

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.27676 of 2018

K.R.R.Aiyyappamani

..Petitioner

..Vs..

State of Tamil Nadu,
By The Inspector of Police,
All Womens Police Station,
Attur.
(Cr.No.9 of 2018)

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to Expunge the remarks made against him in para 9 and para 13 by the Hon'ble Sessions Judge, Mahila Court, Salem while disposing petition in C.M.P.No.1568 of 2018.

For Petitioner : Mr.V.Kartic, senior counsel
for Mr.K.P.Anantha Krishna

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking for the relief of expunging the remarks and observations made against the petitioner by the learned Additional Assistant District Judge (Mahila Court), Salem, while passing orders in CrI.M.P.No.1385 of 2018.

2. The petitioner is a practicing advocate having 18 years of standing in the Bar. The petitioner hails from a family of advocates and his father had practised as an Advocate for more than 50 years.

3. On 09.09.2018, the petitioner was approached by one Ramakrishnan along with the client and he requested the petitioner to appear in an Anticipatory Bail Petition which was pending before the Mahila Court. A change of vakalat was also handed over to the petitioner and he was asked to appear in the case. On 10.09.2018, the petitioner entered appearance in the above proceedings.

4. The petitioner was given specific instructions along with documents in order to impress upon him to argue that the concerned victim girl was a major and is also married, and therefore no offence under POSCO Act is made out. For this purpose, a Birth Certificate of the victim girl and some marriage photos were handed over to the petitioner.

5. The above documents were filed by the petitioner, believing it to be true and genuine, along with a memo, before the concerned Court. The anticipatory bail petition came up for hearing on 24.09.2018, and the Court below wanted to enquire regarding the Birth Certificate submitted before the Court, and therefore called a report from the Competent Authority.

6. The petitioner started noticing that all was not well with the above said Ramakrishnan, who claimed himself to be an advocate. Certain instructions given by him and request made by him to the petitioner to talk with the concerned Tahsildar, created a doubt in the mind of the petitioner regarding the credentials of the above said Ramakrishnan. Therefore, the petitioner started making enquiry about the above said Ramakrishnan and found that this person has not been enrolled before the Bar Council of Tamil Nadu and Puducherry. The petitioner got an information that the said Ramakrishnan was enrolled in Allahabad Bar Council with an Enrollment No.7123/1998. This also did not tally with the name of Ramakrishnan in Allahabad Bar Council. Immediately, the petitioner gave a complaint against the above said Ramakrishnan to the Police.

7. In view of all the above said developments, the petitioner reported "No Instructions" in the Anticipatory Bail Petition and withdrew his vakalat on 03.10.2018, by filing a memo before the Court. While the petitioner had taken these steps before the Court below, it also came to light that the Birth Certificate was not genuine and it was a forged document. The petitioner therefore filed a memo before the Court below not to rely upon the Birth Certificate while considering the Anticipatory Bail

Petition. One Ramya, who claimed to be the sister of the victim also filed an affidavit before the Court below admitting that she had handed over the Birth Certificate to the above said Ramakrishnan for filing it before the Court. The petitioner as a responsible counsel requested the Court below not to rely upon the Birth Certificate, as stated herein above. Thereafter one Murugaraj, an advocate from Salem appeared in the Anticipatory Bail Petition, and the petition was dismissed by the Court below on 03.10.2018.

8.The petitioner gave another detailed Complaint before the Hasthampatty Police Station against the said Ramakrishnan and an FIR was registered in Cr.No.402/2018 on 09.10.2018, for an alleged offence under Section 417, 294, 465, 468, 471 and 506 (ii) of IPC. The above said Ramakrishnan was also arrested and remanded to judicial custody.

9.While so, the petitioner came to know that some remarks have been made against him in the dismissal order, and therefore he obtained a copy of the order. He found that in the said order, the Court below had recorded as if the petitioner is seeking apology before the Court below for filing a forged Birth Certificate. The said observation made by the Court gives an impression as if the petitioner had filed the Birth Certificate knowing fully well that it is a forged document. The petitioner also came to know that the Court below had passed another suo motu order dated 15.11.2018, wherein again the Court below has recorded as follows:

"The learned counsel for the accused Mr.K.R.R.Aiyyappamani Submits that M.Ramya, D/o.Mahalingam handover the bith certificate to him and she is the sister of the said Kaviya and ancitipatory bail application was previously filed by the S.P.Balaji, Advocate, Salem and subsequently he filed change of vakalat and he also seeks apology before this court for filing the fake birth certificate of Kaviya and also filed memo to that effect as he withdraws his vakalat and reporting no instructions since the document produced by the petitioners is not genuine one and they have acted against the interest of counsel and the represented before this court for record the memo and thus render justice. Thereafter Mr.S.Murugaraj advocate has filed change of vakalat for the petitioners in the ancitipatory bail application. He also argued in the ancitipatory bail application

thereafter the Ancitipatory Bail was dismissed on 3.10.2018. The Office of this Court is directed to open a Suo motu Cr.M.P.No.1385/2018 for further proceedings pursuant to the act of production of fake Birth Certificate before the Court".

10.The above said observations again gave an impression to the petitioner that he had produced forged Birth Certificate knowing fully well that it is forged. Therefore, the present petition has been filed seeking to expunge adverse remarks made against the petitioner.

11.Mr.V.Kartic, learned senior counsel for Mr.K.P.Anantha Krishna, appearing on behalf of the petitioner would submit that an advocate acts as per the instructions received by him from the client and he files documents before the Court, based on what is furnished to him by the client. There is no mechanism for an advocate to know the genuineness of a document given to him by the client. The learned senior counsel further contend that this situation can be faced by any advocate and if Courts are to pass adverse remarks against advocates, the advocate community will become vulnerable in the hands of fraudulent persons. The learned senior counsel would further contend that an advocate has no mechanism to know about the credibility of a client who approaches him and the genuineness of the documents given by him for the purpose of filing a case. Therefore, in a situation like this, the Courts must be the saviour of advocates and the Courts must ensure that the credibility of the advocate is safeguarded.

12.The learned Additional Public Prosecutor contended that the case is already being investigated by the Hasthampatty Police Station and they have already arrested Ramakrishnan and the investigation is being carried on in a very effective manner. However, the Court while passing suo motu orders on 15.11.2018, has given a direction to the DGP to allot this case to a specialised agency. The learned Additional Public Prosecutor would submit that unless there is an ineffective investigation, conducted by the concerned Police, there is no requirement to change the investigation at this stage and the learned Additional Public Prosecutor would submit that the investigation is at a crucial stage. Therefore, the learned Additional Public Prosecutor requested this Court that the investigation can be continued by the Hasthampatty Police Station, without any change of investigation at this stage.

13.This Court has carefully considered the submissions made on either side and also the materials placed on record. This is yet another case which exposes the vulnerability of an advocate in the hands of a fraudulent client who introduces himself to be a genuine person and gives instructions to the advocate and also hands over forged documents as genuine and the advocate acts on it and proceeds to file a case and suddenly finds himself pushed to a very embarrassing situation. In this case, the petitioner had no occasion to know about the character of Ramakrishnan, and the genuineness of the documents handed over by him. More particularly because Ramakrishnan introduced himself as an advocate. When instructions are given by another advocate, the normal conduct is to take the instructions as it is and proceed further in the matter. No one will suspect the instruction given by the another advocate. However, this case rings an alarm bell to the advocates since now the advocates will have to first satisfy themselves as to whether the advocate who is instructing them, is a genuine advocate or not. This is a very sad situation. There is no mechanism for an advocate to know about the credibility of the client who approaches him and the genuineness of the documents handed over to him. The entire relationship of an advocate and client is treated as a privileged relationship and that is why the communication between the advocate and a client is barred from being used as evidence under Section 126 of the Indian Evidence Act, 1972. This communication is termed by the Evidence Act as professional communication.

14.In the facts of this case, this Court is able to see that the petitioner has taken all effective steps such as withdrawing himself from the case, giving a Police Complaint against Ramakrishnan and also filing a memo before the Court, informing the Court about the fraud played in this case and requesting the Court below not to rely upon the fake Birth Certificate. The petitioner has also asked Ramya, who had handed over the Birth Certificate, to file an affidavit before the Court below to the effect that she only handed over the Birth Certificate to the said Ramakrishnan for filing it in the Court. Therefore, this Court is fully convinced that the petitioner had taken all effective steps, immediately after coming to know that Ramakrishnan is not a genuine person and the Birth Certificate handed over to him is not a genuine document.

15.In cases of this nature, the Courts will have to come to the aid of an advocate and save his face. The Court below should have been more sensitive in handling the case and should not have made any remarks against the advocate, which may impact the image and the credibility of an advocate. It is difficult

to earn a good name and it takes a very long time for a person to earn a good name but it is very easy to earn a bad name and one single incident will demolish the entire edifice of goodwill that has been earned over a period of time. The language used by the Court below as if the petitioner tendered his apology before the Court for filing a Birth Certificate, gives an impression as if the petitioner knew that the Birth Certificate is a forged document. Even in the memo filed before the Court below, the petitioner has not stated anywhere that he is seeking apology for filing a forged Birth Certificate. Therefore, this Court is of the considered view that this remark should have been avoided by the Court below, in its order dated 03.10.2018, and **15.11.2018**.

16. This Court is able to understand the anxiety of the Court below where a fraud was attempted to be played in a judicial proceedings by producing a forged Birth Certificate. Therefore, this Court appreciates the seriousness shown by the Court below in taking immediate steps to restore the majesty of Court. The Court below was aware of the fact that the criminal Complaint given by the petitioner is already under investigation by the Hasthampatty Police Station, and the Investigating Officer had already arrested Ramakrishnan and remanded him to judicial custody. Therefore, the Court below before giving any directions to the DGP, should have attempted to satisfy itself with regard to the investigation already carried on by the Hasthampatty Police Station. According to the learned Additional Public Prosecutor, the investigation is at a very crucial stage and transferring the investigation to another agency or Police at this stage will impact the investigation. Therefore, it would be better to allow the Hasthampatty Police Station to continue with the investigation, rather than transferring it at this stage. The investigation can always be monitored and if in future the Court finds that the investigation is not going on effectively in the right path, the Court can always take steps to change the investigating agency.

17. This Court is also equally anxious and disturbed with the manner in which a fraud has been attempted to be played in a judicial proceeding. Therefore, this Court completely appreciates the seriousness shown by the Court below in dealing with the matter.

18. In view of the above, the Criminal Original Petition is disposed of in the following terms:

****a) The following remarks made by the Court below in its order dated 03.10.2018 viz; "seeking apology before this Court for filing forged birth certificate." and 15.11.2018 viz; "he**

also seeks apology before this Court for filing the fake birth certificate of Kaviya and also filed Memo to that effect and since counsel on record filed forged birth certificate of Kavya for getting anticipatory bail in this case. This Court is not inclined to grant bail since the act done by the petitioners counsel is tarnished the majesty of this Court's justice delivery system and is hereby expunged.

b) The investigation can be continued by the Hasthampatty Police Station in Cr.No.402 of 2018, and there is no need for any change of investigation at this stage. It is made clear that the Investigating Officer shall continue with an effective investigation and shall also file regular reports before the Sessions Judge, Mahila Court, Salem, regarding the steps taken during the investigation and the stage of investigation. The Court below shall also closely monitor the investigation conducted by the Hasthampatty Police Station.

Sd/-

Deputy Registrar

Dated: 05.12.2018

*** Para 15 & 18(a) of the order
dated 28.11.2018**

**Corrected as per order dated 07.12.2018
and 21.12.2018 by NAVJ**

**Corrected as per the order of this court
dated 09/01/2019**

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Sessions Judge,
Mahila Court, Salem.

To be Substituted to
the order already despatched
on 06.12.2018

2.The Inspector of Police,
All Women Police Station,
Attur.

To be Substituted to the
Order already despatched
on 07/01/2019

3.The Sub Inspector of Police,
Hasthampatty Police Station,
Salem District.

4.The Director General of Police,
State of Tamilnadu,
Chennai.

5.The Superintendent of Police,
Salem District.

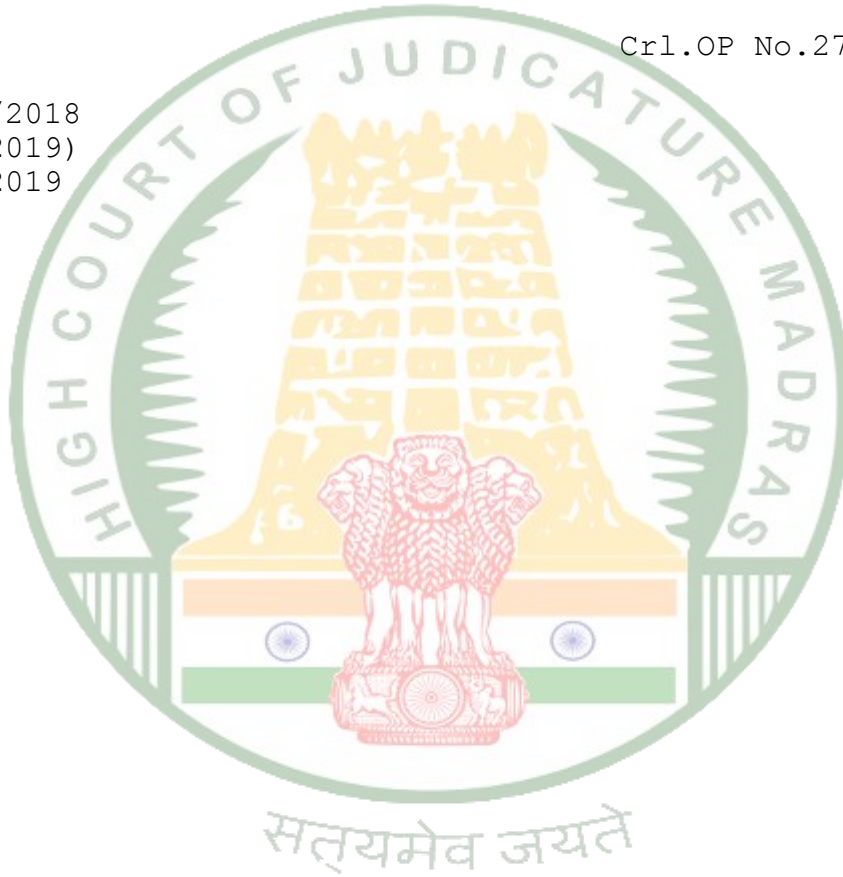
6.The Public Prosecutor,
High Court of Madras,
Madras.

+2cc to Mr.K.P.Anantha Krishnan, Advocate, S.R.No.84246.

+1cc to Mr.K.P.Anantha Krishnan, Advocate sr.no.2197

Cr1.OP No.27676 of 2018

RRS 05/12/2018
SP(04/01/2019)
nr 09/01/2019



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