



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2019

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P. (MD) No.22276 of 2018

R.Kumaresan

: Petitioner

Vs.

1.The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Central Bureau of Investigation (CBI),
Economic Offences Wing,
'A' Wing, Third Floor,
Rajaji Bhavan, Besant Nagar,
Chennai - 600 090.

3.The Superintendent of Police,
O/o. Superintendent of Police,
Collectorate Post, Dindigul - 624 004.

4.The Inspector of Police,
District Crime Branch (DCB),
O/o. Superintendent of Police,
Collectorate Post, Dindigul.
(Crime No.27 of 2018)

: Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to issue a direction to transfer the investigation in Crime No.27 of 2018 on the file of 4th respondent to the 2nd respondent.

For Petitioner : Mr.L.Prabhu

For R1, R3 and R4 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl. Side)

For R2 : Mr.N.Nagendran,
Special Public Prosecutor for CBI cases

**ORDER**

The Criminal Original Petition has been filed by the petitioner to transfer the investigation in Crime No.27 of 2018, on the file of fourthth respondent to the second respondent.

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2.The petitioner is the defacto complainant and he borrowed loan from the Allahabad Bank, Dindigul Branch. He came to know that huge amount was taken as loan with the Bank officials by utilizing the petitioner's name. The petitioner's bankers created bogus loan documents and obtained money from the bank, for which, he received a notice from the Bank. Thereafter, he approached this Court and filed a petition in Crl.O.P.(MD)No.21488 of 2019, seeking transfer of investigation of the complaint from the fourth respondent police to the second respondent/CBI, since the fourth respondent police has not taken proper action. This Court directed the petitioner to send a representation in this regard to concerned authorities. Accordingly, the said Criminal Original Petition was dismissed as withdrawn. Thereafter, the Law Enforcing Agency registered a case under Sections 120(b), 420, 465, 468, 471 and 506(ii) I.P.C and proceeded with the investigation and allegations were levelled against the accused persons. Till date, the investigation is pending. Therefore, the petitioner filed this petition for transfer of investigation to C.B.I.

3.The learned Additional Government Pleader submitted that the Law Enforcing Agency has no objection to transfer the case to the C.B.I.

4.The learned counsel for the petitioner submitted that the very same issue was already decided by this Court, in Crl.O.P(MD) No.15875 of 2018, wherein at Paragraphs 5 to 10 read as follows:

"5.Mr.Radhakrishnan, learned counsel for the accused submitted that Douloth Basha himself is a dubious character and the management has obtained a false complaint from him to fix the accused. He further submitted that under the vigilance Manual, the complaint should have been given to the CBI and not to the local police. It is his contention that the REPCO Bank approached the CBI, but the CBI had refused to entertain the complaint, holding that the entire prosecution is civil in nature. He further submitted that the accused was a whistle blower and had exposed the misdeeds of the Managing Director and that is why, he has been targeted.

6.Though these arguments were advanced across the Bar, the learned counsel for the accused was not able to produce any material to substantiate the charge of mala fides. In State of Bihar Vs.P.P.Sharma (AIR 1991 SC 1260), the Supreme Court has clearly held that an FIR, cannot be quashed on the simple allegation of mala fides without anything more.



7. On the contrary, on a perusal of the records, it is seen that when the bank started to take disciplinary action against the accused, he had lodged three complaints dated 06.07.2017, 01.08.2017 and 22.08.2017 alleging that he was abused by his caste name by the Vigilance Officer on the instigation of the Managing Director of the bank. He has further sought action to be taken against his superior under the SC/ST Act. He has also filed a petition in Crl.O.P.No.15468 of 2017 for a direction to investigate his complaints. Thus, it appears that the accused is taking shelter under the umbrella of caste in order to stifle the ongoing domestic enquiry and criminal investigation against him, which cannot be countenanced and deserves to be deprecated.

8. The accused filed Crl.O.P.No.27439 of 2017 before this Court for a direction to transfer the investigation to the CBI on the ground that the vigilance Manual contemplates CBI investigation, if the amount of misappropriation exceeds Rs.3 crores. This Court has dismissed Crl.O.P.No.27439 of 2017 on 13.12.2017, on the premise that the vigilance Manual is only directory in nature and not mandatory, and that the District Crime Branch has the jurisdiction to conduct the investigation.

9. Since there are sufficient materials in the complaint lodged by the Bank against the accused, the FIR cannot be quashed in the light of the judgment of the Supreme Court in State of Haryana V. Bhajan Lal [AIR 1992 SC 604]. However, this Court finds that the accused has been lodging the complaint against all the officers and has been consistently thwarting the progress of investigation. That apart, the de facto complainant is a Bank dealing with public money.

10. In such perspective of the matter, this Court directs the transfer of Dharmapuri District Crime Branch Cr.No.9 of 2017 to the file of the Central Bureau of Investigation, Chennai. The Inspector of Police, DCB, Dharmapuri, is directed to handover the entire C.D. file in Cr.No.9 of 2017 to the Superintendent of Police, Economic Offences Wing, CBI, Rajaji Bhavan, Besant Nagar, Chennai within two weeks from the date of receipt of a copy of this order. The Superintendent of Police, EOW, CBI, may in turn nominate a competent officer subordinate to him to conduct the investigation.

Accordingly, this petition stands dismissed. Consequently, connected miscellaneous petition is closed."

5. Mr.N.Nagendran, learned Special Public Prosecutor for CBI cases, has also conceded for transfer of case to C.B.I.

6. In view of the above, I am inclined to transfer the case from the file of the Inspector of Police, District Crime Branch (DCB), Dindigul District to the Superintendent of Police, Central Bureau of



Investigation (CBI), Besant Nagar, Chennai. Hence, the fourth respondent is directed to hand over the entire files to the second respondent, for investigation.

7. Accordingly, this Criminal Original Petition is disposed of.

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Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

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To

1. The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
2. The Superintendent of Police,
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4. The Inspector of Police,
District Crime Branch (DCB),
O/o. Superintendent of Police,
Collectorate Post, Dindigul.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.L.PRABHU, Advocate (SR-63543[F] dated 27/04/2019)

Cr1.O.P. (MD) No.22276 of 2018
27.04.2019

ES/15.05.2019/4P/7C