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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.OP.No.30535/2019 & Crl.MP.No.16552/2019

V.Rajendran

...Petitioner

Versus

1.State rep.by

The Inspector of Police
District Crime Branch Police Station,
Dharmapuri District.

2.M.Manimaran

...Respondents

Prayer:- Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records and quash all the proceedings in Crime No.3/2019 on the file of the Inspector of Police, District Crime Branch, Dharmapuri District for the interest of justice, ends of justice.

For Petitioner : Mr.R.Shanmugavelayutham
Senior Counsel for
Mr.B.Vasudevan

For Respondent : Mrs.Kritika Kamal
Government Advocate
[Crl.Side]

ORDER

[Order of the Court was made by M.NIRMAL KUMAR, J., through
Video Conferencing]

- (1) The petitioner, a retired Deputy Superintendent of Police, who is arrayed as 9th accused in Crime No.3/2019 for the commission of the alleged offences under Sections 201, 205, 419, 465, 468 and 420 of IPC, seeking quashment of the said First Information Report insofar as he is concerned, has filed the present petition.
- (2) The said FIR came to be registered pursuant to the directions issued by this Court, vide judgment dated 28.06.2019 made in Crl.A.No.216/2016.



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- (3) Mr.R.Shanmugavelayutham, learned Senior counsel appearing for Mr.B.Vasudevan, learned counsel for the petitioner would submit that the petitioner herein was the Investigating Officer in Crime No.114/2011 and he was also examined as PW.16 in the said case. It is his further submission that the petitioner herein had arrested A2 - Balu and A3-Krishnan in connection with the case in Crime No.114/2011 and that during the arrest of A3, the petitioner herein had made arrangements for taking photographs and lifting of finger prints of A3-Krishnan and thereafter, produced them for judicial remand and on completion of investigation, he laid the Final Report on 27.09.2011.
- (4) Learned Senior counsel would contend that the petitioner, thereafter, was transferred from Kottapatty Police Station, Dharmapuri District to ISTC, Salem, on 23.09.2011 vide proceedings of the Superintendent of Police, Dharmapuri in D.O.No.791/2011 C.No.A1/24583/2011 and the petitioner joined the said post on 29.09.2011. It is his further submission that A3-Krishnan, in SC.No.221/2014 on the file of the Court of Principal Sessions Judge, at Dharmapuri, died on 28.07.2012 by committing suicide and the petitioner, after handing over the charge to his successor, on his transfer, has nothing to do with case. Learned Senior counsel would submit that the present FIR, viz., FIR in Crime No.3/2019, is pointed against the petitioner for the reason that the finger prints and photographs of A3-Krishnan, which was available in the Case Diary in Crime No.114/2011, is now found to be missing and further, taking advantage of the death of Krishnan, his brother Govindasamy, who examined himself as DW2 in the Sessions Case, had impersonated Krishnan by producing bogus death certificate and other documents, including the School Certificate and thereby, joined the army and posted at Jammu and Kashmir. On 05.06.2011, on the date occurrence in Crime No.114/2011 the petitioner was stationed in Jammu and Kashmir and Govindasamy assuming himself as Krishnan could not have been present in Pattavarthi Village, Dharmapuri District. The suicide of Krishnan was on 28.07.2012 and the investigation was not done in a fair and proper manner.
- (5) Learned Senior counsel has drawn the attention of this Court to paragraphs No.34 to 39 of the judgment dated 28.06.2019 made in CrI.A.No.217/2016 and it is relevant to extract the same:-



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''34.This Court by order dated 09.08.2016, directed the Inspector General of Police to file a report on the specific plea made by Govindasamy and his mother/A4 and his wife Aruna. As per the said direction issued by this Court, the enquiry officer after detailed enquiry submitted a report dated 19.07.2016. During enquiry, he has examined 26 witnesses and collected 39 documents and also made a claim that DW2 in the above case is Govindasamy @ Military Govindasamy. Thereafter, this Court directed the trial Court to examine all the witnesses giving opportunity to the learned counsel for the accused and the learned Additional Public Prosecutor to cross~examine the witnesses. As per the direction of this Court, the examination of witnesses have been completed.

35.On perusal of the same, it is found that it is a tactful ploy adopted by DW2 to substantiate his claim that he is Krishnan. He has used the school certificate of his younger brother Krishnan/A3 and joined in Indian Army on 16.09.2006. Fearing that if the case in the name of original Krishnan is proceeded with, he would be exposed of his impersonation and he would have to face Court martial, created all the documents. Taking advantage of the same to save his brother from the capital punishment, he had sustained his claim that he is Krishnan.

36.CW13 Saravanan, who is a Government School Teacher in Pappyreddipatty, hails from Pattavarthini village had categorically stated about the ploy adopted by Govindasamy and Balu/A2. CW13 had helped DW2 and Balu/A2 to get death certificate of Krishnan, who died on 28.07.2012. DW2 and Balu/A2 in a deceitful manner had obtained death certificate in the name of Govindasamy, as the person died on 28.07.2012.

37.CWs.20, 21 and 22 in dereliction of the duty for small benefits, are abettors in preparation of forged death certificate in the name of Govindasamy. After knowing the facts and its consequences, they subsequently cancelled the death certificate.



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38.CW17 and CW18 are the police personals during the relevant period on having knowledge about the suicide of Krishnan on 28.07.2012 have not taken immediate and proper action against Govindasamy, who obtained forged death certificate by illegal means are abettors. The revenue and Police officials namely CW20/VAO, CW21/Deputy Tahsildar, CW18 and CW15 being Public servants had abetted to the act of Govindasamy, his wife Aruna, Balu/A2, Meenakshi/A4 in concealing and designing of false evidence, fabricating the documents and giving false information to screen offenders of a capital punishment.

39.This Court directs the concerned officials of Police and Revenue Department to take appropriate departmental action them. The District Crime Branch, Dharmapuri to register a case against these persons and proceed in accordance with law. The Superintendent of Police, Dharmapuri is also directed to monitor the case and report compliance.''

- (6) Learned Senior counsel would submit that the petitioner had handed over the investigation to his successor, viz., Mr.G.Duraisamy, and during the enquiry conducted by Mr.Pon Manickavel, IPS, Inspector General of Police, Mr.Natarajan, Special Writer in A.Pallipatti Police Station, was examined as CW17 in SC.No.221/2014, has served there from 07.08.2009 to 30.06.2013 and stated that the petitioner had taken steps to collect finger print of Krishnan, sent for remand, and that the Case Diary was handed over to one Mr.Gopal and he was in custody of the Case Diary and the finger print of Krishnan found missing in the Case Diary and the said fact confirmed by one Selvam, Special Sub Inspector of Police of the said Police Station, while he was examined in Crime No.126/2016. Hence, it is the vehement submission of the learned Senior counsel that the petitioner is cannot be found fault with for the missing of crucial documents, viz., the photographs and the finger prints of A3/Krishnan. Learned Senior counsel has referred to the findings of the Investigating Officer, dated 02.08.2016 in Crime No.126/2016, available at page No.99 of the typed set of documents and would submit that the Investigating Officer, viz., the Inspector of Police attached to Pappireddipatti Police Station, had stated that upon his enquiry with the Station Writer and other personnel in the Police Station, it was Mr.Gopal, Sub Inspector of Police, who was in the custody of the Case Diary pertains to Crime No.114/2011 and



added to that, the Charge sheet in Crime No.114/2011 has been filed on 27.09.2011 and A3-Krishnan died nearly one year later, i.e., on 28.07.2012.

- (7) In sum and substance, it is the submission of the learned Senior counsel appearing for the petitioner that the impersonation committed by Govindasamy, elder brother of A3-Krishnan by taking advantage of his death, which is at a later point of time, for which the petitioner cannot be mulcted with any responsibility or proceeded with by way of criminal prosecution and hence, prays for quashment of FIR in Crime No.3/2019 insofar as the petitioner is concerned.
- (8) Per contra, Mrs.Kritika Kamal, learned Government Advocate [Crl. Side] appearing for the 1st respondent/State would submit that pursuant to the directions of this Court, FIR in Crime No.3/2019 came to be registered against the petitioner and others by the 1st respondent police and he has been arrayed as A9. It is her further submission that the fact of whether the petitioner has handed over the Case Diary and other documents pertaining to Crime No.114/2011 to his successor C.Duraisamy or to Gopal or to any other Sub Inspector attached to the said Police Station, has to be found only by investigation and only during investigation, truth will be ascertained as to whom the alleged documents have been handed over and that whether the missing of documents had occurred after the death of A3-Krishnan or not, would also to be found and it is the submission of the learned Government Advocate [Crl.Side] that it may not be appropriate to quash the FIR at this stage. She would further submit that the case in Crime No.126/2016 seeking investigation as regards the death of A3-Krishnan and furnishing of the Death Certificate, is pending on the file of A.Pallipatti Police Station as 'undetected' and prays for transferring of Cr.No.126/2016 to the file of DCB, Dharmapuri, to be investigated along with Cr.No.3/2019, so that both cases could be investigated in a comprehensive manner and that during investigation, if complicity of any of the accused is not found, the Investigation officer would take appropriate steps and the apprehension expressed by the petitioner seems to be unfounded and prays for dismissal of this petition.
- (9) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (10) A perusal of the typed set of documents would reveal that the Investigating Officer, viz., the petitioner herein, who



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had been examined both in the Sessions Case as well as in the enquiry, admitted that he arrested A3 in connection with Crime No.114/2011 and had taken photographs of A3 and lifted his finger prints, which form part of the Case Diary and it is clear that the same are missing now in the Case Diary. Whether the petitioner herein had handed over the entire Case Diary including the missing documents, viz., photographs and finger prints of A3, pertains to Crime No.114/2011 and at what point of time, the said crucial documents were found missing, are matters of investigation.

- (11) It is the submission of the learned Senior counsel that the petitioner, even at the time of letting in evidence before the Sessions Court, has retired from service and is on his evening of his life and therefore, prays for early completion of the investigation and filing of the Final Report in Crime No.3/2019 as expeditiously as possible.
- (12) It is to be noted at this juncture that this Court, while dismissing CrI.A.No.217/2016 vide judgment dated 28.06.2019, has taken note of the alleged fabrication/missing of the crucial documents and therefore, ordered the investigation, by also taking into consideration the Report submitted by Mr.A.G.Pon Manickavel, IPS, the then Inspector General of Police.
- (13) It is needless to point out that any investigation done pursuant to the registration of FIR, be done in a fair and in an objective manner.
- (14) Accordingly, the case in Crime No.126/2016 pending on the file of A.Pallipatty Police Station, is directed to be transferred to the file of the 1st respondent police, viz., the Inspector of Police, District Crime Branch, Dharmapuri District, and the said official is directed to carry out the investigation in both cases, in a fair as well as in an objective manner and if necessary, shall record the statement of the petitioner, who is arrayed as A9 in the case in Crime No.3/2019, and file the Final Reports before the jurisdictional Magistrate, as expeditiously as possible.
- (15) It is made clear that the observations made herein, are only for the purpose of disposal of this Criminal Original Petition and this Court did not go into the truth or otherwise of the allegations levelled against the petitioner in the case in Crime No.3/2019 pending on the file of the 1st respondent police/DCB, Dharmapuri and it is for the Investigating Agency to unearth the truth by conducting fair and proper investigation. As already



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directed by this Court in Crl.A.217/2016 vide judgment dated 28.06.2019, the investigation in both the cases shall be periodically monitored by the Superintendent of Police, Dharmapuri District, who is also at liberty to give appropriate directions for proper, effective and fair investigation.

(16) The Criminal Original Petition stands disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Inspector of Police
District Crime Branch Police Station,
Dharmapuri District.
2. The Public Prosecutor
High Court, Madras.

COPY TO:-

- 1.The Principal District Judge, Dharmapuri.
- 2.The Chief Judicial Magistrate, Dharmapuri.
- 3.The Judicial Magistrate, Pappireddipatti.
- 4.The Judicial Magistrate No.2, Dharmapuri.
- 5.The Superintendent of Police, Dharmapuri District.
- 6.The District Crime Branch, Dharmapuri District.
- 7.The Principal District & Sessions Court, Dharmapuri.
- 8.The Inspector of Police,
A.Pallipatty Police Station,
Pappireddy patty Taluk,
Dharmapuri District.

+2cc to Mr.B.Vasudevan,Advocate,Sr.26623

Crl.OP.No.30535/2019
& Crl.MP.No.16552/2019

SS[co]
NSK 06/08/2021