

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 31.07.2019

PRONOUNCING ORDERS ON : 06.08.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Crl.OP Nos. 17395 of 2019 and Crl OP No.23278 of 2018

Crl OP No.17395 of 2019

Shanthilal

....Petitioner / Complainant/
Defacto complainant

Vs.

1. State Rep. by
The Inspector of Police,
Thirupapuliur Police Station,
Cuddalore District.

... Respondent / Respondent/
Respondents

2. Haaliq Sheik

.. Respondent / Accused No.4/
Accused

Crl OP No.23278 of 2018

Shanthilal

Petitioner

Vs.

1. State, represented by
The Inspector of Police

Thirupapuliyur Police Station,
Cuddalore District.

2. The Superintendent of Police,
Cuddalore District.
3. The Director,
Central Bureau of Investigation,
Southern Region,
No.4,A-Wing, Rajaji Bhavan,
3rd Floor, 3rd Avenue,
Besant Nagar, Chennai 600 090 Respondents

Prayer in Crl OP No.17395 of 2019 : Criminal Original Petition filed under Section 482 of Cr.PC to set aside the Judgement of the learned Judicial Magistrate No.II, Cuddalore (Central Prison) in split up C.C.No.6 of 2018 dated 23.02.2018 as De-nova Trial.

Prayer in Crl OP No.23752 of 2018 : Criminal Original Petition filed under Section 482 of Cr.PC to withdraw the C.C. No.10 of 2018 on the file of the learned Judicial Magistrate No.3, Cuddalore in Crime No.510 of 2013 on the file of the 1st respondent police and direct to transfer the same to the 3rd respondent viz., the Central Bureau of Investigation, to conduct a fresh investigation with the available materials and to file the final report within the stipulated time.

For Petitioners : Mr.S.Hameed Ismail
in both Crl.OPs

For 1st respondent in
 Crl OP No.17395 of 2019 : Mr.Mohammed Riyaz
 For Respondents 1 to 3 Additional Public prosecutor
 Crl OP No.23278 of 2019

COMMON ORDER

The petitioner was running a Jewellery Mart. On 16.11.2013, when he entered his shop, he found that certain gold jewels were missing to the tune of 4500 grams. He found that the grill gate was cut open and the accused persons had decamped with the jewels. The petitioner given a complaint to the 1st respondent police and an FIR was registered in Crime No.510 of 2013 for an offence under Section 457 and 380 IPC. A Special Team was formed to investigate the case. After a thorough investigation, the Special Team based on the information collected, headed to Jharkand and arrested the accused persons and recovered the stolen articles.

2. The Special Team was able to recover only 64 grams of gold and the same was deposited before the learned

<http://www.judis.nic.in> Judicial Magistrate III, Cuddalore and the petitioner has also filed

a petition for return of property and the same was handed over to the petitioner.

3. All the accused persons who were arrested, were produced before the Magistrate and they were all remanded to Judicial custody. The police custody was given for eight days. A1 & A2 were granted bail and A4 was remanded through a PT warrant, when he was arrested in another case.

4. After the completion of the investigation, a final report was filed before the Court below against nine named accused persons, in which, A3, A5 to A9 were shown as absconding accused and the same was taken on file in C.C.No.24 of 2016. The Court below took cognizance of the offence and summon was ordered to the accused persons.

5. Insofar as the absconding accused persons are concerned, the case was split up and numbered as C.C.No.10 of 2018. Insofar as A4 is concerned, his case was split up and

numbered as C.C.No.6 of 2018. He admitted his guilt and he was convicted in the Prison Adalat on 23.02.2018 and was sentenced to undergo one year rigorous imprisonment for the offence under Section 457 of IPC and one year rigorous imprisonment for the offence under Section 380 of IPC and the sentence was directed to run concurrently. Since A4 had already served the sentence, he has been released from the Jail. With regard to the other accused persons, there was absolutely no progress in the case.

6. Crl.OP No.23278 of 2018 has been filed by the defacto complainant seeking for a transfer of investigation to the CBI to conduct a fresh investigation. This petition was filed on the ground that the respondent police has not recovered the entire stolen jewelery except for 64 grams and no effective steps were taken to secure all the accused persons.

7. Crl.OP No.17395 of 2019 has been filed challenging the judgment passed with regard to A4, who had pleaded guilty and had undergone imprisonment and had been

released from the jail.

8. The learned counsel for the petitioner submitted that the accused persons belonged to Jharkand and subsequently, they have shifted to West Bengal. The respondent police is not in a position to secure the accused persons and recover the jewelery and therefore, the investigation must be conducted by the CBI, since it will be easy for them to deal with the accused persons, who belong to another State. The learned counsel further submitted that the offence under Section 457 of IPC is punishable with 14 years imprisonment and the offence under Section 380 of IPC is punishable with 7 years of imprisonment. However, the Court below has mechanically punished A4 for one year in each of the offence, which was directed to run concurrently and A4 having served the sentence has left Tamil Nadu and gone to Jharkhand. This sentence according to the learned counsel for the petitioner has to be interfered by this Court in exercise of its jurisdiction under Section 482 and 483 of Cr.PC.

9. The Inspector of Police has filed a status report before this Court and he has explained the various steps taken by the police to secure the accused persons and to recover the stolen property. It is stated that A1 & A2 were arrested at West Bengal and based on their confession, the other accused persons involved in the case were named in the final report and the stolen property was also recovered. It is stated in the report that A3, A5 to A9 are residents of Jharkhand and West Bengal and they are still absconding and steps are being taken to secure them.

10. This Court directed the Court below to file a report and explain the status of the case. The Court below has sent a report dated 12.12.2018. The relevant portions of the report is extracted hereunder :-

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1. I submit that the Thiruppapuliyur Police Station has registered a case in Crime No.510 of 2013 for offences punishable u/s.457 and 380 of IPC and FIR was registered on 16.11.2013 on the complaint of one

Santhilal. The Final report was filed by Investigation Officer on 13.07.2016 and same was taken on file in C.C.No.24 of 2016 on 15.07.2016. In this case there are nine accused persons and they are namely 1.Ubendire Saha 2. Muhamathu Nayeem Ansari 3. Absul Shek 4. Halid Shek Sakip Kanch 5.Pasuruthen Shek Shakipkanch 6. Chotta @ Rinto 7.Asan Shek 8. Obhu Shek and 9. Tharik Shek. Out of this nine accused the A1 and A2 (Ubendire Saha and Muhamathu Nayeem Ansari) were arrested at Jarkand State on 11.01.2014 and they were produced before the Magistrate on 15.01.2014 and they were remanded to Judicial custody till 21.01.2014. They were released on default bail application on 17.03.2014 after satisfaction of the sureties both are released (A1 and A2) on execution of the bond and on 21.03.2014 they released from the Central Prison at Cuddalore.

2. I submit that the police filed absconding charge sheet for the accused A3 to A9.

Thereafter, A4 Halid Shek Sakip Kanch was remanded to judicial custody on P.T.Warrant on 12.04.2017 and he is remanded to judicial custody till 13.04.2017. Thereafter, the 4th accused admitted his offence and he was convicted on his plead guilty on 23.02.2018 and that Prison Adalat case was numbered as C.C.No.6 of 2018. The case regarding A1 to A3 and A5 to A9 was split up in C.C.No.10 of 2018.

3. I submit that as per the records A1 and A2 were released on default bail on 17.03.2014 and released from the Central Prison on 21.03.2014 regarding the A4, he was remanded to judicial custody on 12.04.2017 and he admitted and convicted in Prison Adalat and that the case was numbered in C.C.No.6 of 2018 and sentenced to imprisonment for one year with set-off. Regarding other accused A3, A5 to A9 are not arrested by the Police and they were not get any bail order from any Court and the police filed absconding

charge sheet.

4. *I submit that from the date of first hearing on 19.08.2016 summons were ordered to the nine accused persons. On 11.05.2017 the A2 was produced from Palayankottai Central Prison and for other accused the summons were ordered. Thereafter, the A2 was produced through video conference service till 12.02.2018. Thereafter the A4 admitted his offence on 23.02.2018. Thereafter, in the new C.C.No.10 of 2018 was assigned on 23.02.2018 and from its first hearing date is on 11.05.2018. The fresh summons were ordered to A1 to A3 and A5 to A9. The summons were given to the police on 13.07.2018, 24.08.2018 and 06.10.2018. But the summons still not served. Presently, the next date of hearing is posted to 04.04.2019.*

5. *I submit that for non appearance of the A1 and A2 so far this Court has not taken any steps to cancel their bail u/s.446(A) Cr.PC. I prayed*

that steps immediately will be taken to cancel their bail u/s 446 (A) Cr.PC.

11. This Court has carefully considered the submissions made on either side and also the materials placed on record.

12. This Court will first deal with Crl.OP No.17395 of 2019, wherein the conviction and sentence passed against A4 has been put to challenge on the ground that it is illegal. Notice was attempted to be served on A4. However, his whereabouts are not known and there is no chances of serving the notice on A4 either through the Court or through private service.

13. A reading of the judgment that has been passed in C.C.No.6 of 2018 clearly shows that the Judicial Magistrate II, Cuddalore (Central Jail) has passed a judgment in the Prison Aadalat based on the admission made by A4. The Court below has imposed imprisonment of one year each for the offence under

Section 457 and 380 of IPC, which was directed to run concurrently. In the considered view of this Court, the Court below failed to take note of the seriousness of the offence and the danger it would cause to the society, if persons like A4 are let out free.

14. In the considered view of this Court, the sentence imposed is a flee-bite sentence, which is completely disproportionate to the seriousness of the offence. Prison Adalats are not conducted to let out persons involved in serious offence/ crimes by handling them with kid-gloves and sentencing them with flee-bite punishments. This Court is thoroughly disappointed with the manner in which the Court had dealt with the case, which has now resulted in A4 getting out of the jail and it is not known whether he can be secured in future.

15. This Court in exercise of its jurisdiction under Section 397 and 401 of Cr.PC r/w section 483 of Cr.PC, hereby set aside the sentence imposed by the Court below and the case is

remanded back to the Court below to consider the question of sentence and pass an appropriate order, after giving notice to A4.

16. Insofar as Crl.OP No.23278 of 2018 is concerned, this Court is not inclined to transfer this case to CBI at this point of time. The respondent police have done their best to investigate the case and since the accused persons had come from Jharkand and West Bengal, there are practical difficulties in investigating such crimes and securing the accused persons. Till all the accused persons are secured, the blame cannot be put against the respondent police for not being able to recover the entire stolen property. It is true that the entire case has come to a stand still, since A1 and A2 who were released on bail are also absconding.

17. In view of the above, there shall be a direction to the learned Judicial Magistrate III (Fast Track Court), Cuddalore to proceed further to take effective steps to secure the accused persons by getting regular status reports and monitoring the steps taken by the respondent police. As and when, the accused persons

are secured, they shall be immediately sent to judicial custody and they shall not be released till the completion of the trial.

18. In view of setting aside the sentence imposed on A4, the Court below shall also take steps to secure A4 and shall pass an appropriate sentence after hearing and giving an opportunity to A4.

19. In the result, the Crl.OP No.23278 of 2018 is dismissed with the above directions and Crl.OP No.17395 of 2019 is allowed.

06.08.2019

Index : Yes
Internet : Yes
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To

1. The Judicial Magistrate No.II,
Cuddalore.
2. The Judicial Magistrate No.III,
Cuddalore (Central Prison)

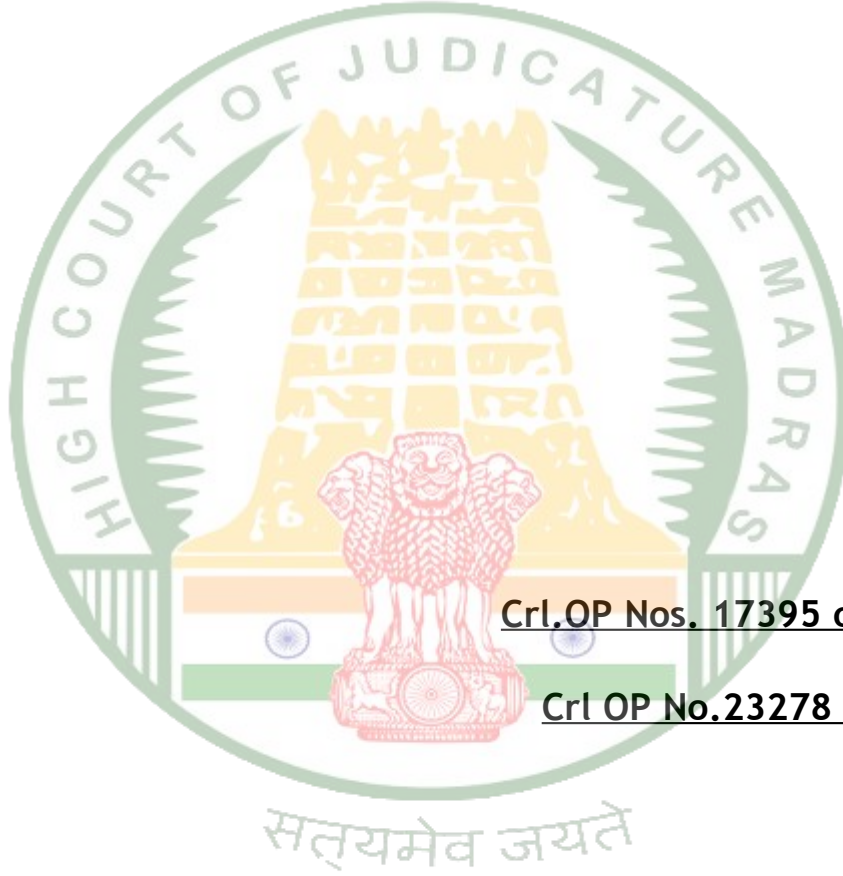
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Besant Nagar, Chennai 600 090



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N.ANAND VENKATESH.J.,

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