



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2020

PRESENT

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.18263 of 2019

Arumugam @ Siva Arumugam

... Petitioner/Accused

-vs-

- 1.The Superintendent of Police,
Sivagangai District.
- 2.The Deputy Superintendent of Police,
District Crime Branch,
Sivagangai.
- 3.The Inspector of Police,
District Crime Branch,
Sivagangai.
- 4.Ramakrishnan
- 5.Alli Rani
- 6.Manikandeeswaran

(R4 to R6 impleaded vide
Court order dated 08.01.2020
in Crl.M.P. (MD)No.9 of 2020)

... Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to enlarge the petitioner on anticipatory bail in connection with the crime No.38 of 2019 on the file of the respondent police.

For Petitioner :Mr.Veerakthiravan
Senior Counsel
for M/s.Veera Associates

For R1 to R3 : Mr.K.Chellapandian
Additional Advocate General assisted by
Mr.A.ROBINSON, Govt. Advocate (Crl. Side)

For R4 to R6 : Mr.G.R.Sathish, Advocate

For Intervener : Mr.G.Prabhu Rajadurai, Advocate
for Niranjana S.Kumar Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C



For Anticipatory Bail in Crime No. 38/2019 on the file of the Respondent Police.

ORDER : The Court made the following order:-

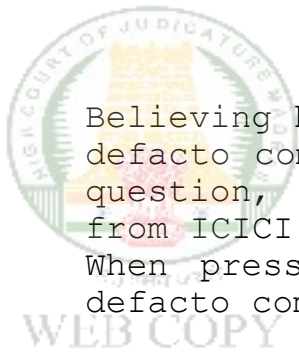
Heard the learned Senior Counsel appearing for the petitioner, the learned Additional Advocate General appearing for the official respondents and the learned counsel for the intervener.

2.This petition has been filed seeking anticipatory bail in Crime No.38 of 2019 registered by the Inspector of Police, District Crime Branch, Sivagangai for the offences under Sections 406, 420, 294(b), 506(i) and 120(b) of IPC.

3.When the matter was taken up for hearing, the learned Senior Counsel appearing for the petitioner submitted that this Court will have to take a serious note of what has actually happened. He had also filed typed set of papers. It is seen that there was a sale agreement dated 03.05.2012 entered into between the petitioner Arumugam and M.K.Srinivasan, the defacto complainant herein. The defacto complainant had paid a sum of Rs.2 Crores to purchase the property, set out in the schedule of the sale agreement dated 03.05.2012. It is not in dispute that the sale agreement did not fructify into a sale deed. According to the defacto complainant, the subject matter of the sale agreement was already encumbered and that the petitioner herein had suppressed certain material facts. While so, the defacto complainant lodged a written complaint on 04.11.2019 before the Superintendent of Police, Sivagangai District and the same was forwarded to the District Crime Branch, Sivagangai. Crime No.38 of 2019 was registered by District Crime Branch, Sivagangai on 03.12.2019 at 7 p.m.

4.The substance of the First Information Report is that the defacto complainant had given a sum of Rs.2 Crores in all to the petitioner herein. In the sale agreement, which was entered into between Arumugam and M.K.Srinivasan, Veeramani S/o. Arumugam had also signed as a attesting witness. The defacto complainant had later told Arumugam that it is not possible to conclude the transaction and that he wanted the advance amount of Rs.2 Crores back. The petitioner is said to have returned a sum of Rs.50 Lakhs in October, 2012 itself. Rs.10 Lakhs was paid by way of cash and the remaining Rs.40 Lakhs was paid through three cheques. Arumugam still owed to return a balance amount of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only).

5.Though more than 7 years have elapsed, Arumugam did not return the balance amount. Whenever the defacto complainant approached him, Arumugam always took the stand that since he was unable to sell the property, he was not in a position to return the balance amount. Arumugam had assured the defacto complainant that in a few months time, he would settle the entire liability.



Believing his words, defacto complainant remained patient. When the defacto complainant came to know that by mortgaging the property in question, the petitioner had raised a sum of Rs.5 Crores as loan from ICICI Bank, the defacto complainant could not wait any further. When pressed further, the petitioner is said to have abused the defacto complainant and also criminally intimidated him.

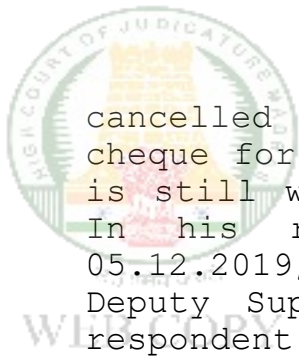
6.After registering the First Information Report at 7.00 p.m, on 03.12.2019, a team of police personnel from District Crime Brach, Sivagangai had apprehended Veeramani, S/o. Arumugam, while he was having his morning walk at race course road. Veeramani was taken to District Crime Branch, Sivagangai. The petitioner was taken from his house at about 9.00 a.m., and then taken to District Crime Brach, Sivagangai.

7.The learned Additional Advocate General would however contend that both the petitioner and his son were served with notice under Section 41(A) of Cr.P.C and pursuant thereto the petitioner Arumugam and Veeramani appeared before the DCB, Sivagangai. I requested the learned Additional Advocate General to pass on a copy of the said notice under Section 41(A) of Cr.P.C. Though the notice is signed on 03.12.2019, it mentions only the C.S.R. Number. The notice called upon the noticees namely Arumugam and Veeramani to appear on 04.12.2019 at about 10 a.m. It is now claimed by the police personnel that these notices were served on Arumugam and Veeramani in the morning of 04.12.2019.

8.The learned Senior counsel for the petitioner would strongly argue that no such notice was ever served and that their signatures were taken in coercive circumstances when they were in the custody of the respondent police. The specific case of the petitioner is that they were kept in the office premises of District Crime Branch, Sivagangai from the morning of 04.12.2019 till 10.00 p.m., on the same day. The petitioner's representation dated 13.12.2019 addressed to the Inspector General of Police South Zone, Madurai sets out all these allegations.

9.It is further alleged by the petitioner that four cheques in favour of the defacto complainant were taken from him and one was presented for collection on the same day. Since, the signature in the cheque differed, it was returned. The petitioner further alleges that a sum of Rs.25 Lakhs was handed over in cash by the petitioner to the defacto complainant on the same day but the defacto complainant insisted that he wanted the return of the amount only through RTGS mode. It is established by record that a sum of Rs.75 Lakhs was paid by the petitioner to the defacto complainant by RTGS mode on 05.12.2019.

10.The petitioner alleges that four cheques were obtained from him on 04.12.2019 when he was in the police custody. One cheque was



cancelled by the petitioner and they are with the police. One cheque for a sum of Rs.75 Lakhs favouring the defacto complainant, is still with the defacto complainant. It is a post dated cheque. In his representation, it is specifically alleged that on 05.12.2019, the petitioner was repeatedly called over phone by the Deputy Superintendent of Police, Thiru.Ramakrishnan., the fourth respondent herein.

11.The learned Additional Advocate General would claim that since the parties had arrived at an understanding, Arumugam and Veeramani were let off in the evening of 04.12.2019 after taking a written undertaking from them.

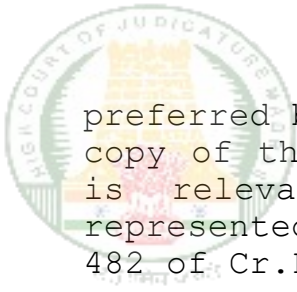
12.The learned Senior Counsel for the petitioner would allege that the District Crime Branch, Sivagangai had conducted a Kattapanchayat to force the petitioner to cough up an amount of Rs.1,50,000,00/- (Rupees One crore and Fifty Lakhs only) to the defacto complainant.

13.Per contra, the learned counsel for the defacto complainant would claim that this was an amount that was admittedly due from the petitioner to him and that there is no miscarriage of justice in this case. He also would point out that this liability has been duly reflected in the Income Tax returns of the petitioner.

14.The learned counsel appearing for the privately impleaded respondents would also deny all the allegations made by the petitioner herein. The named respondents have also filed a counter affidavit denying all these allegations.

15.The learned Additional Advocate General was at pains to emphasis the fact that the District Crime Branch, Sivagangai was bound to register a First Information Report, since in the complaint it had been mentioned that a part of the cause of action had arisen in Vickram College which is located in Sivagangai District and that therefore, the District Crime Branch, Sivagangai, cannot be said to have usurped the jurisdiction.

16.The learned Senior Counsel for the petitioner drew my attention to the order passed in Crl.O.P.(MD)No.15445 of 2017. It is seen that the defacto complainant was shown as a second respondent in the said petition. The said Criminal Original Petition was filed by the petitioner Arumugam. The petitioner had filed the said petition for forbearing the District Crime Branch, Madurai from interfering with the civil dispute that is pending between him and Srinivasan. A learned Judge of this Court by order dated 13.11.2017, directed the police to maintain status quo and observed that there should not be any investigation since the Court was prima facie satisfied that the dispute is civil in nature. Subsequently, the case was closed on 02.08.2018 by recording the



preferred by Srinivasan was enquired into and the same was closed. A copy of the closure report was also produced before the Court. It is relevant to mention here that Srinivasan was very much represented by a counsel in the said petition filed under Section 482 of Cr.P.C., by the petitioner Arumugam.

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17. On a careful perusal of the entire materials on record, I am fully satisfied that the District Crime Branch, Sivagangai, had absolutely no justification whatsoever to have even taken up the investigation in this case. The property in question is located in Madurai. Both the parties, namely, Arumugam and Srinivasan, are residing in Madurai. Ofcourse, Srinivasan is having an educational institution in Sivagangai limits. But then, a passing reference is made in the complaint that a part of the consideration was received by Arumugam in the college campus. It is beyond dispute that the transaction between the parties had taken place way back in the year 2012. Nothing of recent origin is said to have taken place within Sivagangai limits. More than anything else, a similar complaint filed by Srinivasan before the District Crime Branch, Madurai same was enquired into and closed.

18. The learned Additional Advocate General would claim that the District Crime Branch, Sivagangai was not aware of the passing of the orders in Crl.O.P.(MD)No.15445 of 2017. I find it very difficult to buy this story. The First Information Report was registered only on 03.12.2019 at about 7.00 p.m. This is not a transaction that warranted a lightning response. But then a police team from District Crime Branch, Sivagangai came down to Madurai and apprehended not only Arumugam but also his son Veeramani. Veeramani was only an attesting witness and nothing more than that. It is true that a sum of Rs.75 Lakhs was paid by way of RTGS on 05.12.2019. but it is so obvious that the petitioner was coerced to cough up a sum of Rs.75 Lakhs through RTGS and made to hand over a post dated cheque for a further sum of Rs.75 Lakhs.

19. I have no doubt whatsoever in my mind that Arumugam is liable to make the said payment to Srinivasan but then, the question that arises is how the civil issue between the parties is to be resolved. This is all the more so because a categorical observation and finding has been given by this Court in Crl.O.P.(MD)No.15445 of 2017. This Court had been repeatedly warning the police not to interfere in civil disputes between the parties. The said direction has been flouted.

20. I am therefore satisfied that if the respondent is allowed to conduct further investigation, interest of justice will not be served. The petitioner had also given a complaint dated 13.12.2019 addressed to various authorities. No action has been taken on the said complaint given by the petitioner herein. Therefore, I am satisfied that this is a case in which transfer of investigation and action directed to be taken on the petitioner's



representation dated 13.12.2019.

21.I therefore direct the Director General of Police, CBCID to nominate an Investigating officer to take over the investigation in Crime No.38 of 2019 on the file of the District Crime Branch, Sivagangai and the Director General of Police, CBCID will also take an independent action on the petitioner's complaint dated 13.12.2019.

22.Accordingly, this Criminal Original Petition is disposed of. Miscellaneous petitions are closed.

sd/-
13/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT.
- 2.THE DEPUTY SUPERINTENDENT OF POLICE,
DISTRICT CRIME BRANCH, SIVAGANGAI.
- 3.THE INSPECTOR OF POLICE
DISTRICT CRIME BRANC, SIVAGANGAI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE DIRECTOR GENERAL OF POLICE, CBCID.

- +2. CC to M/S.VEERA ASSOCIATES Advocate SR.Nos.3085,6255
+1. C.C. to Mr.NIRANJAN. S.KUMAR Advocate SR.No.3081

ORDER
IN
CRL OP(MD) No.18263 of 2019
Date :13/02/2020

PNN
TK/VR/SAR.2/28.02.2020/6P/9C