

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.6520 of 2020

Kamalhasan

... Petitioner

Vs.

1.The Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

2.The Deputy Commissioner of Police,
Central Crime Branch - 1,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

3.The Sub Inspector of Police,
Central Crime Branch-1,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the second respondent not to harass the petitioner in the blanket of enquiry in CCB Cr.No.25 of 2020, on the file of the second respondent police.

For Petitioner : Mr.Sathish Parasran
Senior Counsel
Assisted by Mr.Vijayan Subramanian

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed to direct the second respondent not to harass the petitioner in pursuant to case registered in CCB Crime No.25 of 2020 for the offences under Sections 287, 337, 338 and 304(A) of IPC.

2 The learned senior counsel appearing for the petitioner submitted that a case has been registered on the complaint lodged by one Bharathkumar, who was also a injured in the occurrence, alleging that, on 19.02.2020, when the shooting was in progress for the film INDIAN 2, crane bearing registration No. TN-18-AR-9858, which was operated by one Rajan, fell down on the shooting spot. Due to that, three persons died on the spot and ten persons were injured. The accident was took place due to rash and negligent operation of crane operator. Hence, FIR has been registered in Crime No.47 of 2020 for the offences under Sections 287, 337, 338 and 304(A) of IPC, as against the crane operator viz., Rajan, the Production Manager viz., Sundarrajan and others. He further submitted that the petitioner is being hero of the film INDIAN 2, was also present on the date of occurrence and he along with the director have narrowly escaped from the accident and they were only a few meters away from the scene of crime. Since, he is one of the eye witness to the scene of Crime, he was enquired in detail for more than three hours. Thereafter, he was also called for enquiry before the second respondent on 03.03.2020 and he has appeared for enquiry. Since he has seen the accident, he was in trauma and stress. Now again, the petitioner was called upon by the second respondent to the place of occurrence for investigation purpose. He further submitted that he is being the political leader, he has been unnecessarily harassed by the second respondent under the guise of enquiry even he has ready to appear before the second respondent for the enquiry but not in the place of occurrence. Since, he is not an accused and no need to explain the crime.

3 Per contra, the learned Additional Public Prosecutor would submit that admittedly, in the presence of the petitioner accident took place. The accident took place due to the rash and negligent operation of the crane by crane operator. The petitioner is being the hero of the film and also eye witness to the occurrence, he has been called for to be present at the place of occurrence to explain the Crime. Therefore, his appearance is must at the place of occurrence for the investigation purpose. He further submitted that the crane which was involved in the accident had capacity to lift only 900 kg, in stead of that, the film unit had used the crane to lift more than three tonnes of weight. Therefore, the accident took place only because of lifting more weight than the capacity of the crane. He further submitted that not only the petitioner was called for and also the director of the film was called to the place of occurrence to explain the scene of crime. In this regard, he further pointed out Section 3 of the Indian Evidence Act, which reads as follows:

“Fact”- “Fact” means and includes -

(1) any thing, state of things, or relation

of things, capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

"Relevant" - One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in Issue".- The expression "facts in issue" means and includes - any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows."

Thus, the presence of the petitioner is essential for reconstruction of crime. He is being an associate of deceased persons and leader of political party, he should have explain the occurrence at the scene of crime.

4 Heard Mr.Sathish Parasran, learned Senior Counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents.

5 The petition has been filed not to harass the petitioner under the guise of enquiry in pursuant to the FIR registered in Crime No.25 of 2020 on the file of the second respondent.

6 The case of the prosecution is that on 19.02.2020, when the shooting was in progress for the film INDIAN 2, a giant crane was operated in a rash and negligent manner by the first accused viz., Rajan was fell down on the shooting spot, resulting which, three persons died on the spot and ten more persons got severely injured. On the place of occurrence, the petitioner was present and he had narrowly escaped from the accident. Thereafter, he was enquired by the second respondent, in respect of crime on 03.03.2020. Again, now, the petitioner is called for to the place of occurrence for reconstruction of crime. Admittedly, it is an accident and the petitioner is an eye witness to the accident, but he is not an accused. Therefore, his presence in the scene of Crime is not required for re-construction of crime. Though, he is hero of the film and one of his colleagues, assistants were died due to accident, his presence would not help for reconstruction of crime. In this regard, the director of the film also called for to the place of occurrence. Therefore, the petitioner need not be

present in the place of occurrence and his presence on 18.03.2020 is dispensed with.

7 This Court, exercising its power under Section 482 of the Criminal Procedure Code normally would not interfere with the investigation conducted by a police officer. Nevertheless, it would also not turn a blind eye to instances of harassment by the police under the guise of investigation is brought to its notice.

8 In the present case in hand, the petitioner has complained of harassment by the police based on a complaint and seek for this Court's intervention by way of a direction. The term 'harassment' by itself has a very wide meaning and hence, what could be harassment to the petitioners may not be the same to the police officer.

9 Therefore, the second respondent is directed not to call upon the petitioner to appear in the place of scene of crime in pursuant to the FIR registered in Crime No. 25 of 2020 on the file of the second respondent. However, the petitioner is directed to appear before the second respondent for investigation purpose on summons and the following guidelines are issued:

a) While summoning any person named in the complaint or any witness to the incident complained of, the police officer shall summon such person through a written summon under Section 160 Cr.P.C., specifying a particular date and time for appearing before them for such an enquiry/investigation.

b) The minutes of the enquiry shall be recorded in the general diary/station diary/daily diary of the police station.

c) The police officer shall refrain himself or herself from harassing persons called upon for enquiry/investigation.

d) The guidelines stipulated for preliminary enquiry or registration of FIR by the Hon'ble Supreme Court in Lalita Kumari Vs. Government of Uttar Pradesh and others [2014 (2) SCC (1)] shall be strictly adhered to.

10 With the above observations and direction, the Criminal Original Petition stands disposed off.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

2.The Deputy Commissioner of Police,
Central Crime Branch - 1,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

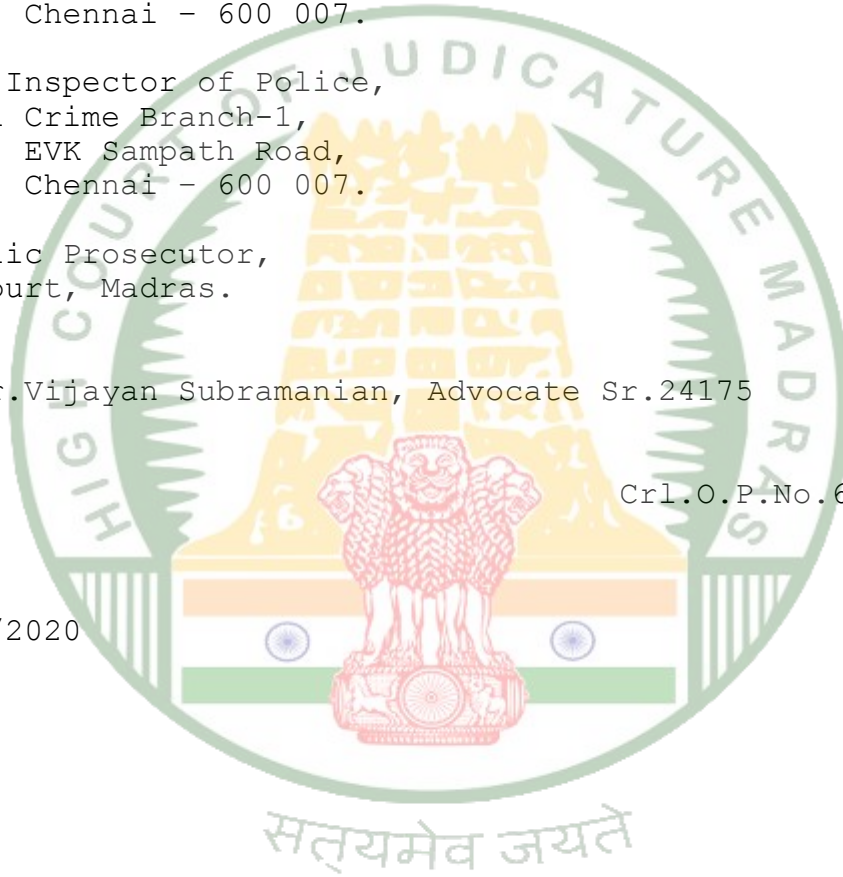
3.The Sub Inspector of Police,
Central Crime Branch-1,
No.132, EVK Sampath Road,
Vepery, Chennai - 600 007.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Vijayan Subramanian, Advocate Sr.24175

Cr1.O.P.No.6520 of 2020

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