

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.08.2020	Pronounced on 28.08.2020
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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3371 of 2017

S. Kandasamy ... Petitioner

Vs.

1.The Assistant Commissioner of Police,
Western Range / Crime,
Salem City, Salem.

2.The Deputy Superintendent of Police,
District Crime Branch,
Vellore – 632 002.

3.The Commissioner of Police,
Salem City, Linemedu,
Salem – 636 004.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the first respondent to file a report before this Court regarding the outcome of the enquiry conducted by the first respondent namely Assistant Commissioner of Police, Western Range of Crime, Salem City, Salem as directed by this Court in Crl.O.P.No.27004 of 2015 dated 15.12.2015.

For Petitioner : Mr. S. Jayakumar
For Respondents : Mr. Prabakaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking report on the enquiry conducted by the Assistant Commissioner of Police, Western Range of Crime, Salem City, Salem, pursuant to the order of this Court in Crl.O.P.No.27004 of 2015 dated 15.12.2015.

2. The case of the petitioner is that he was residing at Alagapuram, Salem, his son is a Doctor in Harur Government Hospital, his daughter, married and settled in Delhi. The petitioner's wife is living with his daughter. The petitioner is running a hotel, since his son wanted to open a clinic. The petitioner pledged his wife's jewellery in Salem Co-operative Bank Ltd., Alagapuram Branch, Salem, availed a loan of Rs.98,000/- and Rs.3,50,000/-, totalling to Rs.4,48,000/-. The said money was kept inside the safe locker at his residence along with 11 sovereigns of gold ornaments and property documents.

3. On 07.05.2010, at about 5.30 am, the Deputy Superintendent of Police, District Crime Branch, Vellore, namely, Rameshwari along with seven police constables forcibly taken the petitioner for enquiry in a police van to a forest guest house, Hasthampatti, Salem. In the guest house, he was confronted with Jaisankar. The Deputy Superintendent of Police claimed that the petitioner received a sum of Rs.6,00,000/- from the said Jaisankar and asked the petitioner to return the said amount. When the petitioner refuted the allegation, he was forced by the Deputy Superintendent of Police, Rameshwari to append his signature in few empty papers and the petitioner was assaulted by seven police constables. Further, the petitioner was taken in a police van to his residence at Alagapuram and his house was broke opened by the Deputy Superintendent of Police, Rameshwari. The petitioner was not allowed to enter his house. The safety locker was also broken and Rs.4,48,000/- in cash along with title deeds of immovable properties and 11 sovereigns of gold jewels was taken by the Deputy Superintendent of Police, Rameshwari. All the above proceedings were video graphed at the instance of the D.S.P., Rameshwari. When the petitioner asked for acknowledgement for taking the jewels, he was shouted

at. After the occurrence, the above illegal acts were informed by the petitioner to the higher Police officials. The seized articles were produced before the learned Judicial Magistrate, Tirupattur in Crime No.23 of 2010, which was pending investigation on the file of the Deputy Superintendent of Police, District Crime Branch, Vellore District, the petitioner informed the Magistrate about the illegally search and seizure articles by the Deputy Superintendent of Police, Rameshwari.

4. The petitioner lodged a complaint on 11.05.2010 for the illegal acts committed by the Deputy Superintendent of Police, Rameshwari and the same was forwarded to the Commissioner of Police, Salem. Since no action taken, the petitioner sent a legal notice dated 10.04.2015 to the Superintendent of Police and Director General of Police and the same was received by them on 17.04.2015. He sent reminder letter to the S.P., and D.G.P., on 29.06.2015, which was also received. The petitioner appeared before the Superintendent of Police on 29.06.2015, he was informed that action will be taken within a period of 10 days. Even thereafter, no action was taken. Hence, the petitioner filed Crl.O.P.No.27004 of 2015, this Court by order dated 15.12.2015 directed the fourth respondent therein to conduct

an enquiry “with regard to the allegations made by the complaint dated 11.05.2010 and for the reminder dated 29.06.2015, directed to proceed further in accordance with law”.

5. For better understanding and appreciation, it would be appropriate to know about the facts of the case in Crime No.23/2010 which was investigated by the District Crime Branch, Vellore for the offence under Sections 420, 408, 467, 468 and 471 IPC. The facts of this case is that on 20.04.2010, the Chief Manager, State Bank of India, Tirupattur Branch lodged a complaint, the complaint was against, Jaisankar, Officer of State Bank of India who committed criminal breach of trust, misappropriation and cheating. The defacto complainant-Muniraj, Chief Manager, State Bank of India, Tirupattur Branch, in his complaint stated that as part of annual closing of accounts on 31.03.2010, instructions were given to the joint custodians to verify and tally the gold ornaments pledged as security for gold loans. The process of physical verification was commenced. The loans by pledge of gold ornaments were managed by Jaisankar, Cash Officer, Tirupattur Branch. During verification, the Cash Officer, Jaisankar failed to attend the branch instead on 01.04.2010 he delivered the keys in a

sealed cover through his relative Baskaran, informing that the said Jaisankar was having chest pain and needed medical treatment.

6. On 01.04.2010, during verification of gold ornaments, it was found that bags containing gold ornaments were missing and further the gold deposited in the bank did not correlate with the loan documents and disbursement of the loans. There was shortage of gold ornaments. It was also found that in the computer system, the loan particulars were not properly entered and updated. During inspection, it was found that the Jaisankar had committed offence in disbursement, sanction and pledging of gold ornaments. On further verification, the currency in the chest balance as on 03.04.2001, was found and removed a sum of Rs.5 lakhs by the Cash Officer, Jaisankar. Further, an amount of Rs.44 lakhs entrusted for depositing in the ATM on 31.03.2010, it was found that the cash officer Jaisankar deposited only Rs.25 lakhs and misappropriated the balance amount of Rs.19 lakhs. Thus, the cash officer Jaisankar has embezzled cash of Rs.19 lakhs and Rs.5 lakhs in cash and gold ornaments which was given as security for gold loan.

7. The contention of the learned counsel for the petitioner is that on 07.05.2010, at 5.30 a.m., the Deputy Superintendent of Police, District Crime Branch, Vellore, namely, Rameshwari along with seven police constables forcefully taken the petitioner from his house in a police van to the forest guest house situated at Hasthampatti, Salem. In the said guest house an unknown person by name Jaisankar was brought in and shown to the petitioner. The Deputy Superintendent of Police alleged that the petitioner has received a sum of Rs.6,00,000/- from the said Jaisankar and he was criminally intimidated by the said Deputy Superintendent of Police, Rameshwari to return the above said sum. When the petitioner refuted the allegation, he was forced by the Deputy Superintendent of Police, Rameshwari to append his signature in few empty papers and the petitioner was assaulted by seven police constables. Further, the petitioner was taken in a police van to his residence at Alagapuram and his house was broke opened by the Deputy Superintendent of Police, Rameshwari and he was prevented from entering into his house. The safety locker was also broken and Rs.4,48,000/- in cash along with title deeds of immovable properties and 11 sovereigns of gold jewellery were taken by the Deputy Superintendent of Police, Rameshwari. The above search and seizure were

video graphed at the instance of the Deputy Superintendent of Police, Rameshwari. The seized articles were taken away from the petitioner's house by them with criminal intention to misappropriate the same. Neither any pachanama nor any other contemporary records as required under the law were recorded at the place of seizure. Aggrieved against the action, the petitioner had filed Crl.O.P.No.27004 of 2015, and this Court by order dated 15.12.2015 directed Assistant Commissioner of Police to conduct an enquiry. The petitioner was not aware of what had happened to the direction. Hence, the present Criminal Original Petition is filed.

8. The learned Additional Public Prosecutor submits that in this case the petitioner, right from beginning created a defence for the money received from Jaisankar, the money which the said Jaisankar handed over is public money of the public bank. He further submits that the signature of the petitioner found in the telegrams and the signature in the representation are in variance creating doubt over the genuineness of the documents. The documents, are created documents for the purpose of defence. On the direction of this Court, enquiry was conducted by the Assistant Commissioner of Police, Salem, on finding that there is no misappropriation

done by the investigation officer at the time of seizure of the materials from the residence of the petitioner, the enquiry was completed and a closure report submitted to the higher officials on 27.05.2016. In view of the same, he submits that nothing survives in this petition. Hence, he sought for dismissal of the petition.

9. In reply, the learned counsel for the petitioner submitted that the person who conducted the enquiry has not filed the enquiry report. It is the succeeding officer who filed the status report, he has no personal knowledge, hence the report is unacceptable. Further, the video graph recorded on 07.05.2010 copy not furnished.

10. Considering the rival submission and on perusal of the materials, this Court finds that the Deputy Superintendent of Police, Rameshwari, on the complaint, from the Chief Manager, State Bank of India, Tirupattur, against the Cash Officer, Jaishankar, who was also the proper officer for safe custody of gold jewels and cash in the branch, had misappropriated a sum of Rs.5 lakhs from the chest and Rs.19 lakhs out of Rs.44 lakhs to be deposited in ATM, he had deposited only Rs.25 lakhs in

the ATM and misappropriated Rs.19 lakhs and created false, forged documents, in the branch records. The said Jaisankar on his arrest gave a confession stating about the money of Rs.6 lakhs given to the petitioner and Rs.2 lakhs given to one Arulappan. Thereafter, the investigating officer along with his team and aid of local police had gone to the house of the petitioner on 07.05.2010 at about 5.30 am, took the petitioner for enquiry to the forest guest house, where the said Jaisankar was confronted with the petitioner. The petitioner had given different version with regard to the familiarity with the said jaysankar. The Jaisankar's mother in law categorically stated that the said Jaisankar had taken loan of Rs.6 lakhs from the petitioner by pledging the house property documents, the same was returned on 01.04.2010. The entire proceedings have been video graphed and recorded. The case property as well as video recordings converted into C.D., was produced before the Judicial Magistrate Court in Crime No.23/10, the investigation in this case is completed, charge sheet filed pending trial in C.C.No.418 of 2015. It is pertinent to note that the petitioner filed a return of property petition seeking return of 23 documents which was seized on 07.05.2010 before the concerned Magistrate Court. In the said petition, there is no mention of the missing of cash and 11 sovereigns of jewels.

11. The enquiry officer conducted enquiry examining the witnesses and collected the documents, Based on the statement and documents given a finding of closure to the enquiry. The enquiry was conducted based on the direction of this Court in Crl.O.P.No.27004 of 2015 on the complaint given by the petitioner. It is to be seen that in the enquiry it is mentioned that the petitioner appeared before the enquiry officer but failed to cooperate with the enquiry and walked away from there. Further the enquiry was directed to be conducted by Assistant Commissioner of Police. In view of the same, the enquiry conducted by Mohan the then Assistant Commissioner, the status report filed. The present Assistant Commissioner, the officer in succession filing status report will affect the credentials of the enquiry report in any manner. Further it is seen that the video graph recordings are converted into C.D., and the same is filed before Judicial Magistrate, I, Tirapattur, which is a material object in C.C.No.418 of 2015.

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12. In view of the same, this Court finds that the enquiry as directed by this Court in Crl.O.P.No.27004 of 2015 has been properly conducted and closed. This Court finds that no infirmity in the finding of

the enquiry report by closing the complaint of the petitioner. Accordingly,
this petition is dismissed.

28.08.2020

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Index: Yes/ No



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M.NIRMAL KUMAR,J.

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