



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.07.2020

Pronounced on : 14.07.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.6023 of 2020

and Crl MP(MD)No.3205 of 2020

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R.Rajkumar

... Petitioner

Vs

The State represented by
The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.
[Crime No.270 of 2012]

... 1st Respondent /
complainant

2.Dhanabalan

... 2nd respondent/
Defacto complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.3 of 2020 on the file of the learned Judicial Magistrate, Thiruvadanai and quash the same.
[Prayer amended vide order dated 02.07.2020]

For Petitioner : Mr.Lawrance

For Respondent : Mr.K.K.Ramakrishnan,
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the accused in C.C.No.3 of 2020 on the file the learned Judicial Magistrate, Tiruvadanai to quash the final report pending in C.C.No.3 of 2020.

2.The case in Crime No.270 of 2012 was registered as against unknown accused. The gist of the First Information Report is that on 08.12.2012, at about 4.00 pm, the Inspector of Police, Thondi Police Station, one Mr.Danapalan, visited the Police station by surprise, verified the Government properties and found a pistol and 30 bullets were missing. The Inspector of Police has further stated in the complaint that on verification of records like general diary and other registers, he found that on 04.11.2012, at about 9.30 pm, the petitioner while working as Sub Inspector of Police in the said Police station, has taken out a 9 MM pistol (But No.53RM) with 6 bullets for the purpose of vehicle check at Thondi check post. But this entry, which is found in the disbursement register has not been recorded in the general diary. Moreover, there is no record for return of those arms in the Police Station. Apart from these 6 bullets, 24 other bullets, which were found in the custody of one Special Sub Inspector of Police, Balaian were also missing and therefore, suspecting that somebody has stolen away the articles, he



lodged the complaint in Crime No.270 of 2012.

3. It is to be noted that originally this petition has been filed challenging the FIR. When the matter was listed for admission on 11.06.2020, the learned Additional Public Prosecutor submitted that the investigation in Crime No.270 of 2012 was already completed and final report was also filed before the Court and the same was also taken on file in C.C.No.3 of 2020 on the file of the learned Judicial Magistrate, Tiruvadanai.

4. In view of the change of circumstances, the learned Senior Counsel appearing for the petitioner sought indulgence of this Court to adjourn the application by two weeks to go through the final report and to file necessary amendment application. Accordingly, at the request of the learned Senior Counsel for the petitioner, this matter was adjourned to 25.06.2020.

5. The learned Additional Public Prosecutor was also directed to furnish a copy of the final report filed in C.C.No.3 of 2020. After perusing the final report, the petitioner preferred a petition in Cr.M.P.NO.3478 of 2020 for amending the prayer in this petition to quash the final report in C.C.No.3 of 2020, instead of quashing the FIR in Crime No.270 of 2020. The said petition for amendment was also allowed by order dated 02.07.2020.

6. In support of this petition, the learned Counsel for the petitioner raised the following grounds:

i. Admittedly, the petitioner was entrusted with the duty of vehicle check at Thondi check post and he was provided with a pistol with bullets for security purpose, since the said place is a costal area. The petitioner after completing his duty, handed over the pistol and the bullets to Balaian, Special Sub Inspector of Police in the said Police Station, who in turn has also made entries in the registers. Despite the same, the arms were found missing and therefore, departmental proceedings were initiated as against this petitioner and other Special Sub Inspector of Police Balaian for dereliction of duty and there is no averment what soever on the allegation of theft as against this petitioner.

ii. During the departmental proceedings, the petitioner and the Special Sub Inspector of Police, Balaian were held responsible for the missing of arms in the Police Station as dereliction of duty and this petitioner was also held responsible for the missing of pistol and 6 bullets, whereas, the Special Sub Inspector of Police, Balaian was found guilty for missing of 24 bullets. Originally the punishment of postponement of increment for three years was imposed for both delinquents and on appeal the punishment was modified by postponing the increment for one year. The Special Sub Inspector of Police, Balaian was also allowed to retire from service in the



petitioner has been arrayed as an accused in the final report in Crime No.270 of 2012 by fixing the liability on the petitioner alone for missing of all the arms from the Police Station.

iii.The respondent Police has conducted a detailed investigation and also searched the house of the petitioner, but they have not recovered any incriminating materials from his house, more particularly, the missing pistol and the bullets. But, even then he has been roped in as an accused at the instance of some higher officials. For the very same incident, a separate charge sheet has been laid during the departmental enquiry that the pistol has been misplaced. But on the very same materials, now the respondent Police has filed the final report, as if it is a case of theft. The case has been maliciously instituted to wreck vengeance against the petitioner.

iv.The case of the prosecution is that the pistol was missing from 04.11.2012. But the entries in the registers of the Police Station would disclose that the pistol was intact as on 08.12.2012. The delinquent Special Sub Inspector of Police was in charge of maintaining the registers in respect of the arms in the Police Station and when the respondent Police thought it fit to proceed departmentally, they have also framed charge as against Balaian for dereliction of duty and the charges against both the petitioner as well as the said Balaian were found to be proved and they have been slapped with a uniform punishment of postponement of increment, whereas, after allowing the said Balaian to retire from service, he was made as a witness and based on his statement, this petitioner has been roped in as an accused.

v.The final report in Crime No.270 of 2012 is filed only after filing of this quash petition on 03.06.2020. The final report is also hit by limitation under Section 468 CrPC and in order to defeat the same, the respondent Police have purposefully added the offence under Section 409 IPC.

7.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the petitioner is working as a Sub Inspector of Police in the Department and when he was working at Thondi Police Station, he was entrusted with the pistol along with 6 rounds of bullets. But the same have not been entered in the general diary or in any other relevant register but by intimidating other Special Sub Inspector of Police had taken away the arms.

8.The prosecution has examined as many as 37 witnesses and among those witnesses, LWs.20, 26, 27, 28, 29, 30, 31, 32, 33, 36 and 37 are Police Officers in the Department and the relevant materials collected during the investigation were placed before the Inspector General of Police, Madurai for according sanction.

<https://hccservices.mca.gov.in/hccservices> also accorded sanction for prosecuting the



petitioner. Moreover, in the departmental proceedings initiated as against the petitioner, charges were found to be proved. The petitioner was also slapped with a punishment of postponement of increment, but he has not preferred any revision petition as against the findings in the departmental proceedings.

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9. The learned Additional Public Prosecutor further submits that the available witness would sufficiently prove prima facie materials available as against the petitioner/accused and entertaining this application would affect the further course of trial, which was already delayed more than eight years.

10. Heard Mr. Lawrance, learned Counsel appearing for the petitioner and Mr. K.K. Ramakrishnan, learned Additional Public Prosecutor appearing for the State and perused the available records.

11. The petitioner is working as a Sub Inspector of Police in the Department and while he was in service at Thondi Police Station, he was entrusted with a pistol and 6 bullets for his safety, while discharging his duty. After the duty, the pistol and the bullets were not returned to the Police Station and there is no entry available in the registers. At the instance of the Inspector of Police, Thondi Police Station, a case was originally registered in Crime No. 270 of 2012.

12. In this case, the pistol and the bullets were found missing from the police station. Though the same has been detected by surprise inspection by the Inspector of Police in the year 2012 and a case was also registered, this Court was unable to accept this delay of eight years in filing the final report in this case, sought a written explanation from the Superintendent of Police, Ramanathapuram District, for the inordinate delay in filing the final report in this matter.

13. Taking clue from the direction of this Court, the learned Counsel for the petitioner sought permission of this Court, to withdraw this petition, but this Court did not permit the petitioner to withdraw this petition after making the submission before this Court.

14. Pursuant to the direction of this Court, the Superintendent of Police, Ramanathapuram filed a report on behalf of the respondent Police that pursuant to the missing of the pistol from the Police Station, the District Collector Ramanathapuram, constituted an Arms Committee vide PSO 245(i)(a) by his proceedings in C.No.2/623331/2012 dated 11.12.2012 with the Deputy Superintendent of Police, Thiruvadanai, Tahsildar, Thiruvadanai and Inspector of Police, Armed Reserve, Ramanathapuram as its members and this Committee arrived at a decision, fixing the petitioner is

<https://hcservicesportal.hcservices.in/> the loss of 9 MM pistol and 6 rounds of bullets and



other Special Sub Inspector of Police, Balaian was held responsible for the missing of remaining 24 rounds of bullets. Pursuant to the recommendations of the Arms Committee, departmental proceedings were also initiated as against the petitioner and other Special Sub Inspector of Police Balaian in P.R.No.86 of 2013 and P.R.No.87 of 2013 respectively. In the Departmental proceedings, charges were found to be proved and the delinquents were awarded with the punishment of postponement of increment for a period of two years with cumulative effect and the cost of the pistol and 6 rounds of bullets totally Rs.21,623/- and the cost of 24 rounds of bullets Rs.480 were also ordered to be recovered from the salary of the petitioner and the other delinquent Balaian respectively.

15.It is further stated that this case in Crime No.270 of 2012 was originally investigated by Deputy Superintendent of Police, one Mohanraj till April 2013. The investigation was continued by another Deputy Superintendent of Police upto 12.01.2016 and the subsequent investigating officer, on completion of the investigation filed the final report treating the case as 'undetected' on 22.01.2017 before the learned Judicial Magistrate, Thiruvadanai. But the learned Judicial Magistrate did not accept the final report and returned the same that it could not be treated as undetected, as in other petty thefts and directed the respondent Police to conduct further investigation through his letter dated 10.04.2017.

16.It appears that pursuant the order of the learned Judicial Magistrate, the investigation in Crime No.270 of 2020 was transferred to the Deputy Superintendent of Police, District Crime Branch, Ramanathapura for further investigation through the proceedings of the Superintendent of Police Ramanathapuram District in C.No.C1/29376/1074/2017, dated 07.12.2017. During the further investigation the investigating officer found that this petitioner had stealthily taken away the pistol and bullets, fraudulently concealed the same and also induced the prime witnesses Head Constable 1783 Pensigar and Head Constable 1828 Subash Chandra Bose to depose before the investigating officer, as if the petitioner returned the pistol and bullets to the Police Station on the next day. In conclusion of the investigation, the present investigating officer has laid the charge sheet against the petitioner for the offence under Sections 424, 380, 409 and 201 IPC and the learned Judicial Magistrate has also taken the final report on file in C.C.No.3 of 2020 on 29.05.2020 and the case is posted on 10.07.2020.

17.During the course of hearing, the learned Additional Public Prosecutor produced the Case Dairy file pertaining to the case in Crime No.270 of 2012 and the records were also perused.

18.The Arms committee consisting of the Executive Magistrate, Thiruvadanai, the Deputy Superintendent of Police, Thiruvadanai and the Inspector of Police, Armed Reserve, Ramanathapuram District conducted a detailed enquiry and submitted a report on 19.01.2013



that the petitioner is responsible for missing of weapons, suggested for initiating departmental proceedings and also suggested for effective investigation in Crime No.270 of 2012.

19.In the departmental enquiry, the charges were also proved and this petitioner was awarded with the punishment of postponement of increment. He was also directed to pay the cost of the pistol and bullets and he also paid the cost. The final report is filed after obtaining sanction for prosecution from the Inspector General of Police, South Zone, Madurai. The sanctioning authority after satisfying with the materials placed before him, has also accorded sanction for prosecuting the petitioner. Therefore, the grounds raised by the petitioner in support of this petition cannot be considered as grounds for quashing the final report pending against the petitioner. The available materials are sufficient to proceed with the trial and the grounds raised by the petitioner in support this petition cannot be considered at this stage.

20.Accordingly, this petition is dismissed with liberty to the petitioner to raise all the grounds raised in this petition before the trial Court.

21.The trial Court shall proceed with the trial and take a decision independently without being influenced by any of the observations made by this Court in this petition. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

DSK

To

1.The Judicial Magistrate, Thiruvadanai.

2.The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P(MD)No.6023 of 2020

14.07.2020

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