



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 17.08.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.11061 of 2021

A.Packiyaraj

... Petitioner/3rd Accused
Vs.

State represented throughout
The Inspector of Police,
Elaayirampannai Police Station,
Virudhunagar District.
(Crime No.21 of 2021)

... Respondent/Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.I, Sattur in Cr.M.P.No.64 of 2021 in Crime No.21 of 2021, dated 04.03.2021 and to set-aside the same and to direct the respondent to produce the CCTV footages available in the adjacent building of the alleged place of occurrence, dated 17.01.2021 before the learned Judicial Magistrate No.I, Sattur.

For Petitioner : Mr.C.M.Arumugam
For Respondent : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to quash the order passed in Cr.M.P.No.64 of 2021 on the file of the learned Judicial Magistrate No.I, Sattur, dated 04.03.2021 and to direct the respondent to produce the CCTV footages available in the adjacent building of the alleged place of occurrence, dated 17.01.2021, before the learned judicial Magistrate No.I, Sattur.

2.The petitioner was arrayed as an accused in Crime No.21 of 2021, which is registered for the offences punishable under Sections 294(b), 323, 324, 307 and 506 (ii) IPC. Based upon the complaint, given by one Lokirajan, one of the co-accused in the above said matter, by name, Muniasamy has given a complaint against the Sub-Inspector of Police attached with the respondent Police Station and based upon that, enquiry was conducted. During the course of enquiry, the Sub-Inspector of Police as well as the Inspector of Police have given contradictory statement regarding the availability of the CCTV camera adjacent to the place of the alleged occurrence. For the purpose of proving innocence of the accused, the CCTV footage, which is available in that area is required. So, the petition filed in Cr.MP.No.64 of 2021 before the learned Judicial Magistrate No.I, Sattur, seeking an order of preservation of the footages, stored in the CCTV on the particular date of alleged occurrence. That petition came to be dismissed by the Trial Court observing that the investigation is over and for the purpose of



misdirecting the Trial Court process, this petition came to be filed.

3. Seeking an order of set aside the above said order, passed in Cr.MP.No.64 of 2021, dated 04.03.2021, this petition is filed.

WEB COPY

4. Heard both sides.

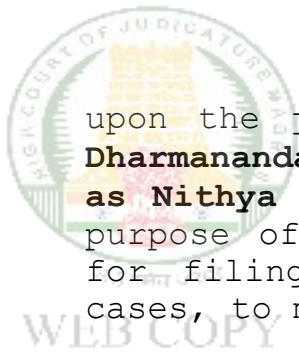
5. One point that has been alleged by the learned counsel for the petitioner is that the CCTV Camera, available in the place of occurrence, would have captured the alleged occurrence took place on 17.01.2021. So, that document is necessary for proving his innocence.

6. That point was resisted by the learned counsel for the respondent by filing counter to the effect that no such CCTV Camera is available in the place of occurrence and there is no possibility to recover the same. More over, it is the duty of the prosecution to prove the case. In which, the petitioner has no right to file such an application.

7. Perusal of entire materials placed before this Court shows that there is a clear admission, on the part of the Sub-Inspector of Police, Elaayirampannai Police Station, by name, one Ramasamy, to the effect that CCTV Camera that has been put up in the place of occurrence became non functional; A counter complaint has also been given along with CCTV footage. But, however, the counter complaint has not been registered. With regard to the very same occurrence, the CCTV footage, that is available in the place of occurrence, will give all the physical evidence to show, who actually involved in the occurrence.

8. The learned counsel for the petitioner would submit that such a piece of evidence, which is available, it may not be proper, on the part of the Investigating Officer to ignore the same by simply stating that the CCTV footage available in the place of occurrence is non functional. So, the Investigating Officer may get it certified by proper authority. If the CCTV footage is available, again, it is the duty of the Investigating Officer to recover the same and produce before the Concerned Court for considering the same, at the appropriate time. But, however, if the CCTV footage is available, the petitioner is not entitled for any copy. As mentioned earlier, that can be taken into account, only at the appropriate time by the concerned Court, at the appropriate stage of the proceedings.

<https://hcservices.courtservice.in/hcservices/> 9. The learned counsel for the petitioner would heavily rely



upon the judgment of the Hon'ble Supreme Court reported in **Nitya Dharmananda @ Lenin & Another Vs. Sri Gopal Sheelum Reddy Also Known as Nithya Bhaktananda and Another** in Crl.A.No.2115 of 2017 for the purpose of argument that even though, the accused is not entitled for filing application, under Section 91 Cr.P.C, in appropriate cases, to meet the ends of justice, the same can be considered.

10. In the facts and circumstance of the case shows that it is a case in counter case. The allegation that has been mentioned by the petitioner is that the counter complaint has not been properly registered and investigated. To show the manner of the occurrence, the CCTV footage is material evidence. So, in such circumstances, I am of the considered view that to meet the ends of justice and to find out the truth of the occurrence, the order passed by the Trial Court is liable to be set aside and accordingly, set aside with the following conditions:-

i) The CCTV footage that is available in the place of occurrence must be recovered by the respondent herein immediately and the same shall be submitted to the Trial Court in a shield cover.

ii) The same may be opened and used by the Trial Court, at the appropriate time, at the appropriate stage.

iii) A copy of the same, need not be supplied to the accused persons, during investigation.

iv) The CCTV camera, which is available in the place is under repair, proper certificate from the competent person, must be obtained by the respondent and file it before the concerned Court along with the case records. The certificate must also give details, the period from, which it became, non functional.

11. With the above direction, this Criminal Original Petition is liable to be allowed and the order passed in Cr.M.P.No.64 of 2021, on the file of the learned Judicial Magistrate No.I, Sattur, dated 04.03.2021 is hereby set aside and the Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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

<https://hcservices.ecourts.gov.in/hcservices/>



correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.I,
Sattur.

2.The Inspector of Police,
Elaayirampannai Police Station,
Virudhunagar District.

Copy to:-

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

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-26703[F] dated
18/08/2021)

Crl.O.P. (MD)No.11061 of 2021
17.08.2021

_RD(7.09.2021) 4P 5C