

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2022

PRONOUNCED ON : 16.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.18104 OF 2021

AND

CRL.M.P.NOS.11870 & 11871 OF 2021

AND

CRL.O.P.NO.21854 OF 2021

CRL.O.P.NO.18104 OF 2021

R.Dharmalingam

... Petitioner

.Vs.

1. The State Rep. by,
The Inspector of Police,
CBCID (South),
Coimbatore.

2. K.P.Ramasamy

3. K.P.Deivasigamani

4. K.P.Nataraj

5. C.R.Anandakrishnan

... Respondents

CRL.O.P.NO.21854 OF 2021

1. K.P.Ramasamy

2. K.P.Deivasigamani

3. K.P.Nataraj

4. C.R.Anandakrishnan

... Petitioners

.Vs.

1. R.Dharmalingam

2. The State Rep. by
The Inspector of Police,
CBCID South Coimbatore,
Coimbatore District.

... Respondents

PRAYER IN CRL.O.P.NO.18104 OF 2021:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the learned Chief Judicial Magistrate, Coimbatore to commence the speedy trial proceedings in C.C.No.21480 of 2019, on the file of the learned Chief Judicial Magistrate, Coimbatore.

PRAYER IN CRL.O.P.NO.21854 OF 2021:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to docket order dated 06.09.2021 in CC.No.21480/2019 and quash the same and direct the learned Chief Judicial Magistrate, Coimbatore to hear the protest petition after giving opportunity to the petitioners 1 to 4 herein.

CRL.O.P.NO.18104 OF 2021:-

For Petitioner : Mr.S.Jeyakumar

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 to R5 : Mr.Ar.L.Sundaresan
Senior Counsel
For M/s.A.L.Ganthimathi

CRL.O.P.NO.21854 OF 2021:-

For Petitioners : Mr.Ar.L.Sundaresan
Senior Counsel
For M/s.A.L.Ganthimathi

For R1 : Mr.S.Jeyakumar

For R2 : Mr.E.Raj Thilak
Additional Public Prosecutor

COMMON ORDER

Crl.O.P.No.18104 of 2021 has been filed to direct the learned Chief Judicial Magistrate, Coimbatore (trial Court) to commence the speedy trial proceedings in C.C.No.21480 of 2019.

2. Crl.O.P.No.21854 of 2021 has been filed to quash the docket order, dated 06.09.2021 in C.C.No.21480 of 2019 passed by the learned Chief Judicial Magistrate, Coimbatore (trial Court) and direct the trial Court to hear the protest petition after giving opportunity to the petitioners 1 to 4.

3. For the sake of convenience and clarity, the petitioners in Crl.O.P.No.21854 of 2021 and respondents 2 to 5 in Crl.O.P.No.18104 of 2021 are referred as accused and the petitioner in Crl.O.P.No.18104 of 2021 and for the 1st respondent in Crl.O.P.No.21854 of 2021 is referred as defacto complainant.

4. The issues for filing the above petitions are that one Ganeshamoorthy, brother of the defacto complainant in C.C.No.21480 of 2019 lodged a complaint before the Inspector of Police, Sulur Police Station, Coimbatore against the accused with regard to creation of forged document, dated 15.03.2006. Using the forged document, N.J.Subramaniam, one of the accused in C.C.No.21480 of 2019, had filed civil suit in O.S.No.438 of 2009 before the learned First Additional District Judge, Coimbatore. Initially, on the complaint of Ganeshamoorthy, C.S.R.No.555 of 2014 was assigned, but no case was registered. Thereafter, the defacto complainant moved this Court and filed a petition in Crl.O.P.No.9938 of 2015 and obtained a direction from this Court. After enquiry, the complaint of the defacto complainant was closed as 'Mistake of Fact' and notice was served to the defacto complainant on 05.08.2016, aggrieved against the same, the defacto complainant filed Crl.O.P.No.15024 of 2015 before this Court to direct the Inspector of Police, Sulur Police Station, Coimbatore to conduct proper enquiry and register a case on the basis of the complaint. This Court, by order, dated 05.10.2015, had set aside the closure report, dated 10.08.2015 and directed the Inspector of Police, Sulur Police Station, Coimbatore to conduct fresh enquiry on all aspects and take action in accordance with law. Despite the same, no action was taken by the Police and hence, the defacto complainant filed a Contempt Petition in C.P.No.2768 of 2015 before this Court, in which this Court, by order, dated 22.03.2016 issued direction to secure the forged sale agreement and cause enquiry into the matter. Thereafter, a case in Crime No.306 of 2016 was registered, for offence, under Sections 420, 468, 471 and 472 IPC. After investigation, it was reported by the Inspector of Police, Sulur Police Station, Coimbatore that 'Further Action Dropped' against the accused. Hence, the defacto complainant

filed Crl.O.P.No.15756 of 2016 before this Court seeking transfer of investigation in Crime No.306 of 2016. This Court, by order, dated 10.08.2016 set aside the closure report in Crime No.306 of 2016 and transferred the case to the file of the Inspector of Police, CCB, Coimbatore for reinvestigation. Despite the same, no action was taken by the Inspector of Police, CCB, Coimbatore. Subsequently, Crl.O.P.No.23712 of 2016 was filed by the defacto complainant seeking change of investigation from the file of Inspector of Police, CCB, Coimbatore to the file of the Inspector of Police, CB-CID, Coimbatore. Finally, the case in Crime No.306 of 2016 was transferred to the file of the Inspector of Police, CBCID (South) Coimbatore/respondent Police and it was renumbered as Crime No.2 of 2016. Since the investigation got delayed, again the defacto complainant filed Crl.O.P.No.22787 of 2018 seeking filing of final report within two months. This Court, by order, dated 24.09.2018 directed the respondent Police to file final report within a period of two months. Finally, the respondent Police prepared the final report deleting the names of the accused in a hurried manner. Despite several directions of this Court, the Police for one reason or other was reluctant to register FIR, conduct proper investigation and file charge sheet against the accused, who are involved in the case.

5. In this case, the primary allegation is that an unregistered forged sale agreement, dated 15.03.2016 was created, using the same, N.J.Subramaniam filed civil suit in O.S.No.438 of 2009 before the learned First Additional District Judge, Coimbatore. The stamp papers, on which the sale agreement, dated 15.03.2006 was prepared itself, came into existence only on 03.12.2008. The father of Ganeshamoorthy and Dharmalingam/defacto complainant viz., Ramukutty Goundar is said to have executed the unregistered sale agreement on 15.03.2006. The said Ramukutty Goundar died on 11.08.2007. On the fact of it, it is apparent that it is a forged document. During investigation, the unregistered sale agreement was sent to the Forensic Department, Chennai and report obtained.

6. During investigation, no notice was served to the defacto complainant for deleting the names of the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj and Anandhakrishnan in the charge sheet. Hence, the defacto complainant filed a Protest Petition in C.M.P.No.337 of 2019 in Crime No.2 of 2016 before the learned Chief Judicial Magistrate, which was dismissed on 26.08.2019, against which, a revision was filed before this Court in Crl.R.C.No.967 of 2019, wherein, this Court, by order, dated 13.11.2019 set aside the order, dated 26.08.2019 in C.M.P.No.337 of 2019 and directed the learned Chief Judicial Magistrate, Coimbatore to take up the Protest Petition on file, hear the defacto complainant and pass orders

on merits. Aggrieved against the order, the accused and others approached the Hon'ble Apex Court in Special Leave to Appeal (Crl.)No.354 of 2020, which was dismissed on 24.01.2020, confirming the order in Crl.R.C.No.967 of 2019, dated 13.11.2019. In the meanwhile, the learned Chief Judicial Magistrate, Coimbatore following the direction of this Court in Crl.R.C.No.967 of 2019 had passed order, dated 18.12.2019 finding prima facie case against all the accused viz., N.J.Subramaniam, K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishnan, Dhanapal and Ramasamy, took cognizance of the case for offence, under Sections 120(b), 467, 468, 471, 420 r/w 511 IPC and issued summons to them. After receipt of summons, the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishnan appeared before the learned Chief Judicial Magistrate, Coimbatore submitted that they should be heard in the Protest Petition as directed by the Hon'ble Apex Court, but the learned Chief Judicial Magistrate, Coimbatore by docket order, dated 16.09.2021 posted the case to 18.10.2021 with the following observations:-

"Heard Counsels, Perused the order of the Hon'ble Apex Court in Petition (S) NO.354 of 2020 for Special Leave to appeal (Criminal) No.(S).354 of 2020 dated 24.01.2020 proceedings preferred by A1 to A4 where Hon'ble Apex Court directed this Court to hear the petitioners in protest petition and take decision on the point of issuing process (or) not, but this Court had taken cognizance of this matter on 18.12.2019 and protest petition is disposed of and the order of the Hon'ble Apex Court was passed on 24.01.2020 and copy of the order served on 03.02.2020. Hence, A1 to A4 have to clarify and get suitable order from the Hon'ble Apex Court to proceed further. Hence, at request posted to 18.10.2021. Petition U/s.317 Cr.P.C filed and allowed for A6,A5, A7,"

7. As against the above docket order, dated 06.09.2021, K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishnan filed Crl.O.P.No.21854 of 2021 are before this Court. The defacto complainant Dharmalingam filed Crl.O.P.No.18104 of 2021 seeking direction to direct the learned Chief Judicial Magistrate, Coimbatore to commence the speedy trial proceedings in C.C.No.21480 of 2019.

8. The learned Senior Counsel appearing for the petitioners in Crl.O.P.No.21854 of 2021 and for the respondents 2 to 5 in Crl.O.P.No.18104 of 2021 submitted that the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj and Anandhakrishnan and N.J.Subramaniam aggrieved on the orders of

this Court in CrI.R.C.No.967 of 2017, dated 13.11.2019, had approached the Hon'ble Apex Court in Special Leave to Appeal (CrI.)No.354 of 2020. The Hon'ble Apex Court, by order, dated 24.01.2020 held as follows:-

"Heard learned counsel for the petitioners.

We do not find any ground to interfere in the impugned order directing the Magistrate to hear on the protest petition. We clarify that the concerned Magistrate will hear the petitioners also on protest petition and take decision on the point of issuing process or not. The observations made during the course of the impugned order will not stand in the way of the learned Magistrate while deciding protest petition.

The special leave petition is, accordingly, dismissed.

Pending applications, if any, stand disposed of accordingly."

9. The learned Senior Counsel further submitted that the pendency of the appeal before the Hon'ble Apex Court was informed to the learned Chief Judicial Magistrate, Coimbatore as well as to the prosecution. Despite the same, the learned Chief Judicial Magistrate, Coimbatore passed an order on 18.12.2019 in C.M.P.No.337 of 2019. He further submitted that the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishnan and N.J.Subramaniam produced the copy of the order of Hon'ble Apex Court to the learned Chief Judicial Magistrate, Coimbatore on 06.09.2021. On the same day, the learned Chief Judicial Magistrate, Coimbatore had passed the docket order, which is as follows:-

"Heard Counsels, Perused the order of the Hon'ble Apex Court in Petition (S) NO.354 of 2020 for Special Leave to appeal (Criminal) No.(S).354 of 2020 dated 24.01.2020 proceedings preferred by A1 to A4 where Hon'ble Apex Court directed this Court to hear the petitioners in protest petition and take decision on the point of issuing process (or) not, but this Court had taken cognizance of this matter on 18.12.2019 and protest petition is disposed of and the order of the Hon'ble Apex Court was passed on 24.01.2020 and copy of the order served on 03.02.2020. Hence, A1 to A4 have to clarify and get suitable order from the Hon'ble Apex Court to proceed further. Hence, at request

posted to 18.10.2021. Petition U/s.317 Cr.P.C filed and allowed for A6,A5, A7,"

10. The learned Chief Judicial Magistrate, Coimbatore despite knowing the fact that the Hon'ble Apex Court had directed to hear the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishanan and N.J.Subramaniam in protest petition and take decision on the point of issuing process or not, the learned Chief Judicial Magistrate, Coimbatore passed the above docket order, which is not proper and violation of the Hon'ble Apex Court order. The learned Chief Judicial Magistrate, Coimbatore ought to have recalled the order, dated 18.12.2019 and heard the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishanan and N.J.Subramaniam and ought to have decided whether the cognizance to be taken against them or not. But the learned Chief Judicial Magistrate, Coimbatore failed to hear and denied the opportunity of the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Nataraj, Anandhakrishanan and N.J.Subramaniam to make their submissions, which is gross violation of the order of the Hon'ble Apex Court order. Hence, he sought for setting aside the docket order of the learned Chief Judicial Magistrate, Coimbatore.

11. The learned counsel for the petitioner in Crl.O.P.No.18104 of 2021 and for the 1st respondent in Crl.O.P.No.21854 of 2021 submitted that the case is kept pending at the instance of the accused, by not receiving summons and absenting themselves alternatively. After the order of this Court in Crl.R.C.No.967 of 2019, dated 13.11.2019, the case before the trial Court was listed on 22.01.2020. On that day, A1 to A4 failed to appear and the case was adjourned for issuance of fresh summons. Likewise, on 21.02.2020, a memo was filed by A2 to A5 to keep document No.44 in safe custody and the case was adjourned to 07.03.2020. On 07.03.2020, it was recorded that the pendency of C.M.P.No.157 of 2020 is recorded, one Mr.C.P.Subramanian filed vakalath for A5 to A7. Thereafter, the Courts below were closed due to COVID-19 pandemic. On 30.09.2020, it was recorded that C.M.P.No.157 of 2020 is pending. Thereafter, none of the accused appeared before the trial Court by absenting themselves and got the case adjourned. On 16.04.2021, again it was recorded that summons to A1 to A4 not served. Thereafter, due to second lock down, restrictions in functioning of Court were imposed. Finally, on 06.09.2021, the impugned docket order was passed by the trial Court. Thus, it is clear how the accused have been successfully dragging on the proceedings before the trial Court for one reason or other.

12. The learned counsel further submitted that the accused are aware about the pendency of C.C.No.21480 of 2019 against

them. Though the Hon'ble Apex Court passed the order on 24.01.2020 in Special Leave to Appeal (Crl.)No.354 of 2020 and received the same on 29.01.2020, it was produced before the trial Court only on 06.09.2021, for which no reason given. All the accused in tandem are attempting to protract the trial for one reason or other. Hence, he prayed for dismissal of Crl.O.P.No.21854 of 2021 and sought for direction to the trial Court to complete the trial in C.C.No.21480 of 2019.

13. This Court considered the rival submissions and perused the materials available on record.

14. The accused approached the Hon'ble Apex Court in Special Leave to Appeal (Crl.)No.354 of 2020 to quash the order passed by this Court in Crl.R.C.No.967 of 2019, dated 13.11.2019, which cannot be faulted with. The trial Court had passed an order in C.M.P.No.337 of 2019 on 18.12.2019 finding prima facie case against all the accused viz., N.J.Subramaniam, K.P.Ramasamy, K.P.Deivasigamani, K.P.Natarj, Anandhakrishnan, Dhanapal and Ramasamy and took cognizance of the case for offence, under Sections 120(b), 467, 468, 471, 420 r/w 511 IPC without hearing the accused. The Hon'ble Apex Court in its order, dated 24.01.2020 had given a positive direction to the trial Court to hear the accused while considering the Protest Petition in C.M.P.No.337 of 2019 and take decision on the point of issuing process or not. In such circumstances, the trial Court is duty bound to hear the accused and thereafter, take a decision on the cognizance and answer the point of issuing process or not.

15. In view of the positive direction of the Hon'ble Apex Court in Special Leave to Appeal (Crl.)No.354 of 2020, this Court quashes the docket order, dated 06.09.2021 in C.C.No.21480 of 2019 and consequently, the order dated 18.12.2019 in C.M.P.No.337 of 2019 passed by the trial Court is set aside insofar as the accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Natarj, Anandhakrishnan and N.J.Subramaniam are concerned. The trial Court is directed to take up the Protest Petition in C.M.P.No.337 of 2019 on its file, hear the submissions and objections of accused viz., K.P.Ramasamy, K.P.Deivasigamani, K.P.Natarj, Anandhakrishnan, N.J.Subramaniam and the defacto complainant and pass orders on merits in accordance with law, within a period of 15 days from the date of receipt of a copy of this order. Accordingly, Crl.O.P.No.21854 of 2021 is allowed.

16. Finding that there are only 33 witnesses and 73 documents, the trial Court is directed to proceed with the trial in C.C.No.21480 of 2019 and complete the same within a period of six months from the date of receipt of a copy of this order. This six months time is only an outer limit. Accordingly, Crl.O.P.No.18104 of 2021 is disposed of.

17. The other accused viz., Dhanapal and Ramasamy having no grievance, not filed any petition earlier against the order of the trial Court, dated 18.12.2019 in C.M.P.No.337 of 2019. Hence, they are restrained from filing any fresh petition till disposal of C.M.P.No.337 of 2019. If any such petition is filed, the same not to be entertained by the trial Court.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate Court,
Coimbatore.
2. The Inspector of Police,
CBCID South Coimbatore,
Coimbatore District.
3. The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.18253

CRL.O.P.NOS.18104 & 21854 OF 2021

GMR(CO)
PBS/21/03/2022