

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2020

PRONOUNCED ON : 12.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.OP.No.29490 of 2019
and
Crl.MP.No.15904 of 2019

Sivagurunathan
S/o.Nagappan

... Petitioner

Vs.

1. The State, represented by
Inspector of Police,
District Crime Branch,
Cuddalore.

2. The Sub Inspector of Police,
DCB, Cuddalore.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records made in Crime No.13 of 2018 on the file of the Inspector of Police, District Crime Branch, Cuddalore and quash the same as illegal to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

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

ORDER

This petition has been filed by the accused to quash the FIR in Crime No.13 of 2018 on the file of the first respondent.

2. One S.Dhanasekaran lodged a complaint before the Inspector of Police, Vadalur Police Station, Cuddalore District on 11.11.2015 stating that he is running a Bakery in the name and style of "Krishna Bakery" in the Shopping Complex of Vadalur Panchayat buildings. His brother Kamaraj and Prakash ran a Hotel by name 'Krishna Bhavan' nearby. On 11.11.2015, one Varadharajan (A1) said to be a local rowdy came to his bakery and demanded rowdy mamool, but, he refused to give any money and

irked by the same, the said gang of rioters attacked the shops and caused damages to the properties.

3. Based on the said complaint, the Inspector of Police, Vadalur Police Station has registered an FIR on 11.11.2015 at 21.30 hours in Crime No.243 of 2015 under Sections 147, 148, 294 (b), 384 and 506(ii) IPC r/w Section 3 of the Prevention of Damage to Public Property Act (for brevity "the PPD Act") against 19 named accused and unnamed other accused persons. In the said complaint, the said Dhanasekaran (defacto complainant) has stated the named accused and unnamed accused hailing from R.C.Colony at Vadalur and Karunguzhi. In the said FIR, the name of the 16th accused has been mentioned as " Sivaguru".

4. The petitioner herein is Sivagurunathan, a practising Advocate of the Cuddalore Bar. He filed a petition in CrI.MP.No.4853 of 2015 before the District and Sessions Court, Cuddalore seeking anticipatory bail for the 19 named accused persons in the FIR in Crime No. 243 of 2015. In the said anticipatory bail petition, the name of the 15th petitioner has been mentioned as Sivaguru aged about 25 years , S/o. Mahalingam, a resident of RC Colony, Vadalur, Cuddalore District. The said petition was dismissed by the Principal District and Sessions Judge, Cuddalore on 23.11.2015. Thereafter, the petitioner filed a second anticipatory bail petition for the aforesaid 19 accused persons in CrI.MP.No.4932 of 2015 and the said petition came up for hearing before the I Additional District and Sessions Judge, Cuddalore. The learned I Additional District and Sessions Judge, Cuddalore has granted anticipatory bail to the petitioners therein by the order dated 27.11.2015.

5. After completing the investigation in Crime No.243 of 2015, the police laid a charge sheet before the Judicial Magistrate No.III, Cuddalore against 18 accused persons for the alleged offences under Sections 147, 148, 294(b), 384 and 506 (ii) r/w Section 3 of the PPD Act. In the said charge sheet, the third accused has been shown as Vakil Sivaguru, aged about 51 years s/o.Navappan, a resident of RC Colony, Vadalur.

6. The learned Judicial Magistrate No.III, Cuddalore has taken the case on file in PRC No.42 of 2017 and issued summons to all the accused including the petitioner herein. The petitioner after receipt of summons in PRC.No.42 of 2017 has filed CrI.OP.No.18264 of 2017 before this Court to quash the proceedings against him in PRC No.42 of 2017.

7. In the said petition, several points were raised by the petitioner herein including that the petitioner herein is a practicing advocate of the Cuddalore Bar and his name is Sivagurunathan, son of Nagappan and in the anticipatory bail petitions which were filed before the Sessions Court, Cuddalore, one Sivaguru, Son of Mahalingam has been shown as 15th petitioner and the said person is not the petitioner herein. It was also contended that in the charge sheet, the third accused has been shown as Vakil Sivaguru aged about 51 years, son of Navappan, whereas, the petitioner's name is Sivagurunathan, S/o Nagappan and hence, the petitioner herein has not involved in the aforesaid case. In that case, the Investigating Officer has filed a counter stating that in the complaint filed by the defacto complainant namely Dhanasekaran, it has been mentioned as one Sivaguru also involved in the said crime, but, his father's name not mentioned. He further stated that he recorded the statement of five witnesses on 12.11.2015 wherein, the said witnesses have categorically stated that Sivagurunathan, S/o Navappan involved in the said crime and hence, the real accused is Vakil Sivaguru and not Sivaguru, S/o.Mahalingam as claimed by the petitioner herein.

8. The Defacto complainant in that case namely Dhanasekaran also filed a counter affidavit stating that a mob was led by Sivagurunathan, S/o.Nagappan, the petitioner herein and in his complaint categorically given the name of the accused as Sivaguru and that apart from the present petitioner herein, there is no other in the name of Sivaguru in the RC Colony, Vadalur, Cuddalore District. He also stated in the statement recorded by the police on 12.11.2015 that he specifically given the name of Sivaguru, the petitioner herein is known by the name Sivaguru, whereas, the petitioner has claimed he is Sivagurunathan.

9. Considering the aforesaid facts, at the time of hearing in Crl.OP.No.18264 of 2017 the Hon'ble Mr.Justice P.N.Prakash has directed the petitioner herein to appear before this Court. Accordingly, the petitioner herein also appeared before this Court. At that time, this Court told the learned counsel for the petitioner that if the petitioner produces Sivaguru, S/o. Mahalingam for and on whose behalf and also on behalf of other accused, the petitioner had filed two anticipatory bail applications before the Sessions Court, then, it will be easier for this Court to decide the issue. Subsequently, on 31.08.2018, when the said petition was taken up for hearing, the petitioner filed an affidavit stating that the said Sivaguru, S/o.Mahalingam is residing at RC Colony, Vadalur, Cuddalore and

he is a Painter by profession and daily worked at various places and he is not able to get him and produce before this Court. Recording the said affidavit, the matter was adjourned to 03.09.2018 for further hearing. On 03.09.2018, the Inspector of Vadalur Police Station has submitted a certificate dated 01.09.2018 issued by the Village Administrative Officer, Saraakuppam Village, to the effect that there is no person by name Sivaguru S/o Mahalingam in RC Colony, Vadalur, Cuddalore. However, the petitioner herein also has submitted a certificate dated 03.09.2018 issued by the Village Administrative Officer of Parvathipuram village, to the effect that the petitioner is living in No.7, Maruthi Nagar, Parvathipuram Village, Kurinjipadi Taluk. On the strength of the said certificate, the learned counsel for the petitioner contended that the petitioner is not a resident of RC Colony, but a resident of Parvathipuram Village.

10. Taking into consideration of the aforesaid facts, the learned Judge has dismissed the said petition in Crl.OP.No.18624 of 2017 by the order dated 05.10.2018. The relevant portion is extracted hereunder :

" In the result this Criminal Original Petition is dismissed. Connected Crl.MPs are closed.

Since only Sivaguru, S/o.Mahalingam, has been granted anticipatory bail by the I Additional District and Sessions Judge, Cuddalore, vide Order dated 27.11.2015 and he is not the real accused, the said order will not cover and protect the petitioner from arrest:

the District Crime Branch, Cuddalore, shall register a suo motu FIR and investigate as to who had signed the affidavit in Crl.M.P.No.4853 of 2015 as "M.Sivaguru".

The Principal District and Sessions Judge, Cuddalore, shall furnish the original records in Crl.MP.Nos.4853 and 4932 of 2015, to the Investigating Officer of the District Crime Branch, Cuddalore, after retaining certified photocopies of the same on file; since the signature in the affidavit in Crl.M.P.No.4853 of 2015 has been affixed outside the Court and thereafter, filed in the court, the provisions of Section 195 and 340 Cr.P.C are not required to be followed in the light of the law laid down by the Constitution Bench of

the Supreme Court in Iqbal Singh Marwah Vs.Meenakshi Marwah (AIR 2005 SC 2119). "

11. Thereafter, it is seen from the records that the petitioner herein has filed CrI.MP.No.5301 of 2018 before the Principal District and Sessions Judge, Cuddalore seeking anticipatory bail in Crime No.243 of 2015 on the file of the Inspector of Police , Vadalur Police Station. The learned Principal District and Sessions Judge, Cuddalore by the order dated 09.11.2018 has dismissed the said petition. Thereafter, the petitioner herein has filed CrI.OP.27637 of 2018 before this court seeking anticipatory bail in Crime No.243 of 2015 on the file of the Inspector of Police, Vadalur Police Station. This Court by the Order dated 29.11.2018 has granted anticipatory bail by imposing certain conditions.

12. The learned Judicial Magistrate No.3, Cuddalore has committed the case in PRC.No.42 of 2017 to the Court of Sessions, Cuddalore. The Principal District and Sessions Judge, Cuddalore has taken the case on file in S.C.No.68 of 2019 and made over the same to the court of I Additional District and Sessions Judge, Cuddalore to dispose of the case in accordance with law.

13. The learned I Additional District and Sessions Judge, Cuddalore after appearance of the accused persons including the petitioner herein framed charges and tried the case. During trial, on the side of the prosecution, four witnesses were examined as Pws.1 to 4. Out of four witnesses, except P.W.4 (Sub Inspector of Police) all other witnesses (P.Ws1 to 3) turned hostile and they did not support the case of the prosecution. Taking into consideration of the aforesaid facts, the learned I Additional District and Sessions Judge by the judgment dated 11.04.2019 has acquitted all the accused persons including the petitioner herein from all the charges by giving benefit of doubt.

14. In the meanwhile, on 31.12.2018 in pursuance of the order passed by this Court in CrI.OP.No.18624 of 2017 dated 05.10.2018, the respondent herein namely the Inspector of Police, District Crime Branch, Cuddalore has registered an FIR in Crime No.13 of 2018 under Section 420 of IPC. To quash the said FIR, the petitioner has filed the present petition.

15. The learned counsel for the petitioner has submitted that one Sivaguru, S/o Mahalingam was arrayed as accused in Crime No.243 of 2015 on the file of the Inspector of Police, Vadalur and the petitioner herein is a practising Advocate over

a period of 20 years and he was instructed to file an anticipatory bail application for 19 accused and accordingly, he filed CrI.MP.4853 of 2015 dated 23.11.2015 on the file of the Principal District and Sessions Court, Cuddalore and the said anticipatory bail application was dismissed. He further submitted that the petitioner herein has filed another anticipatory bail application in CrI.MP.No.4932 of 2015 on the file of the Principal and District Sessions Court and in that application, anticipatory bail was granted to all the accused persons. He further submitted that the Inspector of Police, Vadalur, vindictively implicated the petitioner herein in the aforesaid Crime No.243 of 2015 as his name Sivaguru, though original accused was Sivaguru, S/o.Mahalingam and name of the petitioner is Sivagurunathan, S/o. Nagappan, yet he was forced to face trial and he was honourably acquitted by the learned Additional District and Sessions Judge, Cuddalore by the Judgment dated 11.04.2019. He further submitted that in the meantime, Sivaguru, S/o Mahalingam appeared in person before the Superintendent of Police, Cuddalore and submitted a representation dated 31.12.2018 stating that he is the original accused in Crime No.243 of 2015 on the file of the Inspector of Police, Vadalur and the same was forwarded to the Inspector of Police, District Crime Branch, Cuddalore for consideration. He further submitted that the Inspector of Police, DCS, Cuddalore has issued summons to the said Sivaguru S/o.Mahalingam and on receipt of summons, Sivaguru, S/o.Mahalingam appeared in person before the Inspector of Police, District Crime Branch, Cuddalore on 18.11.219 and confirmed his situation about the affidavit dated 19.11.2015, yet the respondent issued summons to the petitioner with malafide intention to appear before him and such procedure is unheard and malice in law. He further submitted that there is no material to proceed against the petitioner as the original accused who signed in the affidavit to prefer Anticipatory Bail appeared in person, asserted his position and signature, calling upon the petitioner is abuse of process of law. Therefore, he prayed to quash the FIR.

16. The learned counsel for the petitioner in support of his contentions, relied upon the decision of the Hon'ble Supreme Court in Sasikala Pushpa and Others Vs. State of Tamil Nadu [CrI.A.No.855 of 2019 (Arising out of SLP (CrI.) No.7252 of 2016 dated 07.05.2019)].

17. The first respondent (the Inspector of Police) District Crime Branch, Cuddalore has filed a counter stating that in pursuance of the order passed by this Court in CrI.OP.No.18624 of 2017, the first respondent has registered an FIR in Crime

No.13 of 2018 and the matter is pending for investigation. She further stated that on 18.01.2019, the then investigating officer has examined one suspected Sivagurunathan and recorded his statement. She further stated that the said Sivagurunathan gave a statement that he along with other accused persons approached the Advocate Sivagurunathan for taking bail and at that time, they signed in the bail petition. She further stated that through proper channel, i.e, Judicial Magistrate No.III on 01.04.2010, the then Sub-Inspector of Police has sent sample signatures of N.Sivagurunathan (Advocate) S/o.Nagappan and M.Sivaguru, S/o.Mahalingam along with the signature in the affidavit filed in Crl.MP.No.4853 of 2015 on the file of the Principal District and Sessions Court, Cuddalore to Forensic Laboratory, Chennai for comparison and the same is yet to be received. She further stated that at this stage, the petitioner herein has filed the present petition and obtained interim stay and hence, they are not able to proceed further in the above case and therefore she prayed to dismiss the petition.

18. In Sasikala Pushpa and Others Vs. State of Tamil Nadu (cited Supra) the facts are duly different. In that case, the appellants therein filed an anticipatory bail application under Section 438 of Cr.P.C in Crl.OP.(MD)15370/2016 before the Madurai Bench of this Court along with Vakalat Nama bearing the signatures of appellants 1 and 3 dated 18.08.2016, wherein, it was stated that the said Vakalatnama was signed by the appellants before Advocate Mr.Vijaykumar on 17.08.2016 at Madurai. Challenging the maintainability of the said bail application and vakalatnama, the respondent - State filed preliminary objections and submitted that appellant No.1 had left for Singapore from New Delhi on 17.08.2016 at 23.15 hours. Similarly, appellant No.3 had left for Singapore from Bengaluru on 18.08.2016 at 09.30 a.m. It was alleged that the appellants filed anticipatory bail application on 18.08.2016 as if they were present in Madurai on 17.08.2016 and signed in the affidavit and vakalatnama in the presence of the Advocate at Madurai. The High Court vide order dated 23.08.2016 directed the appellants to appear before the Court on 29.08.2016 and to give their explanations with regard to the said preliminary objection. Accordingly, the appellants appeared before the Court on the said date and submitted their affidavit before the High Court stating that the date mentioned in vakalatnama was an inadvertent mistake.

19. In the impugned judgment, the High Court held that the explanations given by the appellants are not satisfactory and the same is contradictory to the written version as contained in the vakalatnama. The learned Single Judge of this Court held

that prima facie, it appears that the document has been forged and the same has been signed and executed outside Madurai and produced before this Court as though, it has been signed and executed at Madurai and the same has been utilized and filed before the High Court. On the above findings, the learned Single Judge of this Court has directed the Registrar (Judicial) to lodge a complaint against the appellants with the jurisdictional Police Station. Pursuant to the said direction, the Registrar (Judicial) of Madurai Bench of this Court lodged a complaint before K.Pudur Police Station, Madurai on 19.09.2016. Based on the said complaint, an FIR was registered in Crime No.1331/2016 for the offences punishable under Sections 193, 466, 468 and 471 IPC.

20. Aggrieved by the same, the appellants therein have filed an appeal before the Hon'ble Supreme Court. Taking into consideration of the aforesaid facts and circumstances of the case, the Hon'ble Supreme Court has held that before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C, the Court must satisfy itself that "it is expedient in the interest of Justice". Further, it has held that the language in Section 340 of Cr.P.C shows that such a course will be adopted only if the interest of justice requires and not in every case. Finally, the Hon'ble Supreme Court has quashed the FIR and the Charge Sheet and observed in paragraph No.24 as follows:

" The FIR and the Charge Sheet are quashed only in the facts and circumstances of the present case and to meet the ends of justice. It is made clear that taking advantage of quashing of the case, the appellants shall not resort to any further consequential proceedings".

Therefore, the aforesaid decision will not apply to the facts of this case.

21. Further, it is clear that the Hon'ble Supreme Court has quashed the FIR and charge sheet mainly on the ground that the learned Judge of this Court has not followed the procedures prescribed under Section 340 of Cr.P.C. But in CrI.OP.No.18624 of 2017, while disposing of the said petition, the learned Judge has observed that since the signature in the affidavit in CrI.MP.No.4853 of 2015 on the file of the Principal District and Sessions Judge, Cuddalore has been affixed outside the court and thereafter, filed in the court, the provisions of Sections 195 and 340 Cr.P.C are not required to be followed in the light of the law laid down by the Constitution Bench of the Hon'ble

Supreme Court in Iqbal Singh Marwah Vs. Meenakshi Marwah (AIR 2005 SC 2119). If the petitioner feels that he is aggrieved by the order of the learned Judge of this Court in Crl.OP.No.18624 of 2017, he should have filed an appeal before the Hon'ble Supreme Court. Further in Sasikala Pushpa and Others Vs. State of Tamil Nadu (cited supra) there was no dispute with regard to the identity of the accused, whereas, in this case, the identity of the accused is in dispute. On that ground also, the aforesaid decision will not apply to the facts of this case.

22. It is also to be pointed out that the learned Judge while disposing of Crl.OP.No.18624 of 2017 has observed that during pendency of Crl.OP.No.18624 of 2017, the petitioner herein has filed a suit in O.S.No.60 of 2018 against the District Collector, Home Secretary, Director General of Police and Elumalai Investigating Officer in Crime No.243 of 2015 on the file of the Inspector of Police, Vadalur Police Station, and Others, before the Special Court for SC/ST (POA) Act Cases, contending that he belongs to Dalit community and that he has been falsely implicated in Crime No.243 of 2015 and that disciplinary action should be taken against the investigating officer and compensation of Rs.3,75,000/- should be paid to him under the SC/ST (Preventions of Atrocities) Act. Not stopping with the filing of the said suit, the petitioner has filed a private complaint on 27.07.2018 under Section 156 (3) Cr.P.C for registration of FIR against the Investigating Officer and the said private complaint has been returned for rectification of certain defects on 11.08.2018. Taking into consideration of all the aforesaid facts, the learned Judge has passed an order to register the FIR suomotu before the District Crime Branch in No.4853 of 2015.

23. It is seen from the typed set of papers filed by the learned counsel for the petitioners that he has obtained a certified xerox copy of the affidavit filed by the 19 accused persons in Crl.MP.No.4853 of 2015 on 24.08.2018 and only thereafter i.e., on 16.11.2018 one Sivaguru @ Sivagurunathan, S/o.Mahalingam signed in sworn affidavit and given to the petitioner and with the help of the same, the petitioner has filed anticipatory bail application before the Principal and District Sessions Court, Cuddalore on 16.11.2018 in Crl.MP.No.5301 of 2018, but, the learned Principal District and Sessions Judge has dismissed the said petition. Further, it appears that one Sivagurunathan, S/o.Mahalingam has obtained a nativity certificate on 14.11.2018 and the said document obtained only after receipt of certified xerox copy of the affidavit filed in Crl.MP.No.4853 of 2015. Further, a perusal of Case Diary shows that one M.Sivagurunathan aged 27 years,

S/o.Mahalingam residing at 35/3, Manamahil Nagar, Vadalur, Kurinjipadi Taluk, Cuddalore District has sent a representation to the Superintendent of Police, Cuddalore District on 31.12.2018 stating that he only signed in the affidavit filed in Crl.MP.No.4853 of 2015 on the file of the Principal District and Sessions Judge, Cuddalore and the said petition was forwarded to the Inspector of Police, District Crime Branch, Cuddalore, and based on the same, the Sub Inspector of Police, District Crime Branch, Cuddalore, has recorded the statement under Section 161 (3) Cr.P.C on 18.01.2019 from one Sivagurunathan aged 28, S/o. Mahalingam residing at 35/3, Manamahil Nagar, Vadalur, Kurinjipadi Taluk, Cuddalore District. In the said statement, he has stated that he joined BE in the year 2010 and during the first year itself he discontinued his studies and thereafter he is doing painting work, but the said person has not produced any educational certificates to show about his name and address. Further, as per the averments made in the counter, it appears that already the signatures were sent to the Forensic Lab and the said report is not yet received. Under the said circumstances, this Court is of the view that investigation shall be allowed to be continued and then only who signed in the affidavit filed in Crl.MP.No.4853 of 2015 as "M.Sivaguru" can be fixed as directed by this Court in Crl.OP.No.18624 of 2017. If the investigation reveals that the person who sent a representation to the Superintendent of Police, Cuddalore District dated 31.12.2018 has falsely claimed that he is the person who signed in the affidavit filed in Crl.MP.No.4853 of 2015 on the file of the Principal District and Sessions Judge, Cuddalore, he shall be dealt with in accordance with law.

24. For the aforesaid reasons, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

-s/d-

सहायक मेजवर
Assistant Registrar

True Copy

Sub-Assistant Registrar

vv
To

1. The State, represented by
Inspector of Police,
District Crime Branch,
Cuddalore.

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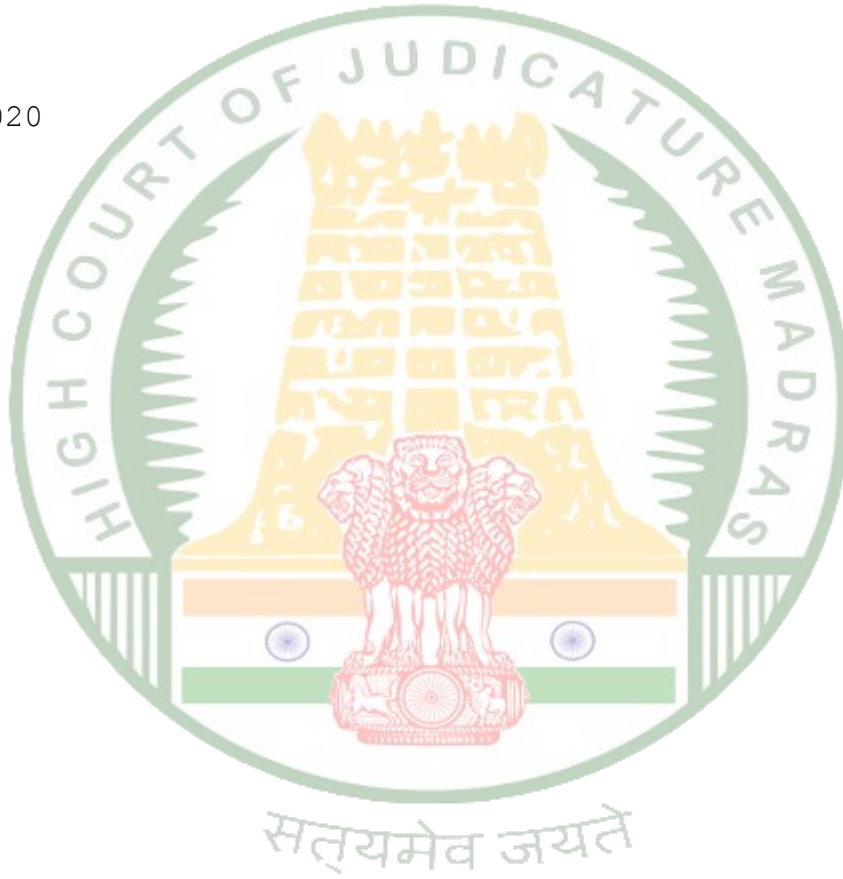
2. The Sub Inspector of Police,
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3. The Public Prosecutor,
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