



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the First day of June Two Thousand Twenty Two

PRESENT

The Hon`ble Mr Justice B.PUGALENDHI

CRIMINAL ORIGINAL PETITION No.12830 of 2022

SATHISH

[PETITIONER / ACCUSED]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
W-30 ALL WOMAN POLICE STATION,
POONAMALLE, CHENNAI.
CRIME NO.NOT KNOWN OF 2022.

[RESPONDENT]

For Petitioner : M/S.M.ARUN Advocate

For Respondent : M/S.A.GOKULAKRISHNAN, Additional Public Prosecutor

For Intervener : MR.NARESH KUMAR, Advocate

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable u/s.408, 417 and 420 of IPC, in Crime No. Not Known of 2022, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner had cheated the defacto complainant under the guise of marriage and received money from her. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is a Software Engineer and the defacto complainant, who is his colleague, has foisted this false complaint as if the petitioner has promised to marry her and cheated her.

4. The learned Additional Prosecutor appearing for the respondent submitted that a complaint was lodged by the defacto complainant on 24.03.2022 and the same is treated as petition enquiry.



5. Mr.Nareshkumar, the learned counsel for the defacto complainant sought permission of this Court to intervene in this matter and submitted that the petitioner has cheated the defacto complainant and promised to marry her and had sexual relationship with her. He had also received money from her. She also lodged a complaint before the Kumananchavadi Police station and the same was treated as petition enquiry in CSR.No.223 of 2022 and a similar complaint was lodged before Ashok Nagar Police Station in CSR.No.24 of 2022 and the present complaint has been lodged before the respondent police and the same is also treated as petition enquiry.

6. This Court considered the rival submissions.

7. The Honourable Supreme court in **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in **(2014) 2 SCC 1**, has discussed in detail, the manner in which cases have to be registered and has passed a detailed order with regard to the directions to be followed by the investigating officer on receipt of a complaint. For better understanding, the relevant portion is extracted hereunder:

"i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.



(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

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- a) Matrimonial disputes/family disputes
- b) Commercial offenses
- c) Medical Negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

8. Pursuant to the same, the Director General of Police has also issued a Circular in Rc.No.226313/Crime.4(3)/2013, dated 26.07.2018, by incorporating the aforesaid directions. In addition to the same, the Circular also contains the following directions / instructions:

"...

3) Hence, all Unit Officers are instructed to adhere to the following instructions in future without fail:-

"... ix) As seen from several cases, the Investigators have lack of legal knowledge to deal with the complaints, viz., civil disputes, money transactions, family disputes etc., Therefore, it is useful to extract the following desirable attributes of a good criminal investigator which are described in the book, viz., Encyclopedia of Police Law and Crimes:



a) Observation powers should be highly developed and specialized.

b) Report writing must be of better quality because the investigator's finished report will determine whether or not the case will go to court.

c) An investigator should be extrovert, he must have the ability to talk to people he doesn't know and gain their confidence within a short period of time.

d) Motivation the investigator must feel he is doing a good job and is performing an important and useful function.

e) A good investigator must be confident he has the abilities to do a good job.

f) The investigator must have a real interest in the criminal investigation filed, a natural curiosity, or inquisitiveness.

g) The ability to work without close supervision is essential. An investigator must be able to work and accomplish a task on his own.

h) Open-mindedness - the investigator must not jump to hasty conclusions.

i) Perseverance and patience - usually, an investigator is working on several cases simultaneously and must attend to a great deal of detail. The investigator needs the patience required for details, stakeouts and long drawn-out proceedings.

j) The criminal investigator should have a logical mind so he can reconstruct the sequence of events. The investigator should also have the imagination to conjecture what possibly could have occurred while the crime was being committed.

k) A criminal investigator must have above-average intelligence and learning ability. The investigator needs excellent memory and recall. He should have the ability to identify a method of operation, the similarities among cases, and the value of evidence and information.



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l) Resourcefulness - a good investigator investigates crimes as an impartial collector of information without bias or prejudice. He must also have the integrity to reject bribes.

m) The criminal investigator must possess a considerable amount of knowledge about the legalities involved in charging a suspect with a crime and prosecuting the crime in court.

n) The investigator should have an average, inconspicuous physical appearance. The investigation unit should have a balance of male and female investigators.

o) The Hon'ble High Court of Madras has come across several Criminal Original Petitions, wherein, the Investigation Officers slept over the complaints for several months / years in view of lack of above qualities to decide the complaint, which would cause unnecessary hardship to the complainant in getting statutory remedy before the respondents.

p) The enquiry should be completed upon the complaint within 15 days from the date of receipt of the complaint, in exceptional cases six weeks. Further, the status of the complaint should be communicated to the defacto complainant through RPAD / e-mail or through SMS within the aforesaid period.

q) The Monitoring Committee shall review all the case once in two months and submit a report to the Unit Officer concerned without any deviation.

4) The Unit Officers shall submit a report to the Director General of Police within one month from the date of receipt of a report from the Monitoring Committee, thereafter, if any deviation is noted, three months time is granted to take further action against the erring officer, after providing opportunity to submit his/her explanation.

5) The Periodical training programmes to the Investigating Officers to update their legal knowledge, especially on civil and criminal law and court procedures by utilizing services of retired Judges as well as Senior Advocates who are specialized on the civil and criminal laws.

6) The Monitoring Committee shall review all the cases once in two months whether the Station House Officers in their jurisdiction have followed the guidelines / directions issued



by the Hon'ble Supreme Court of India in "*Lalitha Kumari*" case in respect of registering FIR in letter and spirit and submit report to the unit officer concerned for taking necessary action. Based on the report of the Monitoring Committee, the unit officers concerned shall take necessary disciplinary action against the erring police personnel for their failure."

9. The police is provided with the power of investigation only after registering the complaint. But, in certain cases the police can proceed with the investigation even without registering the complaint. In order to avoid the abuse, the Honourable Supreme Court has permitted the police to conduct preliminary enquiry in respect of certain cases alone, as stated supra. But it does not mean that the police can proceed with the enquiry for months together as petition enquiry.

10. An ultimatum has been issued by the Honourable Supreme Court that the preliminary enquiry should be made in a time bound manner, not exceeding 15 days and in case of time extension, by adducing adequate reasons in the general diary, the time can be extended, that too for a maximum of six weeks. The circular issued by the Director General of Police also sails with the directions of the Hon'ble Supreme Court and in fact, in the Circular, the Director General of Police has also made it clear that the Monitoring Committee has to review the cases as to whether the directions issued in **Lalitha Kumari**'s case has been scrupulously followed or not and based on its report, the Unit Officers have to take appropriate action against the erring officials.

11. The nature of the complaint in the present case is that the defacto complainant who was aged about 34 years and a Software Engineer by profession has been cheated by the petitioner and on the premise of marriage, he had physical relationship with her. The petitioner has also lodged another complaint before the W23-All Women Police Station. However, the complaints of the petitioner are treated as petition enquiries for more than two weeks, despite the guidelines of the Hon'ble Supreme Court and the Circular issued by the Director General of Police and it appears that Kangaroo Courts are being conducted by the respondent police by keeping the petition enquiry as pending.

12. In view of the aforesaid discussions and considering the manner in which the complaint has been treated, this Court is inclined to grant anticipatory bail to the petitioner, even though the case has not been registered, with certain conditions.

13. Accordingly, the petitioner is ordered to be released on bail in the event of his arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before



the learned **Judicial Magistrate No.I, Poonamallee**, on condition that the petitioner shall execute **a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only)** with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a]the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before respondent police as and when required for interrogation.

[c]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[d]the petitioner shall not abscond either during investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f]If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

14. The Registry is directed to mark a copy to The Director General of Police for taking necessary actions against the respondent police who has not complied with the circular issued by him.

-sd/-
01/06/2022

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, POONAMALLEE.



2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALUR. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE
W-30 ALL WOMAN POLICE STATION,
POONAMALLE,
CHENNAI.

Copy To:

THE DIRECTOR GENERAL OF POLICE
CHENNAI.

+1 CC to M/S.M.ARUN Advocate on payment of necessary charges
SR.NO.8413

CRL OP.12830/2022

Date :01/06/2022

TA-03/06/2022