BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 22.03.2019**
**Delivered on :21.06.2019**

CORAM

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Crl.O.P.(MD)No.17431 to 17433 of 2016**
**and**
**Crl.M.P.(MD)Nos.8623 to 8625 of 2016**

Padmanaban ... Petitioner / *De facto* complainant in all petitions

Vs.

1.State represented by its
Sub Inspector of Police,
District Crime Branch,
Karur.
Crime No. 5 of 2003. ... 1st Respondent/Petitioner/ Complainant (in all Petitions)

2.M.Vijayakumar

3.T.Renganathan

4.M.Raja ... Respondents 2 to 4/Respondents/ A1 to A3 (in all Petitions)

**Prayer in CrlOP(MD)No.17431 of 2016**: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the orders passed in Cr.M.P.No.7328 of 2014 in C.C.No.494 of 2006 on the file of the Judicial Magistrate Court No.II, Karur dated 09.01.2015 and set aside the same.

**Prayer in CrlOP(MD)No.17432 of 2016 :** Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the orders passed in Cr.M.P.No.6691 of 2014 in C.C.No.495 of 2006 on the file of the Judicial Magistrate Court No.II, Karur dated 09.01.2015 and set aside the same.

**Prayer in CrlOP(MD)No.17433 of 2016 :** Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the orders passed in Cr.M.P.No.6691(A) of 2014 in C.C.No.496 of 2006 on the file of the Judicial Magistrate Court No.II, Karur dated 09.01.2015 and set aside the same.

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| For Petitioners (in all Petitions) | : | Mr.V.P.Rajan for Mr.R.Murugan |
| For Respondents (in all Petitions) | : | Mr.M.Chandrasekaran, Additional Public Prosecutor for R.1 |
| | : | Mr.E.Kumaresan for R.2 |
| | : | Mr.R.Raja for R.3 |
| | : | Mr.P.Mahendran for R.4 |

**COMMON ORDER**

These Criminal Original Petitions have been filed by the petitioner / *de facto* complainant challenging the orders dated 09.01.2015 passed by the learned Judicial Magistrate No.II, Karur in Cr.M.P.No.7328 of 2014 in C.C.No.494 of 2006, Cr.M.P.No.6691 of 2014 in C.C.No.495 of 2006 and Cr.M.P.No.6691(A) of 2014 in C.C.No.496 of 2006 respectively.

2.Since all these three Criminal Original Petitions revolve around the same issue, they are taken up together for disposal and disposed of by this common order.

3.The case the petitioner in brief is as follows:

3.1.During the years 1998 to 2001, in State Bank of India, Vangal Branch at Karur, Accused No.1 namely M.Vijayakanth, was working as a Branch Manager, Accused No.2 namely T.Renganathan was working as Assistant Manager and Accused No.3 namely M.Raja was working as Assistant. They all were entrusted with the Bank money and were permitted by the Superior Officer to grant all kinds of loan. During the Circle Audit, it was found that in some cases, some of the loan documents were not available and in some cases, no such persons were available in the given addresses. In two cases, the borrowers were available, however, they stated that they have not availed loan. During the relevant period, A.1 to A.3 were working in the said Branch and most of the loans were sanctioned by M.Vijayakumar /A.1. There are documents to prove that some of the loan proceeds were utilised by M.Raja /A.3 for his relatives and friends.

3.2.From the year 1999 to 2001, 66 loan documents were created in fictitious names by the accused and the accused persons misappropriated the money of the bank to the tune of Rs.16,02,000/- and therefore, a complaint was given by the *de facto* complainant dated 06.06.2003 against A.1 to A.3 for the commission of the offence punishable under Sections 409, 464 r/w 465, 471 r/w 468 IPC.

3.3.After investigation, the respondent Police filed three charge sheets, for year wise misappropriation, i.e., 1999, 2000 and 2001, which were taken on file in C.C.Nos. 494 to 494 of 2006 by the learned Judicial Magistrate No.II, Karur.

4.According to the petitioner, the cases came up for hearing in the year 2015 i.e., after twelve years. He was summoned for evidence. At that time, he found certain vital documents, which are necessary to establish prosecution case, have not been added along with the final report and therefore, the Investigation Officer filed three petitions in CMP Nos. 328, 6691 and 6691(A) of 2014 in C.C.Nos.494 to 494 of 2006 respectively stating that some vital documents in the cases have been miserably failed to be filed along with the charge sheets and those documents are very necessary to mark in the above said cases to prove the prosecution case and prayed to mark the documents as exhibits. The respondents / accused opposed the petitions by filing counter affidavits stating that it has not been stated in the petitions as to how the proposed documents are relevant and without substantiating whether the proposed documents had come to light upon investigation or otherwise, it is prejudicial to their interests and it is settled position of law that the prosecution cannot let-in additional documents as a matter of right and it is only at the discretion of the Court to see whether the proposed documents are relevant and admissible in evidence at the stage of the trial.

5.The learned Judicial Magistrate No.II, Karur, after hearing both side, had dismissed all the CMPs on the ground that the prosecution has not specifically described the documents intended to be marked and the cases were pending for more than six years and even at the time of enquiry, the prosecution has not produced the documents.

6.Challenging the dismissal orders passed by the learned Judicial Magistrate No.II, Karur, the present Criminal Original Petitions have been filed by one Padmanaban, Branch Manager State of Bank of India, Vangal Branch.

7.The learned Counsel for the petitioner submitted that at the time of registering the criminal case all the documents including, the forged documents created by the accused / respondents 2 to 4 were duly handed over to the investigation officer and the 1st respondent, registered the criminal case after satisfying that the documents are forged one and the same are created by the respondents 2 to 4. It appears that the 1st respondent referring the forged documents, filed the final reports against the accused on 22.08.2006.

8.Totally 66 crop loan accounts were opened by the accused and according to the Bank, out of the said 66 crop loan accounts, documents of 31 accounts are not available and documents of 33 accounts are available, however, the persons mentioned in the loan accounts denied the borrowal of loan and in respect of 2 accounts, they were unable to identify the borrower. The crop loan amount was transferred from the loan account to the relatives of A.3. The said documents are vital to establish the charges levelled against the accused and all those documents according to the petitioner, were given to the investigating officer during the investigation, but they were deliberately not produced before the Court along with the final report. The petitioner was not aware of the non-production of the documents, till he was summoned for chief examination in the criminal case and at the instance of the petitioner, the then Assistant Public Prosecutor, filed memos on 14.02.2011 under Section 173(8) CrPC and however, the same were numbered in the year 2014 and the learned Magistrate simply dismissed the memos without assigning any reasons. The original documents were filed along with the said memos and the same are available with the Court. However, the trial Court dismissed the petitions on account of delay. It is unfortunate that against the dismissal orders, the State did not prefer any appeal. The first respondent only marked the sanction letter for preferring complaint against the accused, but, failed to include the said vital documents in the charge sheet. Hence, for all these reasons he prayed that these criminal original petitions be allowed.

9.The second respondent, on the other hand submitted that the petitioner has no *locus standi* to file the present petitions, since he is not a party before the trial Court. In addition to the same, he has raised the following points for the consideration of this Court.

i) No document can be filed, if the same had not been furnished to the accused along with the charge sheet.

ii) The petitioner herein is only a witness and he cannot produce any documents.

Iii) The said documents cannot be marked without any further investigation. Even further investigation cannot be done, as the first respondent has not sought for any further investigation.

iv) If the said documents are allowed to be marked, it would take away the role of the investigating officer and hence, prays for the dismissal of the same.

10.The learned Counsel appearing for respondents 3 and 4 sail with the arguments advanced by the learned Counsel for the 2nd respondent.

11.Heard the learned Counsel for the petitioner and the respective learned Counsel appearing for the respondents.

12.Alleging that the respondents 2 to 4 had misappropriated the bank fund by creating around 66 crop loan accounts in the names of fictitious persons, the petitioner lodged a complaint before the first respondent, on 06.06.2003. Based on the complaint, the Police, after investigation, registered a case in Crime No.5 of 2003 and filed three final reports as against the accused before the learned Judicial Magistrate No.II, Karur. According to the petitioner, at the time of investigation itself, by the Police, he handed over all the vital documents, including the one which are now proposed to be marked, however, while filing the final reports, the Police had not included those documents. It is the specific case of the petitioner that only at the time of his chief examination, he came to know about the non-marking of the said vital documents and only at his instance, petitions were filed before the trial Court, for marking those documents, as they are vital to establish the prosecution case. However, the trial Court, holding the petitions were filed nearly after six years of commencement of trial, dismissed the petitions.

13.The documents sought to be marked by the prosecution, are as follows:

i. Documents dated 24.11.1999, for having transferred Rs.24,600/- from Account No.7/35 of S.Ramasamy and Rs.24,900/- from Account No.7/58 of S.Sellappan, totalling to Rs.49,500/- transferred to SB A/c. No.19/3143 of P.Subramanian, A customer introduced by M.Raja/ A.3.

ii. Documents dated 19.01.2000, for having transferred Rs.25,000/- from Account No.5/30A and Rs.24,000/- from Account No.2/123A of S.Meenakshi, totalling to Rs.49,000/-, to Gold Loan Account of R.Sivagnanam, uncle of M.Raja/ A.3.

iii. Documents dated 28.01.2000 for having transferred Rs.24,000/- from Account No.6/68 of P.Ramasamy SB Account of V.Ramasamy (Farmer), a close relative of M.Raja/ A.3.

iv. Documents dated 04.04.2000 for having transferred Rs.25,000/- from Account No.4/140 of D.Kumar and Rs.30,000/- totalling to Rs.75,000/- utlised to purchase a draft for Rs.50,150/- to V.T.Pulugandiappillai at Rajapalayam, relative of M.Raja/ A.3.

14.On a perusal of the above documents, it appears that they are vital for just adjudicating the case on hand. What the Court has to see is, whether permitting of such document would cause any prejudice to the accused. It is the specific case of the petitioner that even at the time of investigation, the documents, now sought to be marked, were produced to the investigating officer, but the investigating officer failed to include the same at the time of filing final report before the trial Court. This Court is of the view that for the inaction on the part of the investigating officer in producing the documents at the relevant point of time, the complainant / victim cannot be allowed to suffer.

15.Criminal Procedure Code does not provide provisions for defence alone, but also provides for the prosecution and in the criminal justice system. The foremost contention of the accused is that the petitioner has no locus standi to file these petitions before this Court, as he is not a party in the proceedings before the trial Court. This Court is not in position to accept such contention in view of the decision of the Hon'ble Supreme Court in the case of ***M/s.J.K.International Vs. State Government of NCT, Delhi and others***, reported in ***AIR 2001 SC 1142***, wherein it has been held that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial, just because the investigation was taken over and charge sheet was laid by the Police. It has been further held that if the person submits written arguments, it is the duty of the Court to consider the same before taking any decision.



16.Section 173(5) CrPC is not mandatory in the sense that there is no specific prohibition, it cannot be held that the additional document cannot be produced even in the course of trial while the evidence is being recorded of the prosecution witnesses. . If the prosecution, for any good reason, has thought fit not to provide certain documents to the accused at the stage of framing of the charge or there is some omission on its end in this regard, then such document can always be relied upon in the course of the trial and can be produced subsequently.

17.The prosecution has to establish the case beyond reasonable doubt and the case of the prosecution can be established beyond reasonable doubt by adducing oral and documentary evidence. Without necessary documents, the prosecution cannot establish its case. Merely because, the investigating agency has failed to collect the incriminating documents available in support of the prosecution case, it does not mean that the *de facto* complainant is prevented or precluded from adducing any further evidence. The right is accrued on the *de facto* complainant.

18.In this case, it appears that the relevant incriminating documents were submitted by the *de facto* complainant to the investigating agency, who failed to file those documents at the time of filing the final report under Section 173 CrPC. This fact came to the knowledge of the *de facto* complainant only at the time of adducing his evidence and immediately, he acted upon and thereafter, at his instance, the investigating agency had filed applications to receive those documents as additional documents in support of the prosecution. But the learned trial Judge has erroneously dismissed the application that those documents have been produced before the Court belatedly, which would affect the rights of the accused.

19.Unfortunately, as against the order of the learned Judicial Magistrate, the respondent Police has not filed any appeal or revision, virtually helping the accused in escaping from the clutches of law.

20.It is pertinent to note that this is a case of misappropriation, where huge amount of public money was swindled by the accused persons. Without considering the veracity of the case, the learned Magistrate has simply dismissed the applications on the ground that those applications were filed belatedly and those documents were produced belatedly. It is the specific case of the *de* *facto* complainant that those documents have already been submitted to the investigating agency and the investigating agency had deliberately failed to produce those documents before the Court. The fact that the respondent Police have not filed any appeal as against the order of the learned Magistrate also supports the case of the *de facto* complainant.



21.In view of the foregoing discussions, the impugned orders are liable to be set aside and the same are accordingly set aside. The learned Judicial Magistrate No.II, Karur is hereby directed to entertain the petitions filed by the prosecution by receiving the documents and after verifying its genuineness and applicability, proceed with the case further in the manner known to law. Since, the charge sheets were filed in the year 2006, the learned Magistrate is directed to proceed with the case on day to day basis and dispose of the same as expeditiously as possible, in any event not later than three months from the date of receipt of a copy of this order and report compliance to the Registry of this Court.

22. It appears that the witnesses have not been examined in this case and trial has not been proceeded further. Therefore, copies of the documents, which are now proposed to be marked, shall be furnished to the accused as contemplated under Section 205 CrPC, enabling them to cross examine the witnesses.

23.In the result, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To
1.The Judicial Magistrate No.II, Karur.
2.The Sub Inspector of Police,
District Crime Branch, Karur.
3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.MAHENDRAN, Advocate ( SR-70580[F] dated 21/06/2019 )
+1 CC to M/s.R.MURUGAN, Advocate ( SR-70618[F] dated 21/06/2019 )

Order made in
**Crl.O.P.(MD)No.17431 to 17433 of 2016**
**21.06.2019**

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JM/03.10.2019/7P/6C