BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.06.2021

Delivered on : 13.07.2021

CORAM

**THE HONOURABLE MR.JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.15883 of 2019

and

Crl.MP(MD)No.9999 of 2019

Pinekas .. Petitioner/Defacto Complainant

vs.

1.The Superintendent of Police,
Virudhunagar
Virudhunagar District.

2.The Deputy Superintendent of Police,
Sivakasi,
Virudhungar District.

3.The Inspector of Police,
Sivakasi East Police Station,
Sivakasi,
Virudhungar District.
Cr No.302/2014.

4.Ganesh Babu

5.Rajkumar, .. Respondents/Complainant
(R4 and R5 impleaded as per Order of this Court
dated 04.02.2020 in Crl.M.P(MD)No.483/2020,
in Crl.O.P.(MD)No.15883/2019.

**Prayer:** Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the final report filed by the third respondent and taken on file as C.C.No. 117 of 2018 on the file of the Judicial Magistrate No. II, Sivakasi and further direct the first Respondent to conduct reinvestigation in Crime No.302 of 2014, on the file of the third respondent and transferring the same to any other honest officer in Virudhunagar District, under the supervision of the second respondent herein and to file a final report within a stipulated time frame fixed by this Court.

For Petitioner : Mr.J.Jeyakumaran
For R1 to R3 : Mr.R.M.Anbunithi
Additional Public Prosecutor
For R4 and R5 : Mr.A.Mohan

**ORDER**

This Criminal Original Petition is filed seeking an order of reinvestigation in Crime No.302 of 2014, on the file of the third respondent and to transfer the same to some other officer and direct supervision of the second respondent herein.

2.The case of the petitioner is that he is the defacto complainant in Crime No.302 of 2014, subsequently, taken on file in C.C.No.117 of 2018 on the file of the Judicial Magistrate No.II, Sivakasi. He was employed as Accountant cum Legal Decision Officer in the Standard Press (India) Private Limited, Sivakasi, Virudhunagar. The first accused, viz., Ganesh Babu, was working as a General Manager and maintaining all the relevant documents from 20.11.2008 and the second accused, viz., Rajkumar, was working as a General Manager and was incharge of purchase, stock storage and maintain note books and other related documents. The third accused, viz., Maharajan was working as a binding Contractor and was a friend of the second accused. So, during their service, they colluded together and created forged documents regarding the purchase of paper from Tamil Nadu Paper Mills Limited, namely, Vimala Note Book Company, Madurai and they misappropriated Rs.8,81,64000/-. So, the complaint given by the petitioner against the aforesaid three persons, including Maharajan, the binding Contractor, the case was registered under Sections 406, 420 and 120 (b) of I.P.C. But, without conducting proper investigation or enquiry and even without obtaining statement from the witnesses listed in the complaint, filed the final report hurriedly. It is the specific allegation that the third respondent colluded with the accused, namely, Vimala Note Book Company, Madurai. They have been omitted from the charge sheet. The company purchased the paper worth about Rs.8,88,09,778/- from Tamil Nadu Paper Limited and from Vimala Paper Company Private Limited, for conversion, the supply was recorded in the statement of the Standard Press (India) Private Limited. Thereafter, the accused persons colluding with the above said Vimala Paper Company Private Company misappropriated the above said amount. During investigation the money was not recovered, so, if the case is proceeding on trial, Justice is not possible, so, for that purpose, this petition is filed.

3.The fourth respondent has also filed a counter. Even in the F.I.R., the petitioner made a complaint only against three persons. No averment has been made against Vimala Paper Company Private Limited, Madurai. Even after issuance of the F.I.R., no representation was made by the petitioner with regard to the omission of Vimala Paper Company Private Limited. Investigation is pending for more than four years and only in the month of February -2018, final report was filed. The Manager of the Vimala Paper Company Private Limited has been examined by the investigating officer and has also been shown as witness No.2 (L.W.2), in the final report. There was a prevailing business motive between the Standard Paper Company and Vimala Paper Company, out of the same, a false complaint has been given. If really there was any loss worth about more than Rupees Eight Crores, the petitioner would not have kept quiet for quite a long time. The trial Court issued summons to the witness No.1, but, he is evading the summons.

4.Heard both sides.

5.It is a case of cheating misappropriation, falsification of accounts and misappropriation. On the basis of the F.I.R, investigation has undertaken and final report has also been filed and taken on file in C.C.No.117 of 2018. The crime is of the year 2014, now, six years lapsed, even then, the case could not be proceeded, during the pendency of this petition. The main ground, on which, the petition filed by the petitioner, is that the proposed accused, namely, Vimala Paper Company, Madurai, had not been added as an accused person and the paper books that has been purchased by the petitioner from Tamil Nadu Paper Limited, has been sent to the Vimala Paper Company, Madurai, for the purpose of conversion, has been misappropriated by the present accused along with the above said Company, that has not been recovered and even Vimala Paper Company had not been added as an accused person. The petitioner is kept quiet for more than four years, when the investigation was pending as mentioned by the fourth respondent. It appears that not even a single representation has been sent to the investigation officer with regard to the contention that now has been raised. Even though a contention has been raised by the petitioner to the effect that no enquiry or investigation has been conducted by the Vimala Paper Company, the third respondent would submit that the Manager of the Company has been shown as Witness No.2 (L.W.2). The statement of the witness No.2, viz.,Sanjeevi Rathinam, is also annexed in the typed set of papers. But, it is seen that he is the owner of the Standard Press Limited, which is the defacto complainant’s company. But, as per the witness No.9, one Vijay, is the concerned person, he is the Manager of the Vimala Paper Company. During his statement, he has stated that the petitioner Company is to purchase paper, books and as per the statement accounts maintained by them, from 21.03.2013 to 23.03.2013 thorugh separate invoices paper worth about Rs.1,36,65,856/- papers were supplied and on 22.03.2013, worth about Rs. 1,05,03,360/- papers were supplied and on 23.03.2013 worth about Rs.58,12,407/- papers were supplied. The amount was received on Letter of Credit basis. On enquiry by the auditing, he informed that the paper books for conversion they supplied to them is also not available. He has also further stated that only the employees of the petitioner's company by falsely stating that the papers books were available with them misappropriated the amount. This is the uniform statement that has been made by the employees of the petitioner's company. Now, a stand has been taken by the petitioner to the effect that only with the connivance of the Vimala Paper Company, the offence has been committed by the employees, so the Vimala Paper company is also a party to the misappropriation and as well as the offence. But, this is not the statement of the petitioner’s employees during the investigation.

6.A Perusal of the F.I.R registered on the basis of the complaint given by the petitioner shows that a specific averment has been made to the effect that only the employees forged the documents to show as if the papers were supplied to Vimala Paper Company for conversion and it is available with them. Quite contra to this complaint, the new stand has been taken to the effect that Vimala Paper Company is also a party to the forgery and misappropriation. So, even if we consider that it is a geneuine grievance of the petitioner, still opportunity is available to him before the trial Court through appropriate proceedings, through the third respondent. It is seen that he is evading the witness summons, citing the pendency of this petition. More over, on perusal of the records, it shows that all the available records have been recovered in the course of investigation and if during the course of evidence, it came to light that Vimala Paper Company is also involved in the commission of offence, as I mentioned earlier, the petitioner can very well work out the remedy as per law and procedure.

7.So, I am not convinced that this is a fit case for ordering re-investigation. Hence, this Criminal Original Petition deserves to be dismissed and accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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 Superintendent of Police,
Virudhunagar
Virudhunagar District.

2.The Deputy Superintendent of Police,
Sivakasi,
Virudhungar District.

3.The Inspector of Police,
Sivakasi East Police Station,
Sivakasi, Virudhungar District.

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

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SJ(CO)
LR (26.07.2021) 5P 5C