



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.07.2020

DELIVERED ON : 28.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Cr1.O.P(MD)No.7762 of 2020

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The State Rep. by
Deputy Superintendent of Police,
CB CID, Madurai Range,
Madurai District.
(In Crime No.02 of 2020)
(Old Crime No.67 of 2020 on the file
of Oomachikulam Police Station)

...Petitioner/Petitioner

.Vs.

J.Sulaiman Batcha

...Respondent/Respondent/A4

Prayer: Petition under Section 482 of the Code of Criminal Procedure, praying to set aside the return endorsement made by the Learned Judicial Magistrate No.4, Madurai dated 20.07.2020 filed by the petitioner/investigation agency u/s 167(2)(3) of Cr.P.C. and to grant the police custody of the accused for 5 days.

For Petitioner	: Mr.K.K.Ramakrishnan
	Additional Public Prosecutor
Amicus Curiae	: Mr.G.Karuppasamy Pandian

ORDER

The prosecution/complainant filed a petition dated 20.07.2020, before the Court of Judicial Magistrate No.IV, Madurai, seeking police custody of respondent/A4 in Crime No.2 of 2020 (Old Crime No.67 of 2020 on the file of the Oomatchikulam Police Station, Madurai District). The learned Judicial Magistrate No.IV, Madurai had returned the petition with the following endorsements:

"Accused Surrendered on 31.05.2020 and remanded to judicial custody.

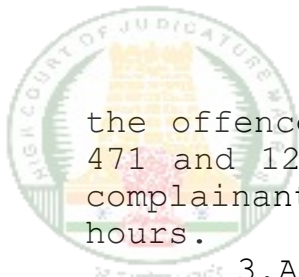
How this petition is maintainable after expiry of initial remand period of 15 days.

Hence returned."

The prosecution/complainant challenging the return of the petition for police custody has filed this Criminal Original Petition and prays for setting aside the same with a consequential direction for grant of police custody of the respondent/A4.

2.Oomatchikulam Police Station, Madurai District, originally registered a case in Cr.No.67 of 2020 for the alleged commission of

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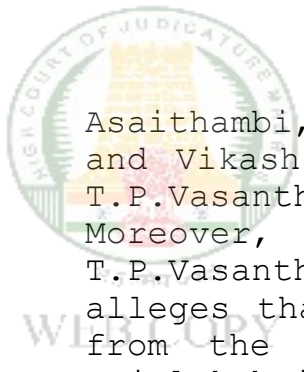


the offences under Sections 342, 379, 406, 419, 420, 465, 467, 468, 471 and 120-B, I.P.C., based on the complaint given by the defacto complainant viz., Smt.Premavathy of Chennai on 21.03.2020 at 13.30 hours.

3.A Division Bench of this Court vide order dated 19.06.2020 passed in Crl.O.P(MD)Nos.6216, 6131 and 5960 of 2020, filed by A1, A2, A4, A7 and A8 respectively, had transferred the investigation of the case to the file of the petitioner herein and in compliance of the same, the Director General of Police, Head of the Police Force, Tamil Nadu, Chennai vide proceedings No.307582/Crime.3(1)/2020 dated 24.06.2020, ordered transfer of investigation and in terms of the same the Director General of Police, CBCID, Chennai has passed necessary consequential proceedings in Crime I(2)/183/06180/2020 dated 26.06.2020, and accordingly, the investigation has been handed over to the Deputy Superintendent of Police, CBCID, Counterfeit Currency Wing Madurai and accordingly, a case in Cr.No.2 of 2020 has been registered for the alleged commission of the offences under Sections 342, 379, 406, 419, 420, 465, 467, 468, 471 and 120-B I.P.C, on 27.06.2020 at 14.20 hours.

4.As per the F.I.R. in Crime No.2 of 2020, registered by the petitioner herein, there are 11 named accused and some unknown accused and the respondent herein is arrayed as accused No.4 and he is also a practising advocate. The contents of the said F.I.R. would reveal among other things that the defacto complainant's brother, viz., T.P.Vasantha Kumar got married to one Padmini and begot a special child, namely, Jayaprakash born on 22.01.1993 and his wife Padmini died on 22.08.2009. T.P.Vasantha Kumar married one Rajeshwari on 21.05.2014, who was a widow. Through her earlier marriage, she begot Senthil Kumar and Meena (A1 and A2). T.P.Vasantha Kumar had bought two plots in the name of his second wife Rajeshwari in the year 2015 and 2016 situated at Vilangudi and Silayaneri, Madurai District and the said T.P.Vasantha Kumar has executed a registered gift settlement deed, dated 01.04.2015, in favour of his second wife - Rajeshwari in respect a flat situated at Cosmo City in Madurai. T.P.Vasantha Kumar died on 27.12.2016 and Rajeshwari also died on 09.12.2017.

5.It is the specific case of the prosecution that the son and daughter of Rajeshwari born through her earlier marriage, namely, Senthil Kumar (A.1) and Meena (A.2) and the husband of Meena, namely, Rajkumar (A.3) conspired and connived with the respondent/ (A.4) Mr.Sulaiman Basha, Advocate and created and fabricated forged legal heir certificate and other documents and thereby registered a Will deed dated 26.10.2017, said to have been executed by Rajeshwari in favour of his son Senthilkumar (A1) by using impersonator as Rajeswari. The impersonator is also subsequently added as an accused. Senthil Kumar (A.1) based on the said Will had sold the properties in Cosmo City in Madurai, Agaram Village in Chennai, Korratur in Chennai and Ayanavaram in Chennai to Rajalakshmi W/o



Asaithambi, Madurai, Muthukumar of Madurai, Purusothaman of Chennai and Vikash and Swathi of Chennai and that apart the car owned by T.P.Vasantha Kumar was also sold by creating fabricated documents. Moreover, the amount deposited in Indian Bank, Egmore Branch by T.P.Vasantha Kumar was also swindled. The prosecution further alleges that the special child of T.P.Vasantha Kumar was evacuated from the Cosmo City house situated in Madurai by Asaithambi, Rajalakshmi, Babu and others and he was admitted as an orphan in Joy Home, Nagamalai Pudukkottai.

6.It is to be noted at this juncture that when the petitions for bail/anticipatory bail in the above said crime number came up for hearing, this Court ordered transfer of investigation to CBCID, and in terms of the orders of the Director General of Police, Tamil Nadu, and the Director General of Police, CBCID, the case was transferred to the file of the petitioner herein and a case was registered in Crime No.2 of 2020.

7.The respondent/A4, when the case was pending before the Oomatchikulam Police Station Crime No.67 of 2020, had surrendered before the Inspector of Police, Oomatchikulam Police Station on 31.05.2020 and he is said to have given voluntary confession statement, which led to the recovery of some incriminating documents. The respondent/A4 was produced before the jurisdictional Magistrate, who remanded him to judicial custody on 31.05.2020 and at present he is lodged at Sub Jail, Dindigul.

8.Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the petitioner/State, made the following submissions:

When a team of Crime Branch CID led by Mr.Anilkumar started investigating the case, in pursuant to the orders passed by the Division Bench of this Court, transferring the case from Oomatchikulam Police Station, Madurai District, Mr.Anil Kumar, Deputy Superintendent of Police, was assigned to do investigation of the case relating to the alleged death of two persons, while they were confined at Sathankulam Police Station and subsequently, the State Government has passed an order entrusting the case to Central Bureau of Investigation (CBI) and he got relieved from that assignment and thereafter, took up the investigation in this case and as such the application for police custody after registration of the case by CBCID came to be filed on 20.07.2020. Since the petitioner/complainant had registered a case in Crime No.2 of 2020 on 27.06.2020, in the light of the above facts and circumstances, the application dated 20.07.2020 filed for seeking police custody of respondent/A4 cannot be said as neither wilful nor wanton. It is further submitted that the respondent/A4, who is a member of a noble profession, had involved in illegal and unethical activities while aiding and abetting serious criminal offences and therefore, his police custody is absolutely necessary for the purpose of effective investigation. However, the jurisdictional Magistrate without having



proper application of mind, has returned the application as not maintainable and therefore, the petitioner is constrained to file this petition seeking quashment of the said endorsement with a consequential direction for granting police custody of the respondent/A4.

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9.The learned Additional Public Prosecutor in support of his submission placed reliance on the following decisions:

- (i) **(2000) 10 SCC 438 [State v. Dawood Ibrahim Kaskar];**
- (ii) **(2016) 1 SCC 507 [CBI v. Rathin Dandapat];** and
- (iii) **2019 SCC Online 825 [Pradeep Ram v. State of Jharkhand].**

10.The learned Additional Public Prosecutor drawing the attention of this Court to the above cited decisions would submit that the learned Judicial Magistrate while considering the petition for police custody ought to have exercised his function in a judicial manner in accordance with Section 167(3) of the Criminal Procedure Code, 1973 and on account of the reasons stated above, the petitioner after registration of the case in Crime No.2 of 2020, was not able to file application for police custody. The police custody of the respondent/A.4 is absolutely necessary so as to enable the petitioner/investigating agency to conduct the investigation more effectively. Therefore, he prays for appropriate orders for setting aside the impugned return order passed by the learned Judicial Magistrate No.IV, Madurai and also for a consequential direction.

11.Mr.G.Karuppasamy Pandian, learned counsel, has entered appearance on behalf of the respondent/A4. He expressed his willingness to act as an Amicus Curiae to help and assist the Court with regard to the legal position as to the grant of police custody of an accused.

12.The learned amicus curiae has drawn the attention of this Court to the following decisions:

- (i) **(1992) 3 SCC 141 [C.B.I. v. Anupam J.Kulkarni];**
- (ii) **(2007) 2 MLJ (CrI) 1676 DB [State by Deputy Superintendent of Police v. Sundaramoorthy];**
- (iii) **2013 (3) MWN (Cr.) 473 [State v. R.Vaithyanathan Iyappan Govindaraj];** and
- (iv) **2014 (2) MWN (Cr.) 175 [G.Priyadarshini v. State].**

13.The learned Amicus Curiae would submit that the issue relating to the grant of police custody after expiry of initial period of remand of 15 days is no longer integra in the light of the law settled in the decision of the Hon'ble Apex Court reported in **(1992) 3 SCC 141** (cited supra). The learned Amicus Curiae would further submit that the sole question which arises for consideration before the Hon'ble Apex Court in the said decision was

<https://hcservices.ecourts.gov.in/hcservices/> "Whether a person arrested and produced before



the nearest Magistrate as required under Section 167(1) Code of Criminal Procedure can still be remanded to police custody after the expiry of the initial period of 15 days."

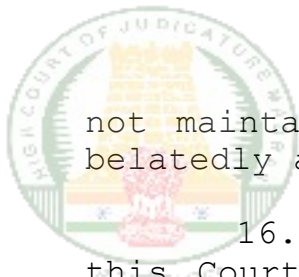
The Hon'ble Supreme Court in the said decision after surveying a catena of earlier decisions has laid down a proposition that

"After the expiry of first fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction."

According to the said decision, the judicial magistrate can at the first instance authorise the detention of the accused either in police or judicial custody from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days, there can be more than one order changing the nature of such custody either from police or judicial or vice-versa. It has been further held in the said decision that police custody, if found necessary, can be ordered only during the first period of fifteen days and the whole scheme underlying Section 167 is intended to limit the period of police custody in order to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

14.It is the further submission of the learned Amicus Curiae that a Division Bench of this Court in the decision reported in **(2007) 2 MLJ (Cr1) 1676 DB** (cited supra), though not referred to the decision of the Hon'ble Apex Court reported in **(1992) 3 SCC 141** (cited supra) has held that in the absence of any application for further investigation, mere application for police custody would not be enough and once final report is filed, Section 167(2) Cr.P.C. has no application.

15.The learned Amicus Curiae has further invited the attention of this Court to the judgment of a learned Single Judge of this Court (Hon'ble Justice S.Palanivelu) reported in **2013 (3) MWN (Cr.) 473** (cited supra) and would submit that when a similar issue arose for consideration, the learned Judge applying the decisions of the Hon'ble Apex Court reported in **(1992) 3 SCC 141** (cited supra), **2010 (6) SCC 753 [Devendrakumar v. State of Haryana]** and **2007 (8) SCC 753 [Dinesh Dalmia v. CBI]** has held that application for police custody filed beyond the initial period of fifteen days is not maintainable. The learned Judge though factually found that the



not maintainable, still found that the copy application was filed belatedly and as such no relief can be granted.

16.By relying on the decision of a learned Single Judge of this Court reported in **2014 (2) MWN (Cr.) 175** (cited supra), the learned Amicus Curiae made a submission that the said decision has also passed a proposition that the Magistrate can exercise the power to grant police custody only before the expiry of the 15 days of first remand. The learned Single Judge also referred to very many decisions including the decision of the Hon'ble Supreme Court reported in **(1992) 3 SCC 141** (cited supra). A similar view has also been taken by a learned Single Judge of this Court in a decision reported in **2012 CrI.L.J. 2464 [K.S.Palanichamy v. State]**.

17.This Court bestowed its best attention to the rival submissions and perused the materials placed before this Court and the decisions relied on both sides.

18.The decision relied on by the learned Additional Public Prosecutor pertains to Sections 167(3) and 309 Cr.P.C. But in the case on hand, the investigation is not yet over. Now, coming to the facts of the case, Oomatchikulam Police registered a case in Crime No.67 of 2020 on 21.03.2020 and pursuant to the orders passed by this Court, the investigation of the case has been transferred to the petitioner herein and accordingly, the case in Crime No.2 of 2020 has been registered/re-assigned on 21.06.2020.

19.Assuming for the sake of arguments that the application for police custody by the petitioner could be maintained, then it should have been filed within the stipulated period at least from the date of registration of the case in Crime No.2 of 2020. However, the petition for police custody was filed only on 20.07.2020. The respondent/A4 surrendered before the Inspector of Police/ Station House Officer on 31.05.2020 and he voluntarily said to have been given a confession statement and certain incriminating documents were seized and thereafter, he was produced before the jurisdictional Magistrate for remand and accordingly, he was remanded to judicial custody on 31.05.2020. The petition for police custody was filed by the petitioner only on 21.07.2020, well beyond the period of 15 days from the date of initial remand and taking into consideration of the said facts, the application was returned as not maintainable.

20.In the decision reported in **(1992) 3 SCC 141** (cited supra) in paragraph 13, the Hon'ble Apex Court held as follows:

"There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But



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this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167 (2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above."

21. In the light of the settled position of law/propositions as enunciated in the above cited judgments especially **(1992) 3 SCC 141** (cited supra), the present petition for police custody dated 20.07.2020, is not maintainable and the learned Judicial Magistrate was right in returning the application as 'not maintainable'.

22. It is also relevant to extract sub-rule (6) of Rule 6 of Criminal Rules of Practice, 2019, hereunder:

"(6) The Magistrate shall not grant remands to police custody unless they are satisfied that there is good ground for doing so. A request for remand to police custody shall be accompanied by an Affidavit setting out briefly, the prior history of the investigation and the likelihood of further clues which the police expect to derive by having Accused in custody, sworn by the investigating or other Police Officer, not below the rank of a Sub-Inspector of Police. The Magistrate shall decide after perusal of the Affidavit. He shall personally see and satisfy himself about the Accused being sound in mind and body before entrusting him to Police Custody and also at the end of the period of custody by questioning him whether, he had, in any way, been interfered with during the period of custody. Where the object of a remand is verification of the statement of an Accused, he shall, whenever possible, be remanded to the charge of a Magistrate; and the period of remand shall be as short as possible."

In terms of the said Rule, the entertainment of an application for police custody is not automatic and the jurisdictional Magistrate is expected to apply the mind as to reasons/ground for seeking police custody.

23. In the light of the factual aspects and the well settled



legal position, this Court is of the considered view that there is no error or mistake on the part of the jurisdictional Magistrate in returning the petition dated 20.07.2020 filed by the petitioner/investigating agency/police custody as 'not maintainable.'

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24. In the result, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CSII)

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/ /2020

Sub Assistant Registrar(CS)

sj

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 Deputy Superintendent of Police,
CBCID Madurai Range,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order in
Cr1.O.P (MD) No.7762 of 2020
28.07.2020

KB(13.08.2020) 8P 3C