



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.08.2020
CORAM
THE HONOURABLE Mr. JUSTICE M. NIRMAL KUMAR

WEB COPY

Crl.O.P.No.198 of 2015

1.Dr.Rama Rao
2.Dr.Buchamma

... Petitioners/ Accused

Versus

State by
The Inspector of Police,
All Women Police Station,
Adayar,
Chennai - 600 020.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, directing the IX th Metropolitan Magistrate Court to refund the cash surety furnished by the petitioners in Crime No.22 of 1997 in their names without insisting their personal appearance.

For Petitioners : Mr.T.S.Gopalan & Co.

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

O R D E R

This petition has been filed to direct the IX Metropolitan Magistrate Court to refund the cash surety furnished by the petitioners in Crime No.22 of 1997 in their names without insisting their personal appearance.

2. In pursuance of the earlier order passed by this Court in Crl.O.P.No.198 of 2015 dated 14.07.2020 in which paragraph 3 of the said order is extracted hereunder;

" 3. The prayer sought for by the petitioners is that the petitioners seek refund of cash furnished in Crime No.22 of 1997. Since the case has been closed, the cash security is no longer to be retained. It is further submitted that when the petitioners had filed necessary application before the XVIII Metropolitan Magistrate, Saidapet, it was informed to them that FIR and the connected case documents were not available. It is seen from the adjudication that this Court as early as on 15.10.2015 and 09.12.2015 issued directions to both learned XVIII Metropolitan Magistrate, Saidapet and the learned IX Metropolitan Magistrate, Saidapet to locate FIR



WEB COPY

and connected papers in this regard. Thereafter, the case has been periodically adjourned without any progress. On 24.04.2017, this Court again reiterating the earlier orders,

directed Registry to issue suitable direction to locate the FIR and connected papers and submit the same along with a report of the XVIII Metropolitan Magistrate, Saidapet. The Registry on 26.04.2017 in CO.NO.208/2017 had directed the learned XVIII Metropolitan Magistrate, Saidapet once again to locate the FIR and connected papers and submit the same along with the report. The learned IX Metropolitan Magistrate, Saidapet, by communication dated 21.12.2015 stated that the FIR in Crime No.22 of 1997 and other connected papers were transferred to the file of XVIII Metropolitan Magistrate Court, Saidapet on the ground of jurisdiction and no papers is available. The learned XVIII Metropolitan Magistrate, Saidapet by communications dated 23.12.2015 and 17.06.2017 stated that despite efforts taken in searching the FIR in Crime No.22 of 1997 and connected records, they are not able to trace the papers immediately and sought some time."

3. The Chief Metropolitan Magistrate (FAC), Egmore, Chennai - 8 by communication vide Dis.No.3166/2020, dated 28.07.2020 has stated that as per the report of the IV Metropolitan Magistrate, an amount of Rs.15,000/- vide receipt No.49690 and an amount of Rs.10,000/- vide Receipt No.49691 have been deposited on 06.09.1998 as per CCD Register of the Saidapet Metropolitan Magistrate Courts.

4. Further, it is seen that the case records in Crime No.22 of 1997 were not traceable and it is not certain as to whether Crime No.22 of 1997 is still pending or closed.

5. In view of the above, reconstruction of the records can be done with the available records.

6. In view of the same, the petitioner to produce the documents 1 to 8 which have been annexed as typed set in CrI.O.P.No.198 of 2015 to the concerned Court and other documents available in this case, relating to the All Women Police Station, Adyar in Crime No.22/1997 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

7. The learned counsel for the petitioner submitted that the petitioners are senior citizens, the second petitioner



is 86 years of age. They are now residing in Andhra Pradesh and they are finding difficult for their daily routine to move without assistance. In such a situation traveling to Chennai for appearing before the Courts at Saidapet would cause great hardship to them and therefore, they seek permission of this Court that their counsel Mr.S.Haroonal Rasheed [Enrollment No. 1927/2003] may be permitted to represent them and to receive the amount of cash surety on their behalf. It is seen from the communication of the Chief Metropolitan Magistrate that the refund of surety amount can be made by way of RTGS payment to the petitioners, on providing the Bank Account details, for making such transfer.

8. Considering the submissions of the learned counsel for the petitioners and also the fact that even after 22 years of registration of Crime No.22 of 1997, it is not certain as to whether the said case is pending and further, final report, either positive or negative, till date not filed. In view of the same, it is to be construed that nothing survives for further adjudication in Crime No.22 of 1997.

9. In view of the same, this Court directs the return of surety amount to the petitioners herein namely Dr.Rama Rao & Dr.Bujamma, who had deposited the surety amount in Receipt No. 49690 of Rs.15,000/- and Receipt No.49691 of Rs.10,000/- respectively on 06.01.1998.

10. The learned counsel for the petitioners are directed to furnish the copy of the documents 1 to 8 annexed in the Typed set and other connected documents along with the memo to the XI Metropolitan Magistrate with a copy to be served on the respondent- police, namely, Inspector of Police, All Women Police Station and to furnish whatever materials available. Thereafter, the XI Metropolitan Magistrate is directed to reconstruct the case and thereafter, refund the surety amount to the petitioners after getting Bank particulars and other necessary details and the deposit amount to be transferred by way of RTGS to the petitioners. After obtaining their present address and affidavit of undertaking that they shall appear before the respondent police or before the concerned court, as and when they are summoned. This exercise to be completed within a period of one month from the date of receipt of a copy of this order, after lifting of the lock down and commencement of functioning of the Court.

11. With these observations, this Criminal Original Petition stands disposed of.

"FOR BEING MENTIONED"

This matter having been listed on 01.10.2020 for being mentioned in pursuance of order dated 07.08.2020 and made



herein and in the presence of Mr.T.S.Gopalan & Co. Advocate for the Petitioner and Mr.C.Iyyappa Raj, Additional Public Prosecutor for the Respondent, this Court made the following order:

WEB COPY

This matter is listed today under the caption 'for being mentioned'.

2. This Court in continuation of the earlier order dated 07.08.2020 now is informed that the bundle in Crime No.22 of 1997 under Section 498 (A), 406 IPC of W-2 All Women Police Station, Adayar, was traced and retrieved. It is found that final report had been filed in Crime No.22 of 1997 as "action dropped", on 03.09.1998. The learned IX Metropolitan Magistrate, Saidapet, accepted the same on 23.09.2004 and made endorsement as "de facto complainant called absent, no representation. Hence prosecution report of Action dropped is recorded".

3. Further, there is a letter of the defacto complainant addressed to Deputy Superintendent of Police, Chennai dated 07.02.1998. From the letter, it is found that the defacto complainant is living happily with her husband Muralidhar Rao Dugyala from June 8, 1998 onwards and she made request to the Court, to treat her complaint against Muralidhar Rao / husband, Buchchamma / mother-in-law and Dr.D.Rama Rao / Brother-in-law as withdrawn.

4. In view of the same, the Lower court, by order dated 23.09.2004, had closed the case as "action dropped."

5. Now the records have been traced, retrieved and available before the IX Metropolitan Magistrate, Egmore, Chennai. In view of the same, paragraph No.10 of the earlier order passed on 07.08.2020 as regards refund of cash security is modified as hereunder:

"The petitioners to file a petition seeking refund of cash security to the IX metropolitan magistrate, Egmore, Chennai, with identity proof, bank particulars, RTGS details and other necessary particulars. Thereafter, the IX Metropolitan Magistrate, Egmore, shall pass appropriate orders to transfer the security amount through RTGS to the petitioners. This exercise is to be completed within one month from the date of receipt of a copy of this order. "

Office is to incorporate necessary corrections and issue fresh order copy.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



kmm
To

The State of Tamilnadu
The Inspector of Police,
All Women Police Station,
Adayar,
Chennai - 600 020.

2.The IX Metropolitan Magistrate Court,Saidapet, chennai.

3.The Public Prosecutor,
High Court, Madras - 104.

+1cc to Mr.T.S.Gopalan & Co , Advocate SR.No. 32400

Cr1.O.P.No.198 of 2015

A.SK(02/11/2020)