



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.2244 of 2018

WEB COPY

K.S.Xavier

...Petitioner/Defacto Complainant

Vs.

The Sub Inspector of Police
Rayappanpatti Police Station
Theni

....Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to direct the learned Judicial Magistrate, Uthamapalayam to dispose of the above case in C.C.No.662 of 2005 within the time stipulated by this Court.

For Petitioner :Mr.A.Joseph Jerry

For Respondent :Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This petition has been filed, seeking to direct the learned Judicial Magistrate, Uthamapalayam to dispose of the case in C.C.No.662 of 2005 within a time stipulated by this Court.

2.The learned counsel for the petitioner had brought to the notice of this Court that the bundle in this case went missing and the case was adjourned repeatedly from the year 2008 for the purpose for reconstruction of the bundle. In this Criminal Original Petition, this Court had directed the learned Principal District Judge, Theni to submit a report. The learned Principal District Judge, Theni filed the report on 12.07.2018 before this Court, stating that the steps are taken to reconstruct the documents marked as Exhibits P1 and P5 in C.C.No.662 of 2005. Along with the said report, the report given by the learned Judicial Magistrate, Uthamapalayam was also sent before this Court. In the said report, it is found that permission was sought for by the Judicial Magistrate, Uthamapalayam from the Principal District Judge, Theni to reconstruct Exhibits P1 and P5 and necessary orders were also passed by the Principal District Judge and notice was also given to the parties for the purpose of reconstruction of the above said two exhibits.

3.When the matter came up before this Court on 28.09.2018, this Court passed the following orders :

<https://hcservices.ecourts.gov.in/hcservices/>

"The learned Principal District Judge, Theni is directed to submit a report to this Court as to whether the



case bundle in C.C.No.662 of 2005 has already been reconstructed. It is seen from the earlier report that notice was sent to both the parties on 05.07.2018 in order to pass an order to reconstruct the case bundle. Therefore, the Principal District Judge, Theni, is directed to file a report as to what happened subsequent to the earlier report submitted before this Court on 12.07.2018. The report has to reach this Court on or before 04.10.2018. In the meantime, the respondent police is also directed to file a status report in this case"

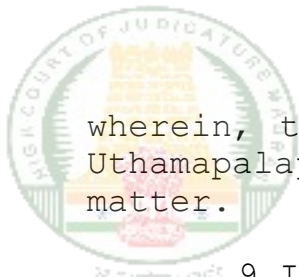
4.Pursuant to the order passed by this Court, a report has been filed along with the entire case bundles. The case bundles would reflect that the Judicial Magistrate, Uthamapalayam by a letter dated 18.07.2018 had informed the Principal District Judge, Theni that the Court was able to reconstruct Exhibit-P1 with the available copy of the said document. Insofar as Exhibit-P5 is concerned, the Court was not in a position to get a certified copy or a photo copy of Exhibit-P5 and therefore, Exhibit P5 could not be reconstructed by the Judicial Magistrate, Uthamapalayam. Subsequent to the said letter, the Judicial Magistrate has proceeded to question the accused person under Section 313 Cr.P.C and has heard the final arguments in the case.

5.From the records, it is also found that the learned Judicial Magistrate, Uthamapalayam has passed the final Judgment in C.C.No.662 of 2005 on 07.09.2018. In the said Judgement, there is a reference to the examination of 10 witnesses and 6 documents, out of which, Exhibit P5, was not able to be reconstructed.

6.The learned counsel for the petitioner representing the defacto complainant would submit that the defacto complainant was kept in dark right from the year 2008 and the defacto complainant was always given an impression that the records are missing and the case is pending. The learned counsel would further submit that right from the beginning, in this case, the documents went missing and the accused person was able to successfully drag on the proceedings and ultimately, now the Judgment has been passed , acquitting the accused person from all charges. The learned counsel would further submit that even copy of the Judgment has not been furnished to him till date, inspite of applying for certified copy of the same before the Court below.

7.It is seen from the records that the Judicial Magistrate, Uthamapalayam had also conducted a departmental enquiry against the concerned person on the missing Court bundle. After a detailed enquiry, it was found that the allegation against the Court staff was also not proved and therefore, negative enquiry report was also submitted.

8.Thereafter, the learned Principal District Judge, Theni as the disciplinary authority has passed the final order on 19.3.2014,



wherein, the enquiry conducted by the learned Judicial Magistrate, Uthamapalayam was struck down and a fresh enquiry was ordered in the matter.

9. In view of the above developments, at this stage, the relief that has been sought for by this petitioner has already come into effect by means of the final Judgment passed by the learned Judicial Magistrate, Uthamapalayam on 07.09.2018.

10. This Criminal Original Petition is disposed of with a direction to the petitioner to apply for certified copy of the Judgment and also all the documents along with all the materials that were relied upon in C.C.No.662 of 2005 and the Court below is directed to give a certified copy of the documents sought for by the petitioner in order to enable the petitioner to workout his remedy in accordance with law. Liberty is also granted to the petitioner to file an appeal against the Judgment passed by the Court below.

11. Registry is directed to give a copy of the status report filed before this Court by the learned Judicial Magistrate, Uthamapalayam and the learned Principal District Judge, Theni to the petitioner.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Principal District Judge
Theni.(W.e) dated: 04.10.2018
2. The Judicial Magistrate, Uthamapalayam.(W.e) dated: 04.10.2018
3. The Sub Inspector of Police
Rayappanpatti Police Station
Theni
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1cc to Mr.A.Joseph Jerry, Advocate Sr.No.20298

msa

VB/PM/SAR3/10.12.2018/3P/6C