

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.13057 of 2017 and
CrI.M.P.Nos.8487 & 8488 of 2017

D.Siva Kumar

... Petitioner

Vs.

1.State rep. by the Inspector of Police,
Vaniyambadi Town Police Station,
Vaniyambadi, Vellore District.
(Crime No.355 of 2012).

2.M.Siva Sathivel

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.15 of 2015 pending trial on the District Munsif cum Judicial Magistrate, at Vaniyambadi, Vellore District and trial the proceedings transfer of the above case same other competent Court.

For Petitioner :	Mr.G.Vinoth Kumar
For R1 :	Mr.C.Iyyappa Raj, Additional Public Prosecutor
For R2 :	Mr.N.Baskaran

ORDER

The petitioner, who is facing trial in C.C.No.15 of 2015 for offence under Sections 465, 468, 471, 420, 120-B r/w 109 IPC, pending on the file of the District Munsif cum Judicial Magistrate Court, Vaniyambadi, has filed this transfer petition.

2.The brief facts of the case is that the petitioner/A1 claims to be Proprietor of M/s.Sharp Machineries in Karur and supplying machineries for various industries. The 2nd respondent intended to start a corrugation box manufacturing business in the name of M/s.Sree Sakthi Packaging Industries at Vaniyambadi and hence, he entered into an agreement with the petitioner for supplying the package machineries for his factory. The 2nd respondent had paid a sum of Rs.27,25,600/- to the petitioner from various accounts through bank as cheque and RTGS on 24.09.2010 and 30.03.2011 towards the machinery cost.

3.A2 was the driver of the petitioner and A3 to A8 were Branch Manager and officials of Indian Overseas Bank, Karur Main Branch. A3 to A8 being the Branch Manager and officials staffs of Indian Overseas Main Branch created forged documents and uploaded the same in the computer of the bank, thereby committed the offence of cheating, misappropriation and forgery and siphoned out a sum of Rs.27,25,600/- of the 2nd respondent. On conclusion of investigation, the 1st respondent Police filed charge sheet against the accused, annexing listed witnesses LW1 to LW 19 and their statements and other documents. The trial Court had taken cognizance of the offence and assigned C.C.No.15 of 2015. During the pendency of the trial, the petitioner filed the present petition for transfer of case.

4.The learned counsel for the petitioner submitted that on 10.06.2016, the petitioner appeared before the trial Court to attend the proceedings. At that time, the 2nd respondent along with his henchmen came inside the Court premises and intimidated the petitioner and the 2nd respondent instructed his henchmen to kill the petitioner. Apprehending danger, the petitioner immediately rushed inside the Court hall and informed the learned Magistrate. The learned Magistrate directed the petitioner to lodge a written complaint. As per his advice, the petitioner lodged a written complaint before the District Munsif cum Judicial Magistrate, Vaniyambadi on 10.06.2016 and sent a copy of the complaint to Registrar General, High Court, Madras and Sub Inspector of Police attached to the 1st respondent Police Station on 15.06.2016.

5.The Registrar General, High Court, Madras has forwarded the complaint of the petitioner in ROC.No.46190/2016/RF/B3, dated 14.11.2016 to the learned Principal District Judge, Vellore for taking necessary action. Despite the same, no action has been taken and whenever the petitioner attending the trial Court, he was abused and threatened by the 2nd respondent and his henchmen. The 2nd respondent being a resident of Karur and his life is put to danger, he filed the present petition.

6.The learned counsel for the 2nd respondent filed typed set of paper and made submissions that this Court granted Anticipatory Bail in CrI.O.P.No.11118 of 2012, dated 24.05.2012 and imposed condition that the petitioner shall deposit a sum of Rs.10,00,000/- to the credit of Crime No.355 of 2012 before the concerned Magistrate within a period of four months. Thereafter, the petitioner filed modification petition in CrI.M.P.No.1 of 2012 in CrI.O.P.No.11118 of 2012, in which, this Court by order dated 13.04.2013, dismissed the petition and gave three weeks time to comply the condition. The 2nd respondent has filed CrI.M.P.No.2 of 2012 in CrI.O.P.No.11118 of 2012 seeking to cancel Anticipatory Bail granted to the petitioner on the ground that the petitioner has not complied the condition of depositing the amount of

Rs.10,00,000/- and the learned counsel for the petitioner therein submitted that he has got no instructions from the petitioner. This Court considering the facts and circumstances of the cases cancelled the Anticipatory Bail granted to the petitioner by order dated 16.06.2015. Thereafter, the petitioner moved a bail petition before the learned District Munsif cum Judicial Magistrate, Vaniyambadi in C.M.P.No.5232 of 2015 on the ground that the petitioner is in confinement from 20.09.2015. The learned District Munsif cum Judicial Magistrate, Vaniyambadi has granted bail to the petitioner with the condition that the petitioner to deposit Rs.1,00,000/- to the credit of the case and to appear before the respondent Police daily at 10.30 a.m and 05.30 p.m. In the meanwhile, the co-accused in this case namely A3 to A8 had filed a transfer petition in Crl.O.P.No.9242 of 2016, in which this Court by order dated 02.06.2016 had dismissed the petition. Thereafter, the 2nd respondent filed Crl.O.P.No.1561 of 2016 to cancel the bail granted to the petitioner by the learned District Munsif cum Judicial Magistrate, Vaniyambadi on 17.12.2015 stating that he did not comply with the condition imposed by the learned District Munsif cum Judicial Magistrate, Vaniyambadi. This Court by order dated 01.08.2016 had cancelled the bail granted to the petitioner by District Munsif cum Judicial Magistrate, Vaniyambadi in C.M.P.No.5232 of 2015 and directed the police to secure the petitioner.

7.This Court in Crl.O.P.No.17802 of 2016 by order dated 17.08.2016, on the submissions made by the learned Government Advocate therein, directed the petitioner to appear in person and file a petition under Section 70(2) Cr.P.C for recalling NBW before the concerned Magistrate and further directed the trial Court to proceed with the case on a day to day basis and shall not adjourn the matter beyond ten working days or two weeks at any point of time. The learned District Munsif cum Judicial Magistrate, Vaniyambadi in by order dated 03.10.2016 in C.M.P.No.3925 of 2016 recalled NBW with conditions. It is also brought to the notice that the some of the co-accused had filed S.L.P (Crl.)No.3526 of 2017 against the dismissal of the transfer petition filed by A3 to A8, challenging the order dated 02.06.2016 in Crl.O.P.No.9242 of 2016 before the Hon'ble Supreme Court. The Hon'ble Supreme Court has dismissed the same and confirmed the order of this Court.

8.The submission of the learned counsel for the 2nd respondent is that the petitioner conspired with the other accused, prepared forged documents and siphoned out huge sums of money from the 2nd respondent. The petitioner has been committing similar nature of offence. The threat expressed by the petitioner on the alleged occurrence is said to have taken place on 10.06.2016, is an imaginary story, which is for the purpose of filing the above petition and to stall the phase of the trial.

9.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that there are totally 19 witnesses, of which seven witnesses have been examined as PW1 to PW7 and within a stipulated time, the trial can be completed. He further submitted that the petitioner has been filing one petition or other, delayed the investigation and now the proceedings of the trial. The petitioner has absconded himself and with great difficulty and perseverance, he is secured in this case and now the trial is in progress. In this case on 20.02.2019, PW1/2nd respondent was examined, on that day, except A5, the petitioner along with other accused appeared. Likewise on 26.02.2019, PW2 and PW3 were examined. On 06.03.2019, PW4 was examined and he was cross examined by the accused. On 13.03.2019, PW5 and PW6 were examined and they were cross examined by the petitioner. From the above, it is seen the apprehension of the petitioner is not true. It is invented for the purpose of filing transfer petition and to stall the progress of the trial. The petitioner has been appearing before trial Court after 10.06.2016 and till now, no complaint of any apprehension for his safety and security is found are made. Further, the Police are providing proper security not only to the petitioner, but also to the other litigants, who are attending the Court.

10.This Court considered the rival submissions and perused the materials available on records.

11.It is seen that this Court by order dated 03.08.2020, directed the learned Judicial Magistrate, Vaniyambadi to send a report about the action taken on the complaint of the petitioner dated 15.06.2016. Thereafter, on 27.08.2020, a reminder was sent through Registrar (Judicial), High Court, Madras in ROC.No.31/2020-Regr(Judl), enclosing the order of this Court. The learned Judicial Magistrate, Vaniyambadi in Dis.No.1689 of 2020, dated 28.08.2020 submitted a report stating that "the petitioner was instructed to lodge a complaint before the Sub Inspector of Police, Vaniyambadi Town Police Station and if he refuses to file an FIR, the petitioner will give a written complaint to the Superintendent of Police. After that if there is no action taken, the petitioner will appear before the Judicial Magistrate Court, Vaniyambadi and file a written complaint.".

12.For the above incident said to have taken place on 10.02.2016, the complaint of the petitioner received by the learned Judicial Magistrate, Vaniyambadi on 15.06.2016 with Receive Register No.1823. On the same day, the complaint has been returned with the above endorsement. The copy of the complaint of the petitioner and the order passed by the learned Judicial Magistrate, Vaniyambadi on 15.06.2016 are annexed with the report. On perusal of the same and on the submissions made by the petitioner and learned Additional Public Prosecutor and the learned counsel for the 2nd respondent, this Court finds that the petitioner's complaint

dated 10.06.2016 is without substance. The learned Judicial Magistrate, Vaniyambadi on 15.06.2016 had informed the petitioner, what steps to be taken for his complaint. The petitioner did not follow and further pursue the complaint, on the other hand, filed the above petition as though no action was taken and the petitioner's life is under threat. From the Court proceedings in C.C.No.15 of 2015, it is seen that the petitioner has been appearing before the trial Court without any complaint.

13.In view of the above, this Criminal Original Petition is dismissed with a direction to the trial Court to follow the directions already issued by this Court in Crl.O.P.No.9242 of 2016 dated 02.06.2016 and in Crl.O.P.No.17802 of 2016, dated 17.08.2016 that the trial Court is expected to take up the matter and proceed with the case on a day to day basis and shall not adjourn the matter beyond ten working days or two weeks at any point of time.

14.The trial Court by following the above two directions of this Court and considering there are totally 19 listed witnesses, out of which 7 witnesses have been examined, shall complete the trial within a period of three months from the date of lifting of lock down and normal functioning of Court below. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Magistrate cum Judicial Magistrate,
Vaniyambadi, Vellore.
- 2.The Inspector of Police,
Vaniyambadi Town Police Station,
Vaniyambadi, Vellore District.
- 3.The Public Prosecutor,
High Court, Madras.

Kk(co)
krd 28/10

Crl.O.P.No.13057 of 2017