

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2018

PRONOUNCED ON : 05.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.OP.No.28123 of 2012
and
M.P.No.1 of 2012

1. K.Arun Kumar (A1)
2. K.Vetriselvan (A2)
3. K.Thirumal (A3) ... Petitioners

Vs.

1. State through the
The Inspector of Police,
B1, District Crime Branch Police Station,
Dharmapuri.
(Crime No.1374 of 2010)

2. C.M.Rathinakumar,
Inspector of Police,
District Crime Branch,
Dharmapuri. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in Crime No.1374 of 2010 on the file of the first respondent and to quash the same.

For Petitioners : Mr.N.Anantha Padmanabhan

For Respondents : Mr.T.Shunmugarajeshwaran for R1
Government Advocate (Crl.Side)

: Mr.K. Venkataramani,
Senior Counsel for
M/s.G.Bala and Daisy for R2

ORDER

This petition has been filed by the accused Nos.1 to 3 to quash the F.I.R in Crime No.1374 of 2010 on the file of the first respondent.

2. The first respondent had registered an F.I.R in Crime No.1374 of 2010 under Sections 379 and 413 of IPC stating that on 09.08.2010 at about 17.30 hours, when the second respondent was on patrol duty at Dharmapuri Bus stand, on suspicion over the third petitioner who was standing in bus stand by holding yellow colour bag and on seeing him, he tried to escape, but he caught him and searched his yellow colour bag and found that 100 gms gold biscuit, 4 Nos; 50 gms gold coin, 2 Nos; gold ring 3 Nos; Gold chain-1; Gold Bracelet, 2 Nos; Gold Bangle-1, Silver Coins-3 Nos and cash of Rs.2,00,000/- and on enquiry, the third petitioner revealed that the same was given by his brothers (petitioners 1 and 2). Further, he stated that his brother and their henchmen used to go to North India and robbed the aforesaid properties and asked him to keep the same and he further stated that his brothers asked him to bring those properties to Thanjavur and when he came to Dharmapuri Bus Stand. Hence, the first respondent had arrested him and registered a case in Crime No.1374 of 2010 under Sections 379 and 413 IPC and remanded to judicial custody.

3. The petitioners herein have filed the present petition under Section 482 of Cr.P.C to quash the said FIR against them.

4. The respondents have filed a Counter opposing the present petition.

5. Heard Mr.N.Anantha Padmanabhan, the learned counsel for the petitioners, Mr.T.Shunmugarajeshwaran, the learned Government Advocate (Crl.Side) for the first respondent and Mr.K. Venkataramani, the learned Senior Counsel for M/s.Bala and Daisy for the second respondent .

6. The learned counsel for the petitioners has submitted that the petitioners are the residents of the Thellampatti Village, Dindal Post, Palakode Taluk, Dharmapuri District. He further submitted that on 29.07.2010 at about 3.00 am five unknown persons came to the petitioners' house and committed robbery by showing deadly weapons. He further submitted that the said persons had taken away eight sovereigns of gold jewels, cash of Rs.30,000/- Bank Pass book and ATM card and also kidnapped the first petitioner and compelled him to take a sum of Rs.40,000/- by using ATM card and they received the said amount and thereafter left him. He further submitted that with regard to the said occurrence, the petitioners' father namely Krishna Murthy had lodged a complaint before the Inspector of Police, Kaarimangalam Police Station, Dharmapuri District, on the same date i.e., 29.07.2010 itself at about 6 p.m and based on the said complaint, a case was registered in Crime No.680 of 2010 under Section 395 IPC in the Kaarimangalam Police Station,

Dharmapuri District.

7. The learned counsel for the petitioners has further submitted that subsequently, the Police came to the petitioners' house and took away some documents namely LIC Policy, Title Deeds, Sale Agreements and balance gold jewels weighing to the tune of 636 gms and deed of partnership firm in respect of a lorry and also a cash of Rs.2,30,000/- and instructed the petitioners' father to be present before them in the afternoon and accordingly the petitioners' father and the third petitioner went to the Police Station. The Police permitted the petitioners' father alone to go home, but, detained the third petitioner in Police Station by saying that he will be sent after taking certain statement from him. He further submitted that even after 3 to 4 days, the respondents have not released the third petitioner. The petitioners' father sent a telegraphic representation to the Inspector of Police, Kaarimangalam Police Station, Dharmapuri District and also to the Superintendent of Police, Dharmapuri District on 02.08.2010 seeking the release of the third petitioner and inspite of the receipt of the said telegram, the police did not release the third petitioner and hence the first petitioner had filed H.C.P.No.1495 of 2010 before this Court to direct the Police to produce the body of the third petitioner. He further submitted that when the said H.C.P.No.1495 of 2010 came up for hearing, the police informed this Court that the case has been registered against the third petitioner in Crime No.1374 of 2010 under Sections 379 and 413 of IPC and in that case, he was arrested and remanded to Judicial custody and recording the said statement, this Court dismissed H.C.P.No.1495 of 2010.

8. The learned counsel for the petitioners has further submitted that the second respondent started to negotiate with the petitioners' father stating that the properties alleged to have been stolen are not account worthy and hence should part with a portion of the same to him. He further submitted that the third petitioner was detained in illegal custody for several days and negotiation was going on under threat. After sending telegram to the authorities and filing of the case in HCP.No.1495 of 2010, the respondents herein have registered a false case against the petitioners herein in Crime No.1374 of 2010 under Sections 379 and 413 of IPC and also remanded the third petitioner in that case. He further submitted that instead of arresting the persons who were involved in Crime No.680 of 2010 on the file of Kaarimangalam Police Station, Dharmapuri District, the respondents herein registered a false case against the petitioners and arrested the third petitioner and remanded to judicial custody. He further submitted that the offences under Sections 379 and 413 IPC are distinct and separate offences and they cannot be pressed into service together in

same crime number. He further submitted that the offence under Section 379 IPC is the parent offence which has to be proved by the prosecution against some persons and only thereafter, the case can be registered under Section 413 IPC. He further submitted that so far no one has come forward to give a complaint against the petitioners stating that they have committed robbery / dacoity and therefore he prayed to quash the FIR in Crime No.1374 of 2010 on the file of the first respondent.

9. Per Contra, the learned Government Advocate (Crl.Side) has submitted that on 09.08.2010 at about 17.30 hours, the second respondent was on patrol duty at Dharmapuri Bus Stand on suspicion over the third petitioner, who was standing in bus stand by holding one yellow colour bag and on seeing the second respondent, the third petitioner tried to escape, but the second respondent caught him and searched his yellow colour bag and found the aforesaid gold jewels and cash of Rs.2,00,000/- and on enquiry, he gave a confession stating that those properties were robbed by his brothers and their henchmen North India and their brothers asked him to keep them and subsequently asked him to bring those properties to Thanjavur for sharing among themselves and hence he was arrested and confession was recorded and the aforesaid properties were seized in the Mahazar in the presence of two witnesses. Thereafter, the third petitioner was produced before the Jurisdiction Magistrate and he was remanded to judicial custody and the seized articles also produced before the concerned Magistrate. He further submitted that the petitioners 1 and 2 have filed Crl.OP.No.20047 of 2010 seeking anticipatory bail and this Court has granted anticipatory bail by the Order dated 30.08.2010 with certain conditions, but the petitioners 1 and 2 have not complied with the said conditions imposed on them till date. He further submitted that the petitioners 1 and 2 are still absconding and they have to be secured for the purpose of investigation and he further submitted that the respondents issued summons to the third petitioner to appear for investigation in Crime No.680 of 2010. Accordingly he appeared for three days and thereafter he did not co-operate for investigation and disappeared.

10. The learned counsel for the Government Advocate (Criminal Side) has further submitted that while on enquiry conducted by the second respondent on 09.08.2010, the third petitioner himself has stated that the petitioners 1 and 2 along with their henchmen have disputed while showing robbed properties, while so, the henchmen robbed the stolen properties kept in their father's residence on 29.07.2010 for which, their father lodged a complaint and based on the same, a case was registered in Crime No.680 of 2010 under Section 395 of IPC and the same was closed undetected on 28.01.2012 because of non-co-

operation of the complainant as well as the petitioners herein, all of them are one family members. He further submitted that the second respondent conducted the investigation in a fair, free and impartial manner in accordance with law by following all the mandatory provisions. He further submitted that the respondents may be permitted to complete the investigation and the preliminary investigation reveals that the petitioners involved in Criminal case and therefore, he prayed to dismiss the said petition.

11. The learned Senior Counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate(Criminal Side).

12. According to the respondents, on 09.08.2010 at about 17.30 hours, when the second respondent was on patrol duty at Dharmapuri Bus Stand, the third petitioner was standing in the bus stand by holding one yellow colour bag and on seeing the second petitioner, the third petitioner tried to escape and hence on suspicion, he was caught and searched his yellow colour bag and found 100 gms gold biscuit-4 Nos; 50 gms gold coin-2, Nos; gold ring-3 Nos; Gold chain-1; Gold Bracelet-2 Nos; Gold Bangle-1; 1 Silvers Coins-3 Nos; and cash of Rs.2,00,000/- and on enquiry, the third petitioner stated that his brothers used to go to North India and robbed the above properties and kept in their father's house and his brothers asked to bring the said properties to Thanjavur and while going to Thanjavur at Dharmapuri Bus stand Police caught him. Based on the said enquiry, the second respondent arrested the third petitioner and recorded confession and seized the aforesaid articles under a Mahazar in the presence of independent witnesses and subsequently, the third petitioner was produced before the Judicial Magistrate No.I, Dharmapuri and remanded to judicial custody. Further, he also produced the aforesaid jewels before the concerned Magistrate.

13. In the affidavit filed by the first petitioner in H.C.P.No.1495 of 2010, he has stated that already his father Krishna Murthy had lodged a complaint stating that the robbery taken place in their house and based on the said complaint, a case was registered in Kaarimangalam Police Station, Dharmapuri District in Crime No.680 of 2010 under Section 395 IPC and subsequently, the Police officials came to their house and took away some documents namely LIC Policy, Title Deeds, Sale agreements and balance gold jewels weighing to the tune of 636 grams and deed of partnership in respect of lorry and also cash of Rs.2,30,000/- and instructed their father to be present before them in the afternoon. He further stated that when his father and the third petitioner went to the Police Station, the Superintendent of Police, interrogated their father and the third petitioner and after certain enquiry, the Superintendent

of Police permitted their father to go home and detained the third petitioner in the Police station by saying that he will be released after recording statements. Further, in this petition also in ground No.4, the petitioners have stated that they have made allegations in Paragraph No.4 of HCP.No.1495/2010 against the second petitioner herein for taking away the gold and cash. So it is clear that, the petitioners herein have admitted the fact that the jewels and cash mentioned in the FIR in Crime No.1374 of 2010 belong to them.

14. In the FIR registered in Crime No.680 of 2010 of Kaarimangalam Police Station, Dharmapuri District, the petitioners' father Krishna Murthy had stated that he retired as Noon Meal Organizer and he is having four sons. He further stated that the first son namely Thirumal, (Third petitioner herein) after completing ITI, is pursuing BCA at Computer Center at Hosur; another son Arun Kumar (first petitioner) is working as lorry driver; the third son Vettri Selvan (second petitioner) after completing +2, left the house four years ago and that the fourth son Thirumalai Selvam was working in a Bakery at Thiruvannamalai but he was not doing well and hence staying in his house for the past one month. He further stated that on 29.07.2010 at about 3 a.m 5 unknown persons came to his house and committed dacoity showing knives. He further stated that the said persons have taken away the jewels weighing 8 sovereigns and cash of Rs.30,000/-. According to the respondents, the petitioners' father has not co-operated for investigation and hence, they have closed the said FIR on 28.01.2012 as undetected.

15. As already pointed out that as per the own statement made by the petitioners' father in FIR in Crime No.680 of 2010, the petitioners father was a retired noon meal Organizer, the first petitioner is only a lorry driver, the second petitioner after completing +2, left the house and the third petitioner after completing ITI pursuing Computer Course in a Computer Centre at Hosur and the 4th son was working in a bakery and that being so, the petitioners should have shown the source through which they procured a huge quantity of gold jewels and also for having the cash of Rs.2,00,000/- in their house. Even in this petition, the petitioners have not stated what is the source for purchasing the aforesaid gold jewels and also having the amount of Rs.2,00,000/- in their house.

16. At this juncture, it would be relevant to refer to the decision in Dineshbhai Chandubhai Patel, Vs. State of Gujarat and others (2018) 3 SCC 104 wherein the Hon'ble Supreme Court in paragraph Nos.29 to 31 has observed as follows:-

29. The High Court, in our view, failed to see

the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code."

17. In this case, the FIR does disclose prima facie commission of cognizable offences. So, in view of the aforesaid decision of the Hon'ble Supreme Court, the Investigating machinery shall be allowed to step into initiate the probe to unearth the crime in accordance with the procedure prescribed in Cr.P.C.,

18. It is also to be pointed out that in the telegraphic message which was sent by the petitioners' father dated 02.08.2010, he has not stated that the Police after registering the case in Crime No.680 of 2010 came to his house and taken away the aforesaid jewels and cash. Further, according to the respondents, though the petitioners 1 and 2 had obtained an Order from this Court, in CrI.OP.20047 of 2010 for anticipatory bail but in pursuance of the said order they have not surrendered before the concerned court and executed the bond and

hence they have to be secured for investigation purpose. Taking into consideration of the aforesaid facts and circumstances of the case, this Court is of the view that there are materials to proceed against the petitioners and hence the police should be allowed to complete the investigation.

19. In the result, this petition is dismissed. Consequently, the connected miscellaneous petition is closed. Since the second respondent happens to be a complainant and the properties involved are also having huge value, for fair and impartial investigation, the Superintendent of Police, Dharmapuri, is directed to entrust the matter to some other Inspector of Police. Further, the Superintendent of Police, Dharmapuri, has to monitor the investigation. The Investigating Officer has to investigate the matter in a fair, proper and impartial manner uninfluenced by the observations made by this court in this order and file a final report in accordance with law at early.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vv

To

1. The Inspector of Police,
B1, District Crime Branch Police Station,
Dharmapuri.
2. C.M.Rathinakumar,
Inspector of Police,
District Crime Branch,
Dharmapuri.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Anantha Padmanaban, Advocate SR.No.20417

+1cc to Mr.G.Bala & Daisy, Advocate SR.No.20836

Cr1.OP.No.28123 of 2012
and
M.P.No.1 of 2012

PM(CO)
GMY(23/04/2019)