



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CrI.O.P.No.32067 of 2019

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R.B.Arun Kumar

...Petitioner/(Victim 47)

Vs

1. The State Represented by
The Commissioner of Police,
Vepery, Chennai - 600 007.
2. The Deputy Commissioner of Police,
O/o. Commissioner of Police,
CCB, Vepery, Chennai - 600 007.
3. The Assistant Commissioner of Police,
CCB, (Job Racketing),
Vepery,
Chennai - 600 007 ...Respondents 1 to 3/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct respondents to conduct further investigation in C.C.No.3627 of 2017 pending on the file of learned Special Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai.

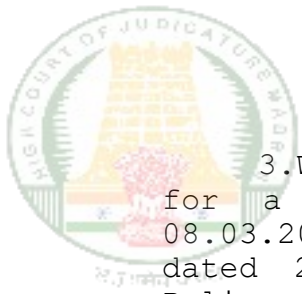
For Petitioners : Mr.S.Ananth

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed to direct respondents to conduct further investigation in C.C.No.3627 of 2017 pending on the file of learned Special Metropolitan Magistrate for CCB and CBCID Cases, Egmore, Chennai.

2.By consent of both sides, this criminal original petition is taken up for final disposal. It is seen that based on the complaint given by one of the victims dated 08.03.2016 an FIR was registered in Crime No.441 of 2015 for the offences under Sections 406, 420 and 419 r/w Section 34 of IPC. The crux of the complaint alleges that the funds of many of the victims, which is alleged to have been given through various brokers for procuring appointments in the Tamil Nadu State Transport Corporation, has been misappropriated.



3. When one of the victims had approached this Court seeking for a direction for registration of the complaint dated 08.03.2016 in CrI.O.P.No.7503 of 2016, this Court by an order dated 20.06.2016 had directed the Assistant Commissioner of Police, CCB to monitor the investigation, since an FIR has already been registered in another complaint. While passing such an order, this Court had also observed that, it is the duty of the police to prove beyond the low level officers and find out the whereabouts of the huge sum of Rs.2 Crores. It was also recorded in the said order of this Court that there were 81 people, who had given complaints and the Additional Public Prosecutor had submitted that the petitioner is one among the 81 members, who could be listed as a witness in the prosecution. However, without reference to the observations made by this Court in its earlier order dated 20.06.2016 passed in CrI.O.P.No.7503 of 2016, as well as the details as to the entire amount of the victims, which is alleged to be over and above Rs.2 Crores, the final report, came to be laid on 13.06.2017.

4. Taking into account, the veracity of the complaint of these 81 victims and also the fact that the total amount alleged to have been misappropriated over and above Rs.2 Crores has not been considered during the course of investigation, particularly in the light of the observations of this Court in its earlier order dated 20.06.2016 in CrI.O.P.No.7503 of 2016 has been disregarded, this Court is of the affirmed view that further investigation could be ordered in the present case.

5. The Hon'ble Apex Court in a decision reported in 2019 (3) MWN (Cr.) 349 (SC) in the case of Vinubhai Haribhai Malaviya and others vs. State of Gujarat and another had observed that the assurance of fair trial is the first imperative of the dispensation of justice and that the ultimate aim of the investigation agency is to ensure that those who have actually committed a crime are correctly booked, and those, who have not arraigned to stand trial. The relevant portions of the said decision of the Hon'ble Apex Court reads as follows:

16. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in *Mrs. Maneka Gandhi v. Union of India & Anr.* (1978) 1 SCC 248, be right, just and fair and not arbitrary, fanciful or oppressive (see paragraph 7 therein). Equally, in *Commissioner of Police, Delhi v. Registrar, Delhi High Court, New Delhi* (1996) 6 SCC 323, it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the



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accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see paragraph 16 therein)

17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

6. In the aforesaid decision, the Hon'ble Apex Court was also of the view that during the course of such investigation, the proceedings before the trial Court should be stayed.

7. In the light of the above observations, there shall be a direction to the 3rd respondent herein to conduct further investigation in C.C.No.3627 of 2017 which is now pending on the file of the learned Special Metropolitan Magistrate for CCB & CBCID Cases, Egmore, Chennai and complete the same as expeditiously as possible, in any event within a period of six months from the date of receipt of a copy of this order. Such an investigation shall be monitored by the Deputy Commissioner of Police on a day-to-day basis. In the mean time, C.C.No.3627 of 2017 on the file of the learned Special Metropolitan Magistrate for CCB & CBCID Cases, Egmore, Chennai shall be kept in abeyance.

8. Accordingly, this Criminal original petition is disposed of.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

ssr/sbn



To

1. The Special Metropolitan Magistrate for CCB and CBCID Cases,
Egmore, Chennai.
2. The Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Deputy Commissioner of Police,
O/o. Commissioner of Police,
CCB, Vepery, Chennai - 600 007.
4. The Assistant Commissioner of Police,
CCB, (Job Racketing),
Vepery, Chennai - 600 007.
5. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Anath, Advocate, SR.No.98737.

Cr1.O.P.No.32067 of 2019

GJ(CO)
CSR: 07/01/2020