



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

Cr1.O.P. [MD] .No.13228 of 2017

and

Cr1.M.P. [MD]No.8950 of 2017

1.Saravanakumar

2.K.Raja

: Petitioners

Vs.

1.The State Rep. by
The Inspector of Police,
Samayanallur Police Station,
In Crime No.242 of 2017

2.Rajesh

: Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records connected to the First Information Report in Crime No.242 of 2017, pending on the file of the first respondent police station and quash the same as illegal.

For Petitioners : Mr.R.Karunanidhi

For R-1 : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the First Information Report in Crime No.242 of 2017, pending investigation on the file of the first respondent police.

2.The second respondent has given a complaint to the first respondent police, by alleging that he is owner of the lorry and on 21.01.2017, he had loaded some food products in the office of the DTC Transport and was proceeding from Salem. The next day on 22.01.2017, in the early morning, he got down from the lorry near Kovilpatti and found that the Tarpaulin that was covering the food products has been cut and certain boxes were missing. He immediately informed the TTC Transport Contractor about the boxes having been stolen. He was instructed to inform about the same at the Madurai Branch. At the time of unloading boxes, it was found that 49 boxes were missing and it is worth Rs.2,37,639/-. The



second respondent was directed to make this payment and thereafter take the lorry. Even though this incident had taken place on 22.01.2017, the complaint itself came to be given only on 23.05.2017, and an FIR was registered on the same date. The petitioners have been made as an accused only based on suspicion.

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3.The learned counsel for the petitioners submitted that the first petitioner is working as the Manager of Tamil Nadu Transport Company. This company had engaged the service of the de-facto complainant for transporting some food products from Salem to Tirunelveli and Kovilpatti. The learned counsel submitted that enroute the de-facto complainant found that the Tarpaulin has been cut and some boxes were missing. Thereafter, at the time of unloading it was found that 49 boxes were missing. In this regard, a complaint has already been given by the first petitioner. The learned counsel submitted that even without conducting a preliminary enquiry, the present First Information Report has been registered and the petitioners have been made as an accused and unfortunately, the first petitioner was also remanded to judicial custody.

4.The learned counsel also brought to the notice of this Court a writ petition that was filed by one Shanmugaraj claiming to be the owner of the same lorry. In the said writ petition final orders were passed by this Court, dismissing the writ petition and serious comments were made about the First Information Report that was registered by the police even without a preliminary enquiry.

5.The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that there were several complaints regarding the missing products from lorry and there is a strong suspicion that the concerned company is behind it. The learned counsel submitted that if some time limit is fixed by this Court, the investigation will be completed and final report will be filed.

6.This is a clear case where persons unconnected with the crime have been made as accused. The lorry driver specifically alleges in his complaint that he found the Tarpaulin cut, when he got down from the lorry on 22.01.2017. The complaint itself was given by him only on 23.05.2017. It is not known as to why it took such a long time for him to give the complaint. Even in the complaint, he is not making any allegation against the petitioners. That apart, there is a serious doubt regarding the ownership claimed by the second respondent over the lorry. One Shanmugaraj had approached this Court seeking for the release of the same lorry and this Court had made the following observations:-

"..6.While so, Rajesh has given a police complaint, based on which, an FIR has been registered on 23.05.2017 in Crime No.242 of 2017, under Sections 379 and 424 of



IPC against the fourth respondent and he was arrested on 25.05.2017 and remanded to custody. In the complaint given by Rajesh, he has not whispered about the pendency of this Writ Petition in W.P.(MD)No.7499 of 2017. The Inspector of Police, Samayanallur Police Station, has not even conducted a minimum enquiry as to find out the actual dispute between the fourth respondent and the petitioner. Had he done that, he would have known that the said lorry is kept in the office of the fourth respondent in Madurai and that there is a dispute between them with regard to, who has to take the responsibility for the loss of 49 boxes. The Inspector of Police had shown undue alacrity in registering the FIR and arresting the fourth respondent..”

7.It is clear from the above observation that the respondent police have acted in a very hasty manner and that has resulted in an unnecessary arrest of the petitioners. Absolutely, no offence has been made out against the petitioners and the pendency of the criminal prosecution will only result in abuse of process of law. This Court has no hesitation to interfere with the criminal prosecution.

8.In the result, the First Information Report in Crime No.242 of 2017, pending on the file of the first respondent police is hereby quashed and accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Samayanallur Police Station.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.R.KARUNANIDHI, Advocate Sr. No. 100672

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GRL(CO)

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