

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.06.2022

Pronounced on:29.06.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.7191 of 2019
& CrI.M.P.No.3960 of 2019

1. Karthik (Age 28),
S/o.Nagarajan,
No.D-167, Kurichi Housing Unit,
Phase-I, Coimbatore South,
Coimbatore Industrial Estate - 641 021.
2. Vignesh,
S/o.Sivaraman,
No.11 E, Anna Nagar,
VI Street, Saibaba Colony,
Opposite to Doppikanna,
Coimbatore North,
Coimbatore - 641 038. ... Petitioners/Accused 1 to 2

/versus/

1. State: Rep. By Sub-Inspector of Police,
E-2, Peelamedu Police Station,
Cr.No.26/2019.
U/s.75(1)(c) TNCP Act, 341, 447, 506(i) IPC
[FIR No.260 of 2019]
2. Kanagaraj,
S/o.Kandasamy,
No.7/41, Thanneerpandhal,
Thiyagikumarn Nagar,
Coimbatore. ... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, (a) to stay the investigation in furtherance of FIR number Crime No.260/2019 by the respondent herein until pendency of the quash petition and (b). to order calling for the records and quashing of the FIR number Crime No.260 of 2019 which is pending before E-2, Peelamedu Police Station.

For Petitioner : Mr.S.Namasivayam

For R1 : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

For R2 : No appearance

O R D E R

The petitioners are employees under M/s.Visage Holdings and Finance Pvt Ltd. It is a Non-Banking Financial Company (NBFC) registered under Reserve Bank of India. Mrs.Renuga, Proprietor of M/s.Sri Renuga Engineering and Mr.Kanakaraj borrowed loan from M/s.Visage Holdings and Finance Pvt Ltd, defaulted in repayment. The lender namely Bank M/s.Visage Holdings and Finance Pvt Ltd initiated arbitration proceedings against the borrower namely the proprietorix of M/s.Renuga Engineering and the co-borrower. The Arbitrator passed award on 14/06/2018 directing the borrower to pay a sum of Rs.6,21,538/- with 18% interest to the lender Company. With liberty to the lender Company to repossess the assets and sell it to adjust the due.

2. Knowing about the award, Renuga and Kanakaraj conspired and secreted away the machineries. Thereafter, gave a foreclosure proposal dated 15/02/2019. When the petitioners being the Executive Officers of the lender Bank went to the residence of the Kanagaraj, he took them to an Advocate Office situated in the next street and asked to negotiate with the Advocate by name Mayilvaganan. Without any provocation, they quarrelled and called police and influenced the police to arrest the petitioners. In spite of producing all the records and the circulars issued regarding procedure for Recovery and their right to reposes the machineries, bound by the undue influence of the Advocate Mayilvaganan, who was holding position in a political party, took the petitioner into custody illegally and remanded them before Judicial Magistrate. After 12 days of Judicial custody, they were granted bail by the Principal District and Sessions Judge, Coimbatore, 28/08/2019.

3. Alleging abuse of power and police excess in connivance with one Advocate Mayilvaganan of Coimbatore, the petitioners are before this Court to call for the records and quash the F.I.R in Crime No.260/2019 on the file of the Respondent Police.

4. This Court being prima facie satisfied with the cause of the petitioners, granted interim stay of further proceedings on 18/03/2019.

5. When the petitioner came up for final hearing on 20/06/2022, the Learned Government Advocate (Crl.Side), on instruction, reported investigation completed and final report filed and taken on file by Judicial Magistrate-II, Coimbatore in C.C.No.618/2020. Wondering, how the Investigating Officer, in spite of interim stay of the proceedings could complete the investigation and file final report directed Learned Government Advocate (Crl.Side) to produce the CD file. The Learned Government Advocate (Crl.Side) for the respondent submitted the copy of the final report which purported to have been prepared on 16/02/2019, on the same day of registration of complaint and arrest of these petitioners. The records show the Investigating Officer has recorded the statements of witnesses under Section 161(3) Cr.P.C and prepared final report on 16.02.2019. However, while producing the accused before the Learned Magistrate, on that day he has requested the remand of the accused on the ground the investigation could not be completed within 24 hours of the arrest. The final report, in fact, taken on file much thereafter, while the stay order was in force. Thus, the record very obviously discloses the fact that, the Investigating Officer had shown scant regard for the court order, this Court called for entire CD file and appearance of the Investigating Officer before the Court on 23/06/2022 to explain how and why investigation proceeded and final report filed in Crime No.260/2019, ignoring the interim stay of further proceedings granted on 18/03/2019.

6. Pursuant to the said direction, the following Police Officers who investigated the case and filed the final report appeared and filed their respective affidavits.

(i) Mr.K.Ganesh Pandian, who served as Sub Inspector in the said Station till 17/02/2019.

(ii) T.Jothi who served as Sub Inspector between 09/07/2019 and 02/03/2019.

(iii). Mr.P.Wikeshwaran, the present Inspector of Police, Peelamedu Police Station.

7. From the affidavit of Mr. K.Ganesh Pandian, the then Sub-Inspector of Police attached to Peelamedu Police

Station, Coimbatore, it appears, he took up the investigation soon after the registration of F.I.R and prepared the Final Report on the same day. After registration of the complaint at 14.30 hours, he has inspected the SOC, had recording the statements of witnesses and also prepared draft final report on the same day. On his transfer to D-2, Selvapuram Police Station, Coimbatore, on 18/02/2019, he left the draft final report for his successor to follow.

8. Thiru.T.Jothi, in his affidavit had stated that, without the knowledge of the interim stay granted by this Court, the Final Report on his instruction was E-filed on 27/11/2019 in C.C.No.19845/2019.

9. Mr.Wikneswaran, the Inspector of Police attached to the Peelamedu Police Station had submitted that, final report prepared on 16/02/2019, presented to the Court through e-filing on 27/11/2019 and taken on file by the Judicial Magistrate on 28/02/2020 and assigned C.C.No.618/2022. The Learned Magistrate, on 18/02/2022 read over the incriminating portion of evidence to the accused 1 and 2, who were present before the Court. They denied the charges, hence the case is adjourned for examination of L.W-1 to L.W-6 on 21/07/2022.

10. From the records, it is clear that, the petitioners who went for in search of machineries hypothecated to them, were in fact prevented by the defacto complainant/2nd respondent and taken to nearby place where one Mayilvagananan claiming himself an Advocate had abused the petitioners and violently turned them away, but able to manipulate with police and register a case in Crime No.260/2019 for the alleged offences under Section 75(1)(c) Tamil Nadu City Police Act, Sections 447, 341 and 506(1) I.P.C at about 14.30 hrs, on 16/02/2019. The respondent police soon thereafter arrested these two petitioners at about 17.00 hrs. They were taken to C.M.C. Hospital for medical examination at about 20.45 hrs and then produced before the Judicial Magistrate at about 21.00 hrs along with remand request.

11. The impugned F.I.R registered on 16/02/2019, at the instigation of the said Mayilvagananan got investigated on the same day, draft final report also prepared by the first Investigating Officer, after recording statements of witnesses. However, while producing the petitioners before the Magistrate,

a written request made for remand on the ground investigation not yet completed. To cap all, the Final Report prepared by the First Investigating Officer even without any verification filed through online on 27/11/2019, disregard of the fact that, this Court has granted stay of all further proceedings on 18.03.2019.

12. This Court is anguished by seeing the records and the way the liberty, Established Procedure of Law as well the orders of the Court being undermined by vested and powerful persons with the help of police. In the quash petition, though the defacto complainant is one of the respondent, he has not opted to appear, for reasons best known. The Learned Counsel for the petitioners state that, by filing this false complaint and taking the petitioners into wrongful custody, the defacto complainant, his wife and the Advocate had removed the machineries and had made the execution of the Arbitration Award, near impossible.

13. This Court find that the F.I.R filed for extraneous consideration and investigation completed within few hours of registration of complainant and preparation of final draft report speaks for itself. Further, the wilful omission to respect the order of this Court restraining the Investigating Officer to stop further proceedings, renders all further proceedings purported to have happened after 18/03/2019 as non-est in law. As a result, the malicious F.I.R followed by perfunctory investigation and haste filing of final report is quashed.

14. Accordingly, the Criminal Original Petition is allowed. The F.I.R in Crime No.260/2019 and C.C.No.618 of 2020 on the file of Judicial Magistrate-II, Coimbatore stands quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

bsm

To

1.The Judicial Magistrate No.II,
Coimbatore.

2.The Sub-Inspector of Police,
E-2, Peelamedu Police Station,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Namasivayam, Advocate SR.No.41357

Crl.O.P.No.7191 of 2019
& Crl.M.P.No.3960 of 2019

GPL(CO)
CB(12/07/2022)