



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 28.02.2018

Delivered on : 06.03.2018

WEB COPY

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.12242 of 2013

M.Soundarapandian ... Petitioner/Defacto Complainant
Vs.

1.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

2.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar.

... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to transfer the investigation in Crime No.29 of 2012 on the file of the second respondent to any other independent agency.

For Petitioner : Mr.G.Venugopal
for Mr.M.P.Senthil

For Respondents : Mr.A.Robinson
Government Advocate
(Criminal side)

ORDER

The petitioner herein is the defacto complainant in Crime No.29 of 2012 on the file of the second respondent police.

2.It is alleged that before registration of the abovesaid case, during the time of occurrence, on 18.12.1971, the petitioner herein purchased the property, which is now in dispute from one Selva Nambi. Thereafter, the said Selva Nambi created a fraudulent and illegal document as if he has got some more lands in the very same survey number. The fraudulent documents are created only for the purpose of grabbing the land, which was purchased by the petitioner and in order to avoid the same, on 23.05.2011, the petitioner lodged a complaint before the second respondent. Unfortunately, the second respondent has not taken any steps to settle the grievances mentioned in the petition. So, on 20.08.2011, the petitioner presented a private complaint before the Court of Judicial Magistrate, Sivakasi. After receiving the said complaint, the learned Magistrate forwarded the same to the second respondent with a direction to register the case and for investigation. Even after



passing order by the learned Judicial Magistrate, the second respondent has not complied with the order passed by the learned Magistrate and therefore, the petitioner has approached this Court for getting appropriate direction. This Court, vide its order dated 29.11.2011, in Crl.O.P.(MD)No.15540 of 2011, directed the second respondent to comply with the order passed by the learned Magistrate with a direction to inform the same to the Magistrate concerned. Even after passing that order, the second respondent herein has not registered a case, instead, on 29.12.2011, he issued R.C. Notice, in which, he mentioned as further action is dropped in the complaint given by the petitioner.

3.After receiving the file from the second respondent, on 12.01.2012, the learned Judicial Magistrate, Sivakasi, passed an order, in which, he directed the second respondent to comply with the order passed by this Court and investigate the matter in accordance with law and file a fresh final report, within a month from the date of receipt of a copy of that order. Then only on 14.01.2012, the second respondent registered a case in Crime No.29 of 2012 for the offences punishable under Sections 120(b), 417, 420, 465, 467 and 468 IPC. After registration of the case, he started the investigation and after completion of investigation, on 25.05.2012, he again issued one another R.C. Notice, in which, he mentioned that the facts found in the complaint are having mistake and also filed a final report in this regard. After receiving the final report, the learned Judicial Magistrate, Sivakasi, issued a notice to the petitioner and on 07.09.2012 passed an order, which reads as follows:

''Complainant present and his objection made considered and it is ordered to Investigate the Matter further and to file Fresh Final Report.''

4.Today when the matter is taken up for hearing, the learned Government Advocate (Criminal side) appearing for the respondents fairly conceded that after receiving the order passed by the learned Judicial Magistrate, Sivakasi, dated 07.09.2012, no action was initiated by the second respondent police. So, the inaction on the part of the second respondent is nothing but abuse of process of law.

5.In the judgment of Vipul Shital Prasad Agarwal Vs. State of Gujarat and another reported in 2013 (1) SCC 197, our Hon'ble Supreme Court has held as follows:

''21.In my opinion, the mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under Section 173(2) is abandoned or rejected. It is only that either the



investigating agency or the Court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report.''

6. So, as per the observation of our Hon'ble Supreme Court, in order to satisfy the Court concerned, the investigating agency is having the duty to collect some more materials in order to sustain the allegation of commission of offence indicated in the report. But, in this case, the second respondent herein not at all doing his job and kept the order passed by the learned Magistrate in a cold storage. The entire attitude committed by the said Investigation Officer is condemnable one. Accordingly, I have no hesitation to give the following direction to the first respondent:-

The Superintendent of Police, Virudhunagar District, is directed to appoint a fresh Investigation Officer not below the rank of Deputy Superintendent of Police, directing him to comply with the order passed by the learned Judicial Magistrate, Sivakasi, within a period of six months. The results of proceedings should be intimated to this Court at the end of six months.

7. With the above direction, this Criminal Original Petition is disposed of.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
2. The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. M. P. Senthil, Advocate, SR.No.53499

CrI.O.P. (MD) No.12242 of 2013
06.03.2018