



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	13.07.2020
Orders Pronounced on	07.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

**CRL OP (MD) Nos.7239 & 7241 of 2020
and
CRL MP (MD) Nos.3539 & 3540 of 2020**

1.Suresh ... Petitioner in Crl.O.P.7239 of 2020 /
Respondent

2.V.Manjunath ... Petitioner in Crl.O.P.7241 of 2020 /
Respondent

Vs.

State Rep.by
The Inspector of Police,
K.Paramathi Police Station,
Karur District ... Respondent /Petitioner in
(Crime Nos.243 & 250 of 2020) in both the petitions.

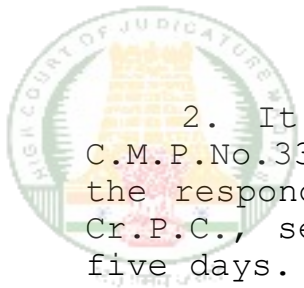
COMMON PRAYER: Petitions filed under Section 482 of Criminal Procedure Code, to call for the records in pursuant to the order passed by the learned District Munsif-cum-Judicial Magistrate, Aravakurichi in C.M.P.No.338 of 2020 and C.M.P.No.340 of 2020 respectively dated 20.05.2020 and 29.05.2020 and consequential proceedings on implementation of the above order and set aside the same as non-est in the eye of law.

For Petitioners : Mr.AR.L Sundaresan, S.C
(in both For Mr.A.N.Ramanathan
Crl.O.Ps.)

For Respondent : Mr.S.Chandrasekar
(in both Additional Public Prosecutor
Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been preferred under Section 482 of Cr.P.C., seeking to set aside the order dated 20.05.2013 and 29.05.2020 respectively made in C.M.P.No.338 of 2020 and C.M.P.No.340 of 2020, on the file of the learned District Munsif-cum-Judicial Magistrate, Aravakurichi, Karur District.



2. It is seen that the Criminal Miscellaneous Petitions in C.M.P.No.338 of 2020 and C.M.P.No.340 of 2020 have been filed by the respondent herein before the Court below, under Section 167(3) Cr.P.C., seeking Police custody of the petitioners / accused, for five days.

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3. It is an admitted fact that the cases were registered against the petitioners / accused in Crime No.243 of 2020 and Crime No.250 of 2020 respectively under Sections 270 and 379 IPC., and under Section 181(3) of Motor Vehicles Act, 1988, now altered into Sections 270 and 379 of IPC., and Section 3 r/w 181 of the Motor Vehicles Act r/w Section 4 of TNPPDL Act r/w 4(i)(A) r/w Section 21(i)(a) of Mines and Minerals (Development and Regulation) Act, 1957. In connection with the above case, the petitioners / accused were arrested by the Police and remanded to the Judicial custody.

4. As per the prosecution case, the petitioners / accused along with some other persons running a quarry business in which they break open the black stones and thereafter, the chips were transported to various area through the vehicles, bearing Registration Nos.TN-47-AQ-8827 and TN-47-AB-2583. When at the time, the defacto complainant, who is the Tahsildar, Pugalar, inspected the same, one person, named as Madan, made a life threat to the defacto complainant. Thereafter, with the assistance of Police Officers, they came out from the quarry.

5. As per the affidavit filed by the respondent before the learned Judicial Magistrate, it is seen that the petitioners were arrested respectively on 07.05.2020 and 19.05.2020. The respondent has further averred that during the time of interrogation the petitioners had given only evasive answers and therefore, due to COVID-19 Pandemic situation, without recording any statement, they have been produced before the learned District Munsif-cum-Judicial Magistrate. Now, for completing the investigation, it is necessary to find out that how many persons were involved in the alleged offence, further, for knowing the details of the owners of the vehicles, which transported the chips from the quarry, the custody of the petitioners are necessary. On the above said grounds, the respondent filed a petition under Section 167(3) of Cr.P.C., seeking police custody of the petitioners. The said request was opposed on the side of the petitioners / accused, as legally not sustainable.

6. Considering the facts and circumstances of the case and the arguments advanced by both sides, the Court below, by order dated 20.05.2020 granted one day Police custody of the accused in Crime No.243 of 2020 with the conditions that the petitioners / accused should not be subjected to harassment by the police and they should be provided with proper food and other essential requirements and produce them by 21.05.2020 at 1.00 p.m., before the Court. Likewise, one day police custody was granted in Crime No.250 of 2020 from 29.05.2020 to 30.05.2020.



7. Aggrieved by the said order, these Criminal Original Petitions have been preferred by the petitioners / accused.

8. In the counter affidavit filed by the petitioners/accused before the trial Court, the petitioners/accused would state the contents of the averments made in the affidavit filed by the respondent are all false. It is further averred that the petitioners are no way connected with the allegations levelled in the FIR, as alleged by the defacto complainant.

9. In order to substantiate the claim made by the petitioners / accused, the learned counsel appearing for the petitioners / accused would submit that the case registered against the petitioners is not a grave crime and involving ramification of investigation. The petitioners / accused were arrested and the vehicles involved in the offence were seized on the date of registration of FIR itself. The further contention of the petitioners is that in the impugned order passed by the learned Judicial Magistrate, the Court has not mentioned any specific reasons for granting police custody and therefore, the conclusion arrived by the learned Judicial Magistrate is not a real conclusion in a true sense and hence, the order passed by the Magistrate without any rhyme or reasons can be termed as *ipse dixit*. Further, it seems that the occurrence narrated in both FIR's are one and the same and except the date, all other sequences narrated are same. Therefore, viewing from in any angle, the order passed by the learned Judicial Magistrate smacks equity, legal consciences.

10. Further, the counsel appearing for the petitioner relied on the Judgment of this Court made in ***Crl.O.PNo.2381 of 2015*** dated 02.02.2015, wherein, this Court has held in Paragraph No.28, which reads as follows:-

"28. The other decision relied on by the learned Senior Counsel appearing for the third respondent is reported in 2012 MLJ (Crl) 567, State rep.by the Inspector of Police Vs. B.Ranganathan and Another, wherein the learned Senior Counsel draw my attention to paragraphs 21, 22, 25 and submitted that custodial interrogation cannot be sought for obtaining particulars in respect of other co-accused and for obtaining voluntary confessional statement of the accused. It is appropriate to incorporate paragraphs 21, 22 and 25 of the said decision:

"21. It is well laid down principle of law regarding the police custody is concerned that 'it amounts to infringement of right of an individual, more particularly fundamental right guaranteed under Article 21 of the Constitution of India'. However,



there are certain exceptions by way of reasonable restrictions and on such restriction is the grant of Police custody while investigation is pending. The Division Bench of our High Court in the judgment in State by Deputy Superintendent of Police, Q Branch CID, Dharmapuri v. Sundarmoorthy, 2007 (2) MWN (Cr.) 414 while dealing with the mode of disposal of the application for police custody and the factors for consideration in the same, observed that any application for grant of police custody must be strictly considered on materials as it involves the fundamental right and personal liberty of an individual and the provisions are to be strictly understood and complied with.

23. It was observed so, in the earlier judgment of the Division Bench of the High Court in G.K. Moopanar and Others v. The State of Tamil Nadu 1990 LW 113. The single Judge of our High Court has in para 8 of the judgment in S. Mahaveer v. State rep. by the Inspector of Police, CCB, Chennai (supra) reproduced Rule 76 of the Criminal Rules of Practice and Circular Orders, 1958 dealing with remands, which reads as follows:

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....

25. As rightly argued by the learned counsel for the respondents, custodial interrogation cannot be sought for obtaining particulars in respect of other co-accused and for obtaining voluntary confessional statement of the accused and for drawing sample signature and hand writing of the accused. The grounds so raised seeking police custody does not deserve any merits and acceptance.

11. Accordingly, this Court has already held that for obtaining particulars in respect of other co-accused and for obtaining voluntary confessional statement of the accused and for drawing sample signature and hand writing, the petition filed by the petitioners under Section 167(3) of Cr.P.C., for police custody cannot be granted.

12. Now, applying the principles set out in the above referred Judgment, in this case also, on go through the affidavit filed by the respondent, he has clearly narrated the reason that only for the purpose of interrogation in respect of identifying the co-accused, the custody of the accused is very much necessary for the police. said reasons stated by the respondent in the



affidavit before the Judicial Magistrate is not a best ground for availing the police custody. However, in this regard, it is necessary to see the Judgment of our Hon'ble Apex Court delivered in **Appeal (crl.)575 to 576 of 2004**, dated 05.05.2004, wherein it has been held as follows:-

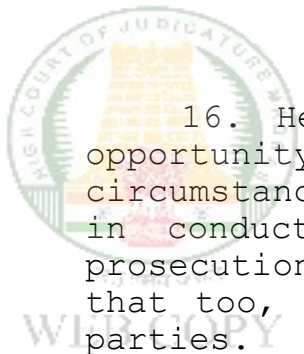
"So far as India is concerned its law of evidence is modeled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. Where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

This being the law, the direction (b) given by the High Court that the confession and alleged recovery has no evidentiary value is clearly illegal and has to be set aside. The effect of the confession and also the recovery of the incriminating article at the pointing out of the accused has to be examined strictly in accordance with the provisions of the Evidence Act."

13. So, applying the principles set out by our Hon'ble Apex Court though the relevant evidence recorded by means of illegal search or seizure cannot be thrown away by mentioning the reasons that the same was obtained by illegal search or seizure. The Hon'ble Apex Court has clearly pointed out that unless there is an express or necessarily implied prohibition in the Constitution, result of illegal search or seizure is not liable to be shut out.

14. In the case in our hand, during the time of police custody, the respondent has recorded the confession given by the accused but nothing was identified based on the confession given by the accused. So, according to Section 26 of the Evidence Act, the confession given by the petitioners cannot have any much value to prove the allegations made against them.

15. Moreover, Chapter XVIII of the Code of Criminal Procedure contains detailed and exhaustive provisions for the trial of an accused before the Court of Sessions. Before the competent Court it provides for framing of charge in support of the prosecution and an opportunity to the accused to enter upon his defence and to adduce evidence in support thereof. Section 313 Cr.P.C., enjoins that circumstances appearing in evidence against the accused be put to him to enable him to explain the same.



16. Herein also, the accused have to get full and complete opportunity to defend themselves in the trial. In the said circumstances, there is absolutely no occasion to record any finding in conduct of the investigation or the records on which the prosecution places reliance, an order granting police remand, and that too, solely on the basis of the affidavit filed by the rival parties. Therefore, collecting evidence by the respondent during the time of police custody is not at all prejudice to the rights of the accused. Hence, in view of the above, I am of the considered view that the order passed by the learned Judicial Magistrate, is not liable for set aside.

17. In the result, the Criminal Original Petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

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 District Munsif-cum-Judicial Magistrate,
Aravakurichi, Karur District.
- 2.The Inspector of Police,
K.Paramathi Police Station,
Karur District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Orders made in
CRL OP (MD) Nos.7239 & 7241 of 2020
07.08.2020

CS (19.08.2020) 6P 4C