



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.OP (MD) Nos.5464 and 5465 of 2018

R.Vivekandan

... Petitioner in both Crl.OP

Vs.

1. The Director of General of Police,
Government of Tamil Nadu,
Chennai.

2. The Superintendent of Police,
Thanjavur.

3. The Inspector of Police,
Sethubavachathiram Police Station,
Thanjavur District.

Cr.Nos.40 and 167 of 2017

...Respondents in both Crl.OPs

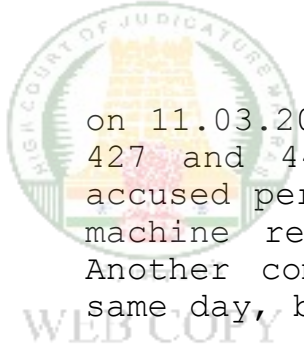
COMMON PRAYER:- Petitions filed under Section 482 of Criminal Procedure Code, to transfer the investigation in Crime Nos.40 and 167 of 2017 on the file of the third respondent (Inspector of Police, Sethubava Chathiram Police Station, Thanjavur) to the CB-CID, Thanjavur District.

For Petitioner	: Mr.Isaac Mohanlal, Senior Counsel for Mr.K.M.Thirupathi
For Respondents	: Ms.S.Bharathi, Government Advocate in both Crl.OPs

COMMON ORDER

These petitions have been filed seeking to transfer the investigation in Crime Nos. 40 of 2017 and 167 of 2017 respectively.

2.The crux of the issue is that the Manager of the owner of the lands in question had given a complaint to the respondent Police dated 09.03.2017 to the effect that the accused persons illegally trespassed into the property and removed the stone pillar wall and fence. This complaint was registered by the respondent Police only



on 11.03.2017 in Crime No.40 of 2017 for the offence under Sections 427 and 448 IPC. When this FIR was pending, on 26.10.2017 the accused persons again trespassed into the property and by using JCB machine removed the iron wires and damaged the entire property. Another complaint was given to the respondent Police on the very same day, but, the same was registered only on 03.11.2017.

3.The accused persons inspite of pendency of the FIR continued to commit the offence, which resulted in the petitioner filing the petition for cancellation of bail in CrI.OP(MD)No.652 of 2018. This Court after considering the entire facts in detail found that the accused persons had committed an act of mischief and trespassed on the very same property even after the grant of anticipatory bail. Taking into note the conduct of the accused persons, this Court cancelled the bail granted by the Sessions Court. This order was appealed before the Hon'ble Supreme Court and subsequently the same was dismissed as withdrawn on 21.05.2018.

4.The learned Senior Counsel Mr.Isaac Mohanlal, appearing for the petitioner would submit that right from the beginning the respondent Police had not investigated this case in right earnest and neither the accused were arrested nor were the machineries that were used for the demolition of the wall, seized.

5.The learned Senior Counsel also brought to the notice of this Court that even after the bail was cancelled, the accused persons approached this Court after the final report was filed by the respondent Police and again sought for anticipatory bail. This Court by an order dated 20.06.2018 made in CrI.OP(MD)No.9930 of 2018 took into consideration the earlier conduct of the accused persons and directed the accused persons to give solemn undertaking that whatever the disputes they have with the petitioner will be resolved only through due process before the Civil Court and they will not indulge in similar conduct. The accused persons also filed an affidavit to that effect before this Court. However, the learned Senior Counsel brought to the notice of this Court that even after filing of such an affidavit the accused persons indulged in committing the offence in the property and therefore the matter is pending before the learned single Judge with regard to the violation of the solemn undertaking given before this Court. This Court by an order dated 10.08.2018 has directed the accused person to file further affidavit in this regard and the accused persons have also filed affidavits to the effect that they will not indulge in any offence in the said property in future.

6.The learned Senior Counsel therefore submitted that the accused continue to commit one offence after the other and the respondent Police are not investigating the case seriously and no arrest has been effected in this case. The learned Senior Counsel further submitted that the JCB machine that was used for the purpose of demolishing the wall, was not even seized in the course of investigation and shown as material object.



7.The learned Government Advocate would submit that the respondent Police have investigated both the FIRs separately and final reports have been filed before the Judicial Magistrate, Pattukottai in PRC No.24 of 2017 for the offence under Section 448 IPC r/w Section 3(1) of TNPPDL Act and PRC No.25 of 2018 for the offence under Sections 447 IPC r/w Section 3(1) TNPPDL Act.

8.The learned Government Advocate would further submit that the respondent Police have obtained statements of both the eye witnesses and also that of the other witnesses, who specifically spoke about the damage that was caused to the property.

9.This Court also perused the CD file that has been produced by the respondent Police and found the statements, which have been taken from the witnesses, who had seen the occurrence and also from the witnesses who had seen the place of occurrence after the incident and who have spoken about the mischief that has been caused in the property. The case is before the committal Court and it has to be committed to the competent Court since it involves the offence under TNPPDL Act.

10.The conduct of the accused persons is already a subject matter before another single Judge and suitable directions are being issued in order to ensure that the accused persons do not continue to commit offence. This Court does not want to venture into that area, since it is already *sub judice* before another single Judge.

11.On going through the CD file and the statements taken from the witnesses, this Court is of the view that the *prima facie* case has been made out against the accused persons. However, in order to ensure that the interest of the *de facto* complainant is safeguarded and the case proceeds in the right manner, leave is granted to the petitioner to file an appropriate application before the Court below to assist the prosecution immediately after the case is committed to the competent Court.

12.It is reported that the case is posted on 11.09.2018 for serving of the copies to the accused persons. Therefore, the Judicial Magistrate, Pattukottai is directed to commit the case to the appropriate Court. The competent Court shall allow the petition, which shall be filed by the petitioner for assisting the prosecution and shall ensure that the trial is completed expeditiously.

13.The criminal original petitions are disposed of with the above directions.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Judicial Magistrate,
Pattukottai.
2. The Chief Judicial Magistrate,
Tanjore at Kumbakonam.
3. The Director of General of Police,
Chennai - 600 004
4. The Superintendent of Police,
Thanjavur.
5. The Inspector of Police,
Sethubavachathiram Police Station,
Thanjavur District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 2 CC TO Mr.M.SENTHIL KUMAR, ADVOCATE IN SR No. 80647

DSK

TE/RSK/SAR-2 : 07/09/2018 : 4P/9C

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