



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

Crl.O.P.[MD]No.1295 of 2020

Dr.Haresh Kumar, S/o.P.V.Moorthy

...Petitioner

Vs.

1.The Commissioner of Police,
Trichy City,
Trichy.

2.The Superintendent of Police,
CBCID,
Chennai.

3.The Inspector of Police (Crime),
Thillai Nagar Police Station,
Trichy.

4.The Inspector of Police,
CBCID,
Trichy.

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to transfer the investigation in Crime No.462 of 2019, dated 10.12.2019, pending on the file of the third respondent to the fourth respondent under the guidance of the second respondent, on the basis of the petitioner's representation dated 11.01.2020.

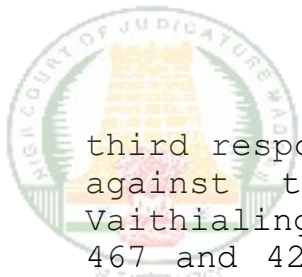
For Petitioner : Mr.M.Sankar

For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking a direction to transfer the investigation of Crime No.462 of 2019, dated 10.12.2019, pending on the file of the third respondent to the fourth respondent under the guidance of the second respondent, on the basis of the petitioner's representation dated 11.01.2020.

2.According to the petitioner, he is a Doctor and one of the Managing Partners of Moorthy's Hospital Private Ltd., Trichy. Based on the complaint lodged by the petitioner, dated 10.12.2019, the



third respondent police registered an F.I.R. in Crime No.462 of 2019 against the accused viz., Udhayakumar and Senthil Kumar @ Vaithialingam, for the offences punishable under Sections 408, 465, 467 and 420 of I.P.C. In the said complaint, it has been stated that the accused persons, who were working as Staff in the Medical Shop run by the petitioner, which is annexed with the petitioner's Hospital, misappropriated a sum of Rs.10,50,000/- from the Medical Shop. Out of the said amount, the second accused viz., Senthil Kumar @ Vaithialingam, has already given Rs.5,50,000/- through his relatives, while he was in judicial custody. It was further stated that the said accused viz., Senthil Kumar @ Vaithialingam misappropriated funds to the tune of Rs.1,56,00,000/- from the Bank Account of the Hospital run by the petitioner. After verifying the Bank Account details of the Hospital, the petitioner came to know about the said misappropriation. Hence, the third respondent police arrested the said accused and thereafter, he was released on bail by the learned Judicial Magistrate No.IV, Trichy. After release from the prison, the second accused and his mother jointly executed a Mortgage Deed in favour of the petitioner, by mortgaging their house property for the abovesaid misappropriated amount.

3.During the course of investigation, the first accused Udhayakumar appeared for enquiry before the third respondent Police and admitted about manufacturing of fabricated fake seal, bills and forged No Due Certificates, which are said to have given to various Medical Agencies. Further, the accused persons sold out medicines without any authority to some other medical agencies, which would definitely cause health issues to the Public, who used the same, without any proper prescription given by the Doctors.

4.It is the further submission of the petitioner that, the accused himself admitted his guilt that he prepared No Due Certificate, by using forged seals and documents and the same have not been recovered so far. It is the grievance of the petitioner that the third respondent is not properly conducting the investigation in the case, which itself clearly would pave the way to escape the accused persons from the clutches of law. Hence, the investigation may be transferred from the hands of the third respondent Police to the fourth respondent Police.

5.Though the petitioner has forwarded a detailed representation to the first respondent on 11.01.2020, there was no action from the first respondent for transferring the investigating agency from the third respondent police to some other investigating agency. Therefore, the petitioner has approached this Court by way of filing the present Criminal Original Petition under Section 482 Cr.P.C.

6.Contrary to the allegations made against the third respondent, he filed a status report before this Court stating that



the complaint lodged by the petitioner is based upon the documentary evidence, which is at the hands of the petitioner/de-facto complainant and therefore, there is no possibility to tamper the evidence by the accused persons. Further, the third respondent has stated that during the period on which, the accused administered the Pharmacy, had purchased medicines from various Medicine Companies and failed to maintain the account for the same. It is very difficult to identify the Companies, for which, the medicines were supplied by the accused. In the Status Report, it was specifically stated that as of now, 17 witnesses have been examined and their statements have been recorded under Section 161(3) of Cr.P.C. As of now, the Experts wanted some more signatures from the accused for comparing the signatures found in the various documents. Now, steps have been taken for sending the recovered stamps and the signature of the accused to the Deputy Director of Regional Forensic Science Laboratory, Madurai. It is the further contention of the third respondent that the second accused is a close relative to the petitioner/de-facto complainant.

7.The learned counsel appearing for the petitioner would submit that though sufficient material was supplied to the third respondent, he carelessly dealt with the same and not completed the investigation in a proper manner. He would further submit that the entire misappropriated amount has not been recovered. Further, there was a delay in recording the confession statement from the accused. The third respondent has enquired the petitioner regarding 10 patients and they have stated that medicines have been sold by the accused persons to them, which is not at all logically possible, for the reason that, Rs.10,50,000/- medicines can be sold on retail price upto Rs.18,00,000/- and 10 patients will not buy the medicines worth about Rs.10,00,000/-. So, at any event, the investigation conducted by the third respondent cannot be in a correct path. Therefore, the prayer sought by the petitioner is reasonable one and accordingly, the relief sought by him may be granted in his favour.

8.The learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that after registration of the case, the third respondent investigated the case in a correct way. Granting bail by the learned Judicial Magistrate No.IV, Trichy, is a Judicial order. Further, it is not a easy job to recover the Rubber Stamp from the Uyyakondan River, since the same has full of water throughout the year.

9.Upon considering the arguments advanced by the learned counsel on either side, no doubt, whenever any information relates to the commission of cognizable offence or non-cognizable offence is received, the Police Officer shall adhere to the procedure contemplated under Sections 154 and 155 of Cr.P.C. and after conducting necessary enquiry/investigation, file final report under Section 173 of Cr.P.C. Such investigation under the Code of



Criminal Procedure shall be completed without any unnecessary delay. Sub-section (2) of Section 173 Cr.P.C., provides that as soon as such investigation is completed, the officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report.

10. In the instant case, it is not in dispute that as of now, 17 witnesses have been examined and their statements have also been recorded under Section 161 Cr.P.C. by the third respondent. Now, after collecting the signature of the accused, the third respondent is taking steps to forward the same to the Deputy Director of Regional Forensic Science Laboratory, Madurai, for the purpose of comparing the signature with the materials collected by him during the course of investigation.

11. At this juncture, it is relevant to refer a decision rendered by the Hon'ble Apex Court in the case of **State of Punjab Vs. Davinder Pal Bhullar and Others** reported in **2012 (1) Cr.C.C. 437 (SC)**. In the said decision, the Hon'ble Apex Court while considering the scope of jurisdiction under Section 482 of Cr.P.C., has observed as under:-

'The order cannot be passed by-passing the procedure prescribed by law. The Court in exercise of its power under Section 482 Cr.P.C., cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by a procedure not prescribed in Cr.P.C. Such powers should be exercised very sparingly to prevent abuse of process of any Court. Courts must be careful to see that its decision in exercise of this power is based on sound principles.'

12. Therefore, an order for transferring the investigation cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police. So, complying the principles already set out by various Courts, this Court cannot direct the third respondent to move the investigation in a particular way, as required by the petitioner. If such type of order is passed, it would amount to by-passing the procedure prescribed under the Code of Criminal Procedure.

13. Now, on coming to the details in the Status Report filed by the third respondent, it is clear that the third respondent is conducting the investigation in a correct path and therefore, I do not understand on what basis, the petitioner made allegations against the third respondent.

14. In view of the above, I do not find any substance in any of the allegations made by the petitioner against the third respondent, for transferring the investigation from the hands of the third respondent to the fourth respondent. Hence, this petition is devoid of merits and deserves to be dismissed.



Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Commissioner of Police,
Trichy City,
Trichy.
- 2.The Superintendent of Police,
CBCID,
Chennai.
- 3.The Inspector of Police (Crime),
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- 4.The Inspector of Police,
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Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

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KB(28.07.2020) 5P 6C