

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Cr1.O.P No.25585 of 2019

P.Saravanan

... Petitioner

Vs.

1. State rep. by
The Inspector of Police,
CCB, Salem City,
Salem District.
(Crime No.23 of 2014)

2. Muthulingam

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 22.07.2016 passed in C.M.P.No.1321 of 2016 by the Judicial Magistrate Court -I, Salem.

For Petitioner : Mr.S.Deivasigamani

For 1st Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

For 2nd Respondent: No appearance

O R D E R

The Criminal Original Petition has been filed to set aside an order dated 22.07.2019 passed in C.M.P.No.1321 of 2016 by the Judicial Magistrate - I, Salem.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the first respondent police.

3. The petitioner is an accused in Crime No.23 of 2014 registered for an offence under Section 420 I.P.C. on the file of the first respondent police. In connection with the said crime, he has been arrested and remanded to judicial custody on 25.01.2016. After sending him to judicial custody, the first respondent has not filed any final report within a time as

stipulated by the Code of Criminal Procedure. Hence, by an order dated 28.03.2016 passed in C.M.P.No.1161 of 2016, the Judicial Magistrate - I, Salem, granted a statutory bail under Section 167 (2) of Cr.P.C. to the petitioner with a condition to appear before the respondent police daily at 10.00 a.m.

4. On the other hand, the CCB Police, Dharmapuri, had included the petitioner as accused in yet another case in Crime No.7 of 2014, in which, he was released on bail with a condition to sign before the CCB Police, Dharmapuri, daily at 10.00 a.m.

5. Having a distance of sixty kilometres between the two police stations, the petitioner was unable to appear before the respondent police daily at 10.00 a.m. More than that, due to non-giving of proper advice by the counsel, the petitioner was unable to take proper decision and he has failed to appear before the respondent police and sign at 10.00 a.m. as per the conditions. Therefore, the respondent police filed an application for cancellation of bail in C.M.P.No.1321 of 2016 before the learned Judicial Magistrate -I, Salem, and the same was ordered on 22.07.2016. Therefore, in the said circumstances, unless the order passed in C.M.P.No.1321 of 2016, which is filed for cancellation of bail is set aside, the petitioner will be highly prejudiced.

6. The learned counsel appearing on behalf of the petitioner would submit that in connection with the petition mentioned case, the first respondent police has not filed a final report till date. In the said circumstances, if the petitioner is again arrested for the same crime number, which violates Section 167 (2) Cr.P.C. and therefore, it is needless to mention that the order passed by the learned Judicial Magistrate -I, Salem, in respect of the cancellation of bail has to be necessarily set aside.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent police would concede that in Crime No.23 of 2014, the respondent police has not completed the investigation and not filed a final report.

8. In the said circumstances, it is necessary to see Section 167 of Cr.P.C., which reads as follows:-

"167. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge

of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be to released under the provisions of Chapter XXXIII for the purposes of that Chapter;

9. Therefore, in view of the above provision, no Magistrate shall authorise the detention of the accused person beyond the period, which fixed for investigation. In this case, since the offence committed by the petitioner is 420 I.P.C., he has to be detained only for a period of 60 days. In this regard, it is admitted on either side that the petitioner is already detained for a period 60 days and therefore, further detention is unnecessary. The NBW issued against the petitioner was executed, it will create a path for further detention. Therefore, in the absence of the final report set asiding the

statutory bail granted by the learned Judicial Magistrate - I is unwarranted. Therefore, this Court is of the view that the impugned order passed by the learned Judicial Magistrate - I, Salem, is violative of Section 167 (2) Cr.P.C and the same is necessarily to be set aside. In otherwise, it is not at all necessary to direct the accused to appear before the trial Court by fixing a hearing date before filing of final report.

10. Accordingly, in the light of the above discussions, the impugned order dated 22.07.2016 passed in C.M.P.No.1321 of 2016 by the learned Judicial Magistrate - I, Salem, is set aside and the Criminal Original Petition is disposed of with a direction to the learned Judicial Magistrate - I, Salem, to send summons to the accused after receipt of the final report, particularly, after taking cognizance in Crime No.23 of 2014.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
CCB, Salem City,
Salem District.
- 2.The Judicial Magistrate No.I,
Salem.
- 3.-do- thro The chief Judicial Magistrate, No.I
Salem.
4. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.S.Deivasigamani, Advocate, sr no.32758

Cr1.O.P No.25585 of 2019

SSI (CO)
RMP (21/10/2020)