



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Thirteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL.M.P. (MD) Nos.8820 and 8858 of 2018
in
CRL.O.P. (MD) Nos.10036 and 11021 of 2016

CRL.M.P. (MD) No.8820 of 2018 in CRL.O.P. (MD) No.10036 of 2016:

R.DEIVAM

... PETITIONER/ 3rd PARTY

Vs

- 1 R.SELVAGANESAN
- 2 P.ARUMUGAM
- 3 P.RAJENDRAN
- 4 P.MAHALINGAM
- 5 A.NARAYANAN

... RESPONDENTS 1 TO 5/ PETITIONERS

- 6 THE COMMISSIONER OF POLICE
O/O.THE COMMISSIONER OF POLICE,
MADURAI.

- 7 THE JOINT DIRECTOR AND HEAD OF THE ZONE,
CENTRAL BUREAU OF INVESTIGATION (CBI)
III FLOOR, EVK SAMPATH BUILDING,
COLLEGE ROAD, CHENNAI.

- 8 THE SUPERINTENDENT OF POLICE
O/O.THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT.

- 9 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING,
VIRUDHUNAGAR DISTRICT.

- 10 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI DISTRICT.
CRIME NO.64/2015

- 11 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING II,
MADURAI DISTRICT.
CRIME NO.1/2016

... RESPONDENTS 6 TO 11/
RESPONDENTS 1 TO 6



Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to recall the order in CrI.O.P(MD).No.10036/2016 dated 11.09.2018.

Prayer in CRL OP(MD) . 10036/ 2016 :

To directing the respondent No.1 to withdraw the case in Crime No.64 of 2015 dated 05.12.2015 on the file of respondent No.3 and entrust the same to respondent No.2 for investigation of the case by a competent office and file a final report before the jurisdictional magistrate within the time period stipulated by this Honourable Court.

CRL.M.P. (MD)No.8858 of 2018 in CRL.O.P. (MD)No.11021 of 2016:

R.DEIVAM

... PETITIONER/ 3rd PARTY

- Vs. -

1 P.KARTHIKEYAN

... 1st RESPONDENT/ PETITIONER

2 THE COMMISSIONER OF POLICE
O/O.THE COMMISSIONER OF POLICE,
MADURAI.

3 THE JOINT DIRECTOR AND HEAD OF THE ZONE,
CENTRAL BUREAU OF INVESTIGATION (CBI),
III FLOOR, EVK SAMPATH BUILDING,
COLLEGE ROAD, CHENNAI.

4 THE SUPERINTENDENT OF POLICE
O/O.THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT.

5 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING II,
MADURAI DISTRICT.
CRIME NO.1/2016

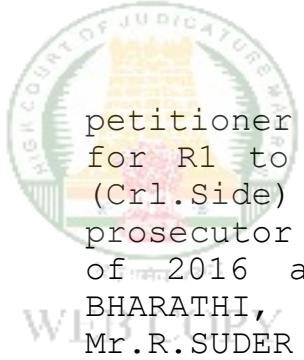
... RESPONDENTS 2 TO 5/
RESPONDENTS 1 TO 4

To recall the order in CrI.O.P.(MD).No.11021/2016 dated 11.09.2018.

Prayer in CRL OP(MD) . 11021/ 2016 :

To withdraw the case in Crime No.1 of 2016 on the file of Inspector of police, Economic Offences wing-II, Madurai, Madurai district dated 6.1.2016 the 4th respondent herein and transfer the same to the 2nd respondent for investigation and file final report within a reasonable time.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.ANANTHAPADMANABAN, Advocate for Mr.J.SELVAM, Advocate for the



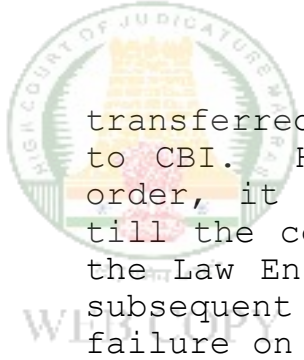
petitioner in both the petitions and of Mr.T.LAJAPATHI ROY, Advocate for R1 to R5 and Mr.K.SUYAMBULINGA BHARATCHI, Government Advocate (Crl.Side) for R6,R8 to R11 and Mr.R.SUDER KUMAR, Special Public prosecutor for R7 in CRL MP(MD)No.8820 of 2018 in CRL OP(MD)No.10036 of 2016 and Mr.K.APPADURAI, Advocate for R1, Mr.K.SUYAMBULINGA BHARATHI, Government Advocate(Crl.Side) for R2,R4 & R5 and Mr.R.SUDER KUMAR, Special Public prosecutor for CBI cases for R3 in CRL MP(MD)No.8858 of 2018 in CRL OP(MD)No.11021 of 2016, the court made the following order:-

These petitions have been filed under Section 482 Cr.P.C., to recall the order passed in Crl.O.P.(MD)Nos.10036 and 11021 of 2016 dated 11.09.2018.

2.The case of the petitioner herein is that he is the accused in Crime Nos.64 of 2015 & 01 of 2016. Crl.O.P.(MD)Nos.10036 and 11021 of 2016 have been filed by the depositors, who were cheated by the accused who had taken money from the said depositors, which came to several crores of rupees, seeking transfer of investigation to CBI. This Court, by its order dated 11.09.2018, after hearing the learned counsel for the depositors and the learned Government Advocate (Crl.Side) appearing for the respondent police and considering the gravity of offence committed by the petitioner, transferred the case to CBI. Since the accused is not a party in the aforesaid transfer petitions, without their knowledge, the transfer petitions were ordered by this Court. Hence, these present petitions have been filed to recall the said order of transfer.

3.The learned counsel for the accused would submit that though the depositors have approached this Court for transfer of the case to CBI in the year 2016, while entertaining the transfer petitions, this Court did not grant any interim order to prevent the Law Enforcing Agency to conduct investigation and file charge sheet. In the absence of any interim order, except no other option, the Law Enforcing Agency conducted investigation and filed charge sheet before the trial Court on 24.07.2018. Thereafter, the trial Court has taken cognizance of the matter in C.C.No.6 of 2018 on 14.08.2018._ This information has not been placed before this Court. In an earlier occasion, one of the accused has approached this Court in Crl.O.P.(MD)No.2186 of 2018, in which this Court, by its order dated 23.02.2018, issued a direction to the Law Enforcing Agency to complete the investigation and file final report before the trial Court, within a period of six months from the date of receipt of a copy of the said order. That order is not brought to the notice of this Court. In the absence of such information, this Court passed an order, transferring the investigation to CBI. According to the accused, this is contrary to law. Accordingly, he seeks recall of the order to safeguard the rights of the accused.

4.The learned Government Advocate (Crl.Side) appearing for the State would submit that this Court after considering the gravity of offence committed by the accused and after hearing the parties,



transferred the case to CBI and now all the files were handed over to CBI. He would further submit that though there is no interim order, it is the duty cast upon the Law Enforcing Agency to wait till the conclusion of the present case and it is also the duty of the Law Enforcing Agency to furnish the details with regard to the subsequent direction and other things. However, though there was a failure on the part of the Law Enforcing Agency, it will not prevent this Court to pass an order transferring the investigation to CBI. It is the right of the affected parties to seek transfer of investigation.

5.He would further submit that the accused persons are belonged to South India and they are running business in all over India. Therefore, it is appropriate to hand over the matter to CBI for conducting appropriate investigation.

6.Considering the above facts and circumstances of the case, this Court already passed an order transferring the investigation to CBI on 11.08.2018. If at all the accused have aggrieved by the said order, only remedy available for him is to file an appeal before the Hon'ble Apex Court. I am of the view that this recall petition is not maintainable as there is a bar under Section 362 Cr.P.C., for recalling such order.

7.Therefore, I am not inclined to recall the order transferring the case to CBI. Hence, these petitions are dismissed. However, it is open to the accused to work out his remedy in the manner known to law.

sd/-
13/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE COMMISSIONER OF POLICE
O/O.THE COMMISSIONER OF POLICE,
MADURAI.
- 2 THE JOINT DIRECTOR AND HEAD OF THE ZONE,
CENTRAL BUREAU OF INVESTIGATION (CBI)
III FLOOR, EVK SAMPATH BUILDING,
COLLEGE ROAD, CHENNAI.
- 3 THE SUPERINTENDENT OF POLICE
O/O.THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT.



5 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI DISTRICT.

6 THE INSPECTOR OF POLICE
ECONOMIC OFFENCES WING II,
MADURAI DISTRICT.

7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2. C.C. to Mr.J.SELVAM Advocate SR.Nos.4958 & 4959
+1CC TO Mr.K.APPADURAI, Advocate, Sr No.4777

ORDER IN
CRL.M.P. (MD) Nos. 8820 and 8858 of 2018
in
CRL.O.P. (MD) Nos. 10036 and 11021 of 2016
Date : 13/03/2019

MS/PN/SAR-2/20.03.2019/5P.11C