

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.20781 of 2019
and
CrI.M.P No.10684 of 2019

S.Selvaraj

... Petitioner

vs.

1. State Rep. By
The Inspector of Police (L&O)
B-1 Bazaar Street Police Station,
Coimbatore.
2. The Commissioner of Police,
Coimbatore City, Coimbatore.
3. R.Ramaraj
4. R.Akila

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to direct the 1st respondent police to give written request to the learned Judicial Magistrate No.5, Coimbatore in C.C No.225 of 2016 for further investigation only to secure fair investigation and trial, the life purpose of the adjudication of the present case.

For Petitioner : Mr. C.S.Dhanasekaran

For 1st & 2nd Respondents: Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed seeking for a further investigation by the respondent police.

2. The petitioner is the defacto complainant. The case of the prosecution is that the 3rd respondent was an employee working under the petitioner and that he had misappropriated a sum of Rs.25,00,000/- from the company. When this was questioned by the petitioner, the 3rd and 4th respondents threatened him with dire consequences. Hence the complaint was given to the respondent police and an FIR came to be registered in Crime No.600 of 2015 for an offence under Section 409, 420 and 506(ii) of IPC.

3. After the completion of the investigation, a final report came to be filed before the Judicial Magistrate V, Coimbatore, against the respondents 3 & 4 and the same was taken on file under Section 409, 420 and 506(ii) of IPC in C.C No.225 of 2016.

4. The petitioner was not aware about the materials that were collected by the respondent police at the time of investigation. At a later point of time, when the petitioner was summoned for the purpose of giving evidence in this case, the petitioner came to know that the investigation itself has not been properly conducted and the accused persons were not even arrested and nothing was recovered by the respondent police in the course of investigation. The petitioner found that a slipshod investigation was conducted and therefore, the final report filed by the respondent police was vulnerable and could not be sustained in the eyes of law. Therefore, the present petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the petitioner cannot file a petition before the Court below seeking for further investigation since the Court below has already taken the cognizance of the final report. The learned counsel further submitted that the Court below cannot suo motu order for further investigation since the final report has been taken cognizance. Therefore, the only way to conduct further investigation in this case is to direct the respondent police to file necessary application under Section 173(8) of Cr.P.C and seek for further investigation.

6. The learned counsel for the petitioner further submitted that in this case, the accused persons were not arrested inspite of their anticipatory bail being dismissed by this Court on two occasions. The learned counsel further submitted that since there is a charge under Section 409 IPC, there must be a material to show misappropriation and for this purpose, the respondent police ought to have recovered the money from the accused persons and this has not been done in this case. Therefore, the learned counsel concluded his arguments by submitting that the case requires further investigation.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the final report was filed as early as in the year 2016 and after nearly three years, the present petition has been filed seeking for further investigation. The learned counsel submitted the entire C.D file before this Court and requested this Court to peruse the same and come to its own conclusion with regard to the manner in which the investigation was conducted.

8. This Court has carefully considered the submissions made on either side and also the materials available on record and also the case diary that was submitted before this Court.

9. It is seen from the case diary that the accused persons had approached this Court twice seeking for anticipatory bail by filing Crl.O.P No.18519 of 2015 and 25082 of 2015 and both these petitions were dismissed by this Court. This Court had dismissed the anticipatory bail after giving a specific finding that there are prima facie materials to show that the accused persons have misappropriated a sum of Rs.25,00,000/- and therefore, the accused persons must be subjected to custodial interrogation. The 4th respondent who is the wife of A2 was granted anticipatory bail by this Court. In spite of the dismissal of the anticipatory bail petition filed by A3, the respondent police did not choose to arrest him. Since A3 was never arrested, there was no scope for recovering any amount from him.

10. Ultimately, when the final report was filed before the Court below, A3 was shown to be an absconding accused. The case has been pending for the last three years and even, charges have not been framed in this case.

11. On going through the case diary, it is clear that the prosecution may not be able to prove the charge under Section 409 IPC since there are no materials to show that there was misappropriation on the part of A3. Unless this ingredient is satisfied, the offence of criminal breach of trust cannot be sustained. If this cannot be sustained, the offence of cheating will also get watered down. Therefore, in the considered view of this Court, the case requires a further investigation and allowing the proceedings to go on before the Court below will result in grave prejudice to the petitioner, who is the de-facto complainant in this case.

12. In view of the above, there shall be a direction to the respondent police to file an appropriate petition before the Court below informing the Court below that further investigation is going to be conducted in this case and a further report will be filed under Section 173(8) of Cr.P.C. On the filing of this application, the Court below shall keep the proceedings in abeyance till the further report is filed after the completion of the further investigation. The investigation shall be monitored by the Deputy Commissioner of Police (Law and Order), Coimbatore. It is even open to the respondent police to take A3 into custody in order to collect materials to sustain the charge of misappropriation.

13. The further investigation shall be completed within a

period of three months from the date of receipt of copy of this order and thereafter, a further report shall be filed before the Court below. The Court below shall thereafter proceed to frame the charges and complete the trial as expeditiously as possible.

14. This Criminal Original Petition is accordingly allowed with the above direction. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.V,
Coimbatore.
 2. The Inspector of Police (L&O)
B-1 Bazaar Street Police Station,
Coimbatore.
 3. The Commissioner of Police,
Coimbatore City, Coimbatore.
 4. The Public Prosecutor
High Court of Madras.
 5. The Deputy Commissioner of Police (L&O)
Coimbatore.
- +1cc to Mr. C.S.Dhanasekaran, Advocate SR.72199

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and
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PPA (CO)
CB(16/10/2019)

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