

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION NOS.3166 & 9269 OF 2018

IN CRL OP.32141 OF 2007

SUPERINTENDENT OF POST OFFICE [PETITIONER / DEFACTO
VRIDDHACHALAM DIVISION, COMPLAINANT
VRIDDHACHALAM - 606 001 IN CRL.MP.NO.3166 OF 2018]

1 K.KANDHARUBI [PETITIONER / RESPONDENT
2 K.PREMANAND IN CRL.MP.NO.9269 OF 2018]
3 K.PREMKUMAR
4 K.ANANDHI

Vs

1 KUPPUSAMY (DECEASED) [RESPONDENT / PETITIONER
IN CRL.MP.NO.3166 OF 2018]

2 THE SUB INSPECTOR OF POLICE [RESPONDENTS
OOMANGALAM POLICE STATION, IN CRL.MP.NO.3166 OF 2018]
CUDDALORE DISTRICT

3 K.KANTHARUBI

4 K.PREMANAND

5 K.PREMKUMAR

6 K.ANANDHI

1 SUPERINTENDENT OF POST OFFICE [RESPONDENTS / PETITIONER
CRIDDHACHALAM DIVISION, DEFACTO COMPLAINANT
VRIDDHACHALAM - 606 001. IN CRL.MP.NO.9269 OF 2018]

2 KUPPUSAMY (DECEASED) [RESPONDENTS
IN CRL.MP.NO.9269 OF 2018]

3 THE SUB-INSPECTOR OF POLICE,
OOMANGALAM POLICE STATAION,
CUDDALORE DISTRICT.

Petitions praying that in the circumstances stated therein the High Court will be pleased to

[i] withdraw the amount of Rs.1,39,695/- (Rupees One Lakh Thirty Nine Thousand Six Hundred and Ninety Five Only) credited in Crime No.119/2006 on the file of District Munsif cum Judicial Magistrate, Neyveli which was deposited as per the order passed by this Honourable Court in the above Crl.O.P.No.32141 of 2007 dated 30.10.2007

[ii] permit the Petitioners/ Respondents 3 to 6 to withdraw the amount of Rs.1,39,695/- which is on the file of the District Munsif cum Judicial Magistrate, Neyveli which was disposed by this Hon'ble Court in Crl.O.P.No.32141 of 2007 by an order dated 30.10.2007.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.K.RAMANAMOORTHY, Advocate for the petitioner IN CRL.MP.NO.3166 OF 2018 & Respondent-1 IN CRL.MP.NO.9269 OF 2018 and of MRS.V.SARATHADEVI Govt. Advocate (Crl. Side) [R-2 IN CRL.MP.3166 OF 2018 & R3 IN CRL.MP.NO.9269 OF 2018] and of M/S.R.MALAICHAMY Advocate for Respondent 3 to 6 IN CRL.MP.NO.3166 OF 2018 & Petitioner in CRL.MP.NO.9269 OF 2018], the court made the following order:-

This Crl.M.P.No.3166 of 2018 is filed by the petitioner/defacto-complainant seeking permission to withdraw the amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) credited in Crime No.119 of 2006. Crl.M.P.No.9269 of 2018 is filed by the petitioners herein, who are the legal heirs of deceased Kuppusamy seeking permission to withdraw the amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only), which has been credited in Crime No.119 of 2006.

2.This court by an order dated 23.04.2018 in Crl.M.P.No.3165 of 2018 in Crl.O.P.No.32141 of 2007,impleaded the legal heirs of deceased Kuppusamy, who worked as Sub-Post Master at Omangalam, Sub-Post Office, who had embezzled the deposits made by the depositors of various recurring deposits/savings bank account and committed a fraud to the tune of Rs.2,99,822/- including belated credits for an amount of Rs.79,962/-.

3.The case of the prosecution is that the petitioner/defacto complainant in Crl.M.P.No.3166 of 2018, the Superintendent of Post office, Virudhachalam division has lodged a police complaint against deceased Kuppusamy to the Sub Inspector of Police, Oomangulam Police Station, Cuddalore District and the same was registered as Crime No.119 of 2006 for offences under Sections 406, 409 and 420 IPC.

4.It is submitted that the said deceased Kuppusamy was placed under suspension from 28.07.2006 and he was due to retire on superannuation on 31.07.2006. The 1st respondent deceased Kuppusamy absconded from 29.07.2006 evading arrest as well as departmental enquiry in the fraud case. It is further submitted that the said Kuppusamy filed CrI.O.P.No.26035 of 2006 before this court seeking Anticipatory bail in Crime No.119 of 2006. This court granted Anticipatory bail to the petitioner on 11.10.2006, wherein the counsel appearing on behalf of the accused Kuppusamy had submitted that "without prejudice to the contention, the petitioner is prepared to deposit the alleged amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) and prayed for grant of Anticipatory bail". This court considered the facts and circumstances of the case and granted Anticipatory bail and directed the petitioner/Kuppusamy to deposit a sum of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) before the District Munsif cum Judicial Magistrate, Neyveli within a period of two weeks from the date of receipt of the copy of the order and on further condition to execute sureties and to appear before the respondent police for a period of 15 days. Further, the petitioner is directed to surrender before the concerned court within 15 days from the date of receipt of the copy of the order failing which the Anticipatory bail granted shall stands cancelled.

5.The accused Kuppusamy did not comply with the conditions and he filed the second Anticipatory bail Petition in CrI.O.P.No.32141 of 2007. This court by its order dated 30.10.2007, taking into consideration that the petitioner Kuppusamy could not mobilized the amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) within the stipulated time and unable to deposit the same and permitted him to deposit the said amount, as per the earlier order within a period of two weeks from the date of receipt of the order and extended the time for executing the bond reiterating the earlier conditions imposed.

6.The petitioner deposited the amount in Crime No.119 of 2006 before the learned District Munsif cum Judicial Magistrate Neyveli on 12.11.2007. "The said amount was taken as security amount in Crime No.119 of 2006 of Omangulam Police Station". The contention of the defacto complainant/petitioner in CrI.O.P.No.3166 of 2018 is that the deceased Kuppusamy adopted several dilatory tactics to prolong the departmental enquiry. The enquiry officer on 11.02.2014 filed Inquiry report and held all the charges leveled against the said Kuppusamy as "proved" on the basis of documentary and oral evidences. The copy of the Inquiry report was also sent to the said Kuppusamy on 19.03.2014 calling upon to submit his representation. The said kuppusamy had sent his representation on 12.04.2014 and the same was received by the defacto complainant on 15.04.2014.

7.The said Kuppusamy died on 31.05.2014 leaving the petitioners herein as legal heirs Viz., K.Kandharubi, K.Premnand, K.Premkumar are sons and K.Anandhi is Daughter in CrI.M.P.No.9269 of 2018. After the death of the Kuppusamy all his retirement benefits were settled to his wife and the deposit amount is to make good, the loss due to the fraud committed by the said Kuppusamy. It is further submitted that the amount of Rs.1,39,695/-(Rupees one lakh thirty nine thousand six hundred and ninety five only) misappropriated by the said Kuppusamy belongs to various third parties deposits. The Postal department repaid the said amount to the depositors, so the petitioner department incurred loss. Therefore, they sought permission to implead the legal-heirs and to withdraw the amount, which is lying in the credit of Crime No.119 of 2006, before the District Munsif cum-Judicial Magistrate, Neyveli.

8.The legal-heirs of late Kuppusamy, who are the petitioners in CrI.M.P.No.9269 of 2018 submitted that the postal department permitted the said Kuppusamy to retire from service on 30.07.2006 pending disciplinary proceedings against him. The deceased Kuppusamy had rendered 41 years of service in the postal department and the Postal Department has not paid even the provisional pension, Thereafter, he approached the CAT for remedy. Accordingly, the provisional pension was ordered, against which the postal department filed the Writ Petition, which came to be dismissed. The postal department not only initiated Disciplinary proceedings, and also gave the Criminal complaint against Kuppusamy. The Deceased Kuppusamy had lot of creditors to be paid, in fact when he died on 31.05.2014, the entire family members were not allowed to take the body of Kuppusamy to perform his last ceremony by some of the creditors and they have to arrange hand loan to neighbours to overcome the situation.

9.The Postal Department closed the Disciplinary proceedings initiated against the petitioner. In the meanwhile, the police completed the investigation in Crime No.119 of 2006 and filed the charge sheet before the learned District Munsif Cum Judicial Magistrate, Neyveli in C.C.No.173 of 2010. The retirement benefits of the deceased Kuppusamy was wantonly delayed by the postal authorities for nearly nine years. The postal authorities have deducted a sum of Rs.2,78,524 from the terminal benefits of Kuppusamy and remitted the same to Tamil Nadu Circle Postal Co-operative bank Ltd., without any concurrence or authority from the legal heirs of deceased Kuppusamy. From the postal authorities, as they are objecting the petitioners to get back the security amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) deposited by the deceased Kuppusamy. The petitioners are unable to get back the amount.

10.The petitioners have also filed the order passed by the learned District Munsif cum Judicial Magistrate, Neyveli recording the death of late Kuppusamy, closed the proceedings in C.C.No.173 of 2010 as "Charge against the accused abated" by an order dated 19.09.2014. The communication from the postal department dated 27.01.2015 had been produced to show that the Disciplinary proceedings initiated against the said Kuppusamy was closed vide Directorate order No.C-14016/132/2014-VP, dated 15.01.2015.

11.Considering the rival submissions and on perusal of the materials produced, it is the admitted fact that the amount of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) has been deposited as Security amount in Crime No.119 of 2006 on 12.11.2007 pursuant to the order of this court dated 30.10.2007 in CrI.O.P.No.32141 of 2007, the Accused/Kuppusamy had deposited the said amount "without prejudice". It is also not in dispute that the said Kuppusamy died on 31.05.2014. The postal authorities admitted in their communication dated 27.01.2015 that the Disciplinary proceedings initiated against Kuppusamy is closed and the learned District Munsif cum Judicial Magistrate, Neyveli on 09.09.2014 recording the death of Kuppusamy closed the case.

12.It is made clear that, it is not possible to accept the submissions of the postal authorities, on the reason that the prosecution has abated on the death of the accused. Hence, the concept of abatement of a trial could be subsumed in the clause, where the final judgment and order of criminal court is one of acquittal.

13.Therefore, the Presumption of innocence of accused till his conviction should be borne in mind and there is no reason to consider this presumption to have vaporized upon the death of an accused. It is to be noted that the Hon'ble Apex Court has again and again reiterated the presumption of innocence till a person is convicted. It is stated that a prosecution cannot continue against dead person. A *fortiori* criminal court cannot continue the proceedings against dead person and find him guilty. Hence, this proceedings is also in contrary to the very findings of the criminal proceedings.

14.In such a case, the accused does not exist and cannot be convicted, the facts involved herein do not warrant presumption of commission of offence by deceased Kuppusamy. The postal department having closed the Disciplinary proceedings and the amount deposited by Kuppusamy in the Crime No.119 of 2006 is only a security amount towards Anticipatory bail. The postal authorities cannot claim to lay hands on the pretext that the amount was deposited as per order passed by this Court in CrI.O.P.No.32141 of 2007, dated 30.10.2007.

15.In the result, the Crl.M.P.No.3166 of 2018 filed by the defacto complainant stands dismissed and the Crl.M.P.No.9269 of 2018 is allowed. In view of the above, the petitioners/legal heirs of the late Kuppusamy are permitted to withdraw the amount deposited in Crime No.119 of 2006 for a sum of Rs.1,39,695/- (Rupees one lakh thirty nine thousand six hundred and ninety five only) before the learned District Munsif Cum Judicial Magistrate, Neyveli and the learned Magistrate is directed to return back the said amount to the petitioners/legal heirs of deceased Kuppusamy.

-sd/-

14/03/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, NEYVELI.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUB INSPECTOR OF POLICE
OOMANGALAM POLICE STATION.

+1C.C. to M/S.K.RAMANAMOORTHY Advocate on payment of necessary charges SR NO.

Order

in
CRL MP.3166 & 9269 2018

in
CRL OP.32141/2007

Date :14/03/2019

MK:22/03/2019



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