws in the system to thwart the criminal prosecution against him.

3 The vignette of the facts of the case is as under:

3.1 Dhanasekaran (second respondent herein/de facto

complainant) runs a bakery styled "Krishna Bakery" in the shopping complex of Vadalur Panchayat. His brothers Kamaraj and Prakash, run a hotel styled "Krishna Bhavan" nearby.

3.2 On 11.11.2015, one Varadarajan (A1), said to be a local goon, came to the de facto complainant's bakery and demanded rowdy mamool (protection money). The de facto complainant refused to give him any money. Varadarajan (A1) went to Iyengar Bakery run by one Ali and also to Hotel Krishna Bhavan and demanded rowdy mamool. All the shop owners, in unison, did not concede to his illegal demand. Irked by their not yielding to his demand, on the same day, around 4.00 p.m., Varadarajan (A1) led a gang of rioters and attacked the shops and caused extensive damage to properties.

3.3 On the complaint given by the de facto complainant, the first respondent police registered a case in Cr. No.243 of 2015 on 11.11.2015 under Sections 147,148,294(b), 384 and 506(II) IPC read with Section 3 of the Prevention of Damage to Public Property Act (for brevity "the PPD Act") against 19 named accused and unnamed others. The de facto complainant has stated that the named accused and unnamed others hail from R.C.Colony at Vadalur and Karunguzhi. In the FIR, the name of the 16th accused has been as "Sivaguru".

3.4 The petitioner herein is Sivagurunathan, a practising advocate of the Cuddalore Bar. The petitioner filed an application in CrI.M.P. No.4853 of 2015 before the District and Sessions Court, Cuddalore, seeking anticipatory bail under Section 438 Cr.P.C. for the 19 accused named in the FIR in Cr. No.243 of 2015. In the said anticipatory bail application, the name of the 15th petitioner has been given as Sivaguru, aged 25 years, S/o Mahalingam, a resident of R.C. Colony, Vadalur, Cuddalore District. The said petition was dismissed by the Principal District and Sessions Judge, Cuddalore, on 23.11.2015, by taking into consideration, the nature of the allegations in the FIR.

3.5 Thereafter, the petitioner filed a second anticipatory bail application in CrI.M.P. No.4932 of 2015 before the I Additional District and Sessions Judge, Cuddalore, in which also, the name of the 15th petitioner has been shown as Sivaguru, aged 25 years, S/o Mahalingam, a resident of R.C. Colony, Vadalur, Cuddalore District. The I Additional District and Sessions Judge, Cuddalore, granted anticipatory bail to the petitioners therein on 27.11.2015.

3.6 The police completed the investigation in Cr. No.243 of 2015 and filed a charge sheet before the Judicial Magistrate No.III, Cuddalore, against 18 accused for the offences under

Sections 147,148,294(b),384 and 506(II) read with Section 3 of the PPD Act.

3.7 It may be relevant to state here that in the charge sheet, the third accused has been shown as Vakil Sivaguru, aged 51 years, S/o Navappan, a resident of R.C. Colony, Vadalur.

3.8 Since an offence under Section 3 of the PPD Act is triable by a Court of Session, the charge sheet was taken on file by the Judicial Magistrate No.III, Cuddalore, as P.R.C. No.42 of 2017 and process was issued to all the 18 accused, including the petitioner herein. The petitioner received the summons in P.R.C. No.42 of 2017. Challenging the prosecution against him, Sivagurunathan, the petitioner herein, has preferred the present petition to quash the prosecution against him in P.R.C. No.42 of 2017.

4 Heard Mr. R. Muralidharan, learned counsel for the petitioner, Mrs. Kritika Kamal P., learned Government Advocate (Crl. Side) appearing for the first respondent-State and Mr. C.D. Johnson, learned counsel for the de facto complainant.

5 The learned counsel for the petitioner made the following submissions:

i Sivagurunathan, the petitioner herein, is a practising advocate of the Cuddalore Bar;

ii the petitioner herein is not Sivaguru, S/o Mahalingam, but, Sivagurunathan, S/o Nagappan;

iii the petitioner herein filed two anticipatory bail applications on behalf of the accused in Cr. No.243 of 2015, in which, the name of the 15th petitioner, was shown as Sivaguru, aged 25 years, S/o Mahalingam;

iv the first anticipatory bail application in Crl.M.P. No.4853 of 2015 was dismissed by the Principal District and Sessions Judge, Cuddalore on 23.11.2015 and the second anticipatory bail application in Crl.M.P. No.4932 of 2015 was allowed by the I Additional District and Sessions Judge, Cuddalore on 27.11.2015;

v during the course of arguments in both the anticipatory bail applications, neither the police nor the District Public Prosecutor represented to the Sessions Court that the 15th petitioner in the anticipatory bail applications, viz., Sivaguru, aged 25 years, S/o Mahalingam, is not the actual accused, but, Sivagurunathan, S/o Nagappan.

vi therefore, the charge sheet in which the third accused has been shown as Vakil Sivaguru, aged 51 years, S/o Nagappan, is liable to be quashed (the word "Vakil" in Tamil means "advocate", i.e., Vakil Sivaguru means Advocate Sivaguru).

6 Mr. M. Elumalai, Inspector of Police and the Investigating Officer, has filed a counter dated 30.08.2018 denying the allegations of the petitioner that he has been falsely implicated in the case.

7 In the counter, the Investigating Officer has stated that in the complaint which formed the basis for registration of the FIR, the de facto complainant had given the name of 19 persons who had attacked his shop and other shops in the complex and in that complaint, he had given the name "Sivaguru", but, had not given the name of Sivaguru's father. However, the Investigating Officer has recorded the statement of five witnesses on 12.11.2015 itself, wherein, they have given the name "Sivagurunathan, S/o Navappan", as one of the persons in the attack team. In paragraph no.14 of his counter, the Investigating Officer has stated as under:

"14 As per the investigation, Vakil Sivaguru, S/o Navappan is the real accused not Sivaguru, S/o Mahalingam, as claimed by the petitioner in Ground "C" and "E" of the grounds."

8 The de facto complainant has filed a counter affidavit dated 02.09.2018, wherein, at paragraph nos.7 and 8, he has stated as under:

"7. It is further submitted that on the date of occurrence, the mob was led by Mr. Sivagurunathan, S/o Nagappan, the petitioner herein. In my complaint that I categorically given the name of the petitioner as Sivaguru. It is further submitted that apart from the present petitioner herein, there is no other person in the name of Sivaguru in R.C. Colony, Vadalur, Cuddalore District.

8 I further submit that in the statement recorded by the police on 12.11.2015, I have specifically given the name of Sivaguru, the petitioner herein is known by the name Sivaguru, whereas the petitioner claims that he is Sivagurunathan."

9 This Court gave its anxious consideration to the rival submissions.

10 During the hearing of this case, the petitioner was

present in the open Court. This Court told the learned counsel for the petitioner that if the petitioner produces Sivaguru, S/o Mahalingam, for and on whose behalf and also on behalf of other accused, the petitioner had filed two anticipatory bail applications before the Sessions Court, then, it will be easier for this Court to decide the issue.

11 On 31.08.2018, when the matter was taken up for hearing, the petitioner filed an affidavit of even date, wherein, at paragraph no.3, he has stated as follows:

"3. I submit that the above case came up before this Hon'ble Court on 20.08.2018 and this Hon'ble Court passed an order, directing me to file an affidavit and in obedience to the above order, I have filed the affidavit on 27.08.2018. The Hon'ble Court also directed me to file particulars of the above said Sivaguru, S/o Mahalingam and also ask to bring him to the Hon'ble Court. I further submit that the said Sivaguru, S/o Mahalingam is residing at R.C. Colony, Vadalur, Cuddalore District and he is a painter by profession and daily he goes to various places to work. I submit that I am not able to get him and produce before this Hon'ble Court since I am not aware of his daily movements in spite of my best efforts. Hence, I am unable to produce him before this Hon'ble Court. This Hon'ble Court has directed me to appear on 31.08.2018 and in obedience of order of this Hon'ble Court, I am appearing today. As per the direction of this Hon'ble Court, I have provided particulars of Sivaguru, S/o Mahalingam as stated above. But I am unable to procure and produce before this Hon'ble Court." (emphasis supplied)

12 On that day, i.e., 31.08.2018, the matter stood adjourned to 03.09.2018 for further hearing. On 03.09.2018, the Inspector of Police submitted a certificate dated 01.09.2018 issued by the Village Administrative Officer, Seraakkuppam Village, to the effect that there is no person by name Sivaguru, S/o Mahalingam in R.C. Colony, Vadalur.

13 However, the petitioner has also submitted a certificate dated 03.09.2008 issued by the Village Administrative Officer of Parvathipuram Village to the effect that the petitioner is living in No.7, Maruthi Nagar, Parvathipuram Village, Kurinjipadi Taluk. On the strength of the said certificate, the learned counsel for the petitioner contended that the petitioner is not a resident of R.C. Colony, Vadalur, but, a resident of Parvathipuram Village.

14 This Court called for information from the Court of the Judicial Magistrate No.III, Cuddalore, as to whether

Sivaguru, S/o Mahalingam, arrayed as the 15th petitioner in CrI.M.P. No.4932 of 2015, had surrendered and furnished bail in compliance with the order dated 27.11.2015 passed by the I Additional District and Sessions Judge, Cuddalore, in and by which, anticipatory bail was granted.

15 To the said pointed query, the Judicial Magistrate No.III, Cuddalore, has sent a report to the effect that Sivaguru, S/o Mahalingam, has not surrendered till date.

16 It is seen that this quash application has been filed before this Court on 05.09.2017. During the pendency of this quash application, the petitioner has filed a suit in O.S. No.60 of 2018 against the District Collector, Home Secretary, Director General of Police and Elumalai, the Investigating Officer and others, before the Special Court for SC/ST Act Cases, contending that he belongs to Dalit community and that he has been falsely implicated in this case and that disciplinary action should be taken against the Investigating Officer and compensation of Rs.3,75,000/- should be paid to him under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Not stopping with the filing of the said suit, the petitioner has filed a private complaint on 27.07.2018 under Section 156(3) Cr.P.C. for registration of FIR against the Investigating Officer and the said private complaint has been returned for rectification of certain defects on 11.08.2018.

17 Admittedly, after taking cognizance of the offence in P.R.C. No.42 of 2017, the Judicial Magistrate No.III, Cuddalore, issued summons to the petitioner, which was received by the petitioner and thereafter, the petitioner has filed the present quash application.

18 This Court perused the case diary and found that the incident in question had taken place on 11.11.2015 and after the complaint given by the de facto complainant, the FIR was registered on the same day at 21.30 hrs. In the complaint, the de facto complainant has given the names of the attackers and it is seen that the name of Sivaguru figures therein. However, on the same day, the police have recorded the Section 161(3) Cr.P.C. statements of not only the de facto complainant but also that of seven witnesses, viz., (1) Loganathan, Manager of Krishna Bakery, (2) Kannan, eye witness, (3) Narayanan, eye witness, (4) Ali, owner of Iyengar Cake Shop and Bakery and (5) Ashraf, Cashier in Iyengar Cake Shop and Bakery, (6) Kamaraj, owner of Krishna Sweets and (7) Prakash, owner of Krishna Bhavan Hotel, who have all clearly stated that that Vakil Sivaguru was also part of the attackers team and he too participated in the attack. They have also given the name of Sivaguru's father as Navappan. In fact, the gang had not only damaged the bakery of

the de facto complainant but also the Iyengar Cake Shop and Bakery run by Ali. The show case of both the bakeries have been damaged.

19 The contention of the learned counsel for the petitioner that the petitioner's name is "Sivagurunathan", whereas, the de facto complainant and other witnesses have stated the name as "Sivaguru" and therefore, the petitioner has been falsely implicated, requires to be stated only to be rejected. Dictates of common sense would state that Sivaguru is the short form for Sivagurunathan. That is how people will refer to a person with such a long name. The affected witnesses have clearly stated that Advocate Sivaguru partook in the attack. Whereas, the case of the petitioner is that Sivaguru, S/o Mahalingam is a painter by profession and not an Advocate. Though an opportunity was afforded to the petitioner to produce his client Sivaguru, he expressed his inability to produce him, as could be seen from his affidavit dated 31.08.2018, the relevant portion of which, has been extracted in paragraph no.11 above. To cap it all, Sivaguru, S/o Mahalingam, who was granted anticipatory bail by the I Additional District and Sessions Court, Cuddalore, has not surrendered before the Judicial Magistrate No.III, Cuddalore, till date.

20 The next contention of the learned counsel for the petitioner is that the District Public Prosecutor did not bring it to the notice of the Sessions Court that Sivaguru, S/o Mahalingam, is not the accused, but, Sivagurunathan, S/o Nagappan is the accused. Indubitably, this is a remiss on the part of the District Public Prosecutor. The first anticipatory bail application was dismissed by the Principal District and Sessions Court and in the second anticipatory bail application, the I Additional District and Sessions Judge, Cuddalore, has granted anticipatory bail to all the petitioners named in the petition, including Sivaguru, S/o Mahalingam. As pointed out above, the very fact that the said Sivaguru, S/o Mahalingam, has not surrendered before the Judicial Magistrate No.III, Cuddalore, in compliance with the anticipatory bail order till date itself exposes the lacuna in the petitioner's case. The failure of the District Public Prosecutor to inform the Sessions Court that the actual accused in this case is Sivagurunathan, who is the counsel on record for the petitioners and not Sivaguru, the 15th petitioner in the anticipatory bail application, cannot be a ground to hold that a false case has been foisted against the petitioner, especially in the teeth of overwhelming materials that have been collected by the Investigating Officer to the effect that Advocate Sivaguru was involved in the attack. It should be borne in the back of our mind that the petitioner is a practising advocate of the Cuddalore Bar and was also an office bearer of the Bar

Association. In all fairness, the District Public Prosecutor, who is also a member of the same Bar, should have alerted the Court, which, for reasons best known to him, was not done. This loophole cannot be a ground for escape.

21 A feeble attempt to quash the prosecution was made by the learned counsel for the petitioner that the petitioner is Sivagurunathan, S/o Nagappan and not S/o Navappan, as given in the charge sheet. It is common knowledge that the English language is not phonetically a sound one. Further, the spelling and pronunciation of the name of the petitioner's father is not relevant, because, the witnesses in their police statements, have clearly identified him as "Advocate Sivaguru". That apart, the de facto complainant has filed an affidavit, wherein, he has stated that the petitioner was one of the attackers. Therefore, this submission does not cut ice with this Court.

22 Further, this Court called for photocopies of the records from the Sessions Court in Crl.M.P. Nos.4853 and 4932 of 2015. A perusal of the records shows that a supporting affidavit, signed by 19 persons named in the petition in Crl.M.P. No.4853 of 2015, has been filed before the Sessions Court. In that supporting affidavit, one M. Sivaguru has signed. Whereas, there is no such affidavit in Crl.M.P. No.4932 of 2015. In Crl.M.P. No.4932 of 2015, anticipatory bail has been granted based on a petition filed without there being any supporting affidavit. The question is as to who has signed as "M.Sivaguru" in the supporting affidavit in Crl.M.P. No.4853 of 2015. This does require a separate investigation by the District Crime Branch. Realising that the noose was getting tightened around him, the petitioner has desperately filed a civil suit and a private complaint against the Investigating Officer during the pendency of this quash application in order to impede the prosecution against him. In the ultimate analysis, the conduct of the petitioner, an advocate by profession, is undoubtedly unbecoming, requiring a Bar Council enquiry against him.

In the result:

- this Criminal Original Petition is dismissed. Connected Crl.M.Ps. are closed;
- since only Sivaguru, S/o Mahalingam, has been granted anticipatory bail by the I Additional District and Sessions Judge, Cuddalore, vide order dated 27.11.2015 and he is not the real accused, the said order will not cover and protect the petitioner from arrest;
- the District Crime Branch, Cuddalore, shall

register a suo motu FIR and investigate as to who had signed the affidavit in CrI.M.P. No.4853 of 2015 as "M. Sivaguru";

- the Principal District and Sessions Judge, Cuddalore, shall furnish the original records in CrI.M.P. Nos.4853 and 4932 of 2015, to the Investigating Officer of the District Crime Branch, Cuddalore, after retaining certified photocopies of the same on file; since the signature in the affidavit in CrI.M.P. No.4853 of 2015 has been affixed outside the Court and thereafter, filed in the Court, the provisions of Section 195 and 340 Cr.P.C. are not required to be followed in the light of the law laid down by the Constitution Bench of the Supreme Court in Iqbal Singh Marwah vs. Meenakshi Marwah [AIR 2005 SC 2119].

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1 The Station House Officer
Vadalur Police Station
Cuddalore District
- 2 The Principal District and Sessions Judge
Cuddalore
- 3 The Judicial Magistrate Court No.III
Cuddalore
- 4 The Superintendent of Police
District Crime Branch
Cuddalore
- 5 The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.68757

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.69000

CrI.O.P. No.18624 of 2017

GSP(17/10/2018)