



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Cr1.O.P.No.32079 of 2019
and
Cr1.M.P.No.17603 of 2019

D.Vijaya

... Petitioner/Defacto Complainant

Versus

1. State Rep. by
The Inspector of Police,
District Crime Branch,
Perambalur.
(Crime No.9 of 2012)

2.V.Janarthanan

3.J.Rajan Babu

4.K.Poottai Govindaraj

... Respondents/ Accused 1 to 3

Prayer:

This Criminal Original Petition has been filed under Sections 482 and 483 of Criminal Procedure Code to direct the first Respondent Police to give written request to the learned Judicial Magistrate, Perambalur in C.C.No.230 of 2015 for further investigation to seize the vehicles bearing Registration Nos.TN 46 B2 999, TN 46 C 2999, TN 32 B 2999, TN 23 B 2799, TN 28 E 6286, TN 05 33 73, TN 01 L 0929, TN 46 A 2999 and one LPG cylinder lorry bearing Registration No.TN 32 Z 2266 for the just decision of the case, the life purpose of the adjudication of the present case.

For Petitioner : Mr.C.S.Dhanasekaran

For R1 : Mr.S.Vinothkumar
Government Advocate (Cr1.Side)

For R2 : Mr.R.Vivekananthan



ORDER

This Criminal Original Petition has been filed seeking to direct the first Respondent Police to give written request to the learned Judicial Magistrate, Perambalur in C.C.No.230 of 2015 for further investigation to seize the vehicles bearing Registration Nos.TN 46 B2 999, TN 46 C 2999, TN 32 B 2999, TN 23 B 2799, TN 28 E 6286, TN 05 33 73, TN 01 L 0929, TN 46 A 2999 and one LPG cylinder lorry bearing Registration No.TN 32 Z 2266 for the just decision of the case, the life purpose of the adjudication of the present case.

2. When the case is taken up for hearing, the learned Counsel for the second Respondent submitted additional typed set of papers. As per the additional typed set of papers, the learned Counsel for the second Respondent had furnished the copy of the plaint in O.S.663 of 2005 and the suit had been registered by the learned District Munsif Court, Kallakurichi, wherein, the date of judgment is mentioned as 08.12.2006 and the result is "This suit is dismissed as settled out of court and refund 1/2 of the court fee less 5%".

3. The learned Counsel for the second Respondent also invited the attention of this Court to the averments in the plaint, relevant portion of the same is extracted hereunder :

"7. Tanker lorries were owned by the 2nd plaintiff which were used in the said business. The first defendant has simply obtained signatures from the 2nd plaintiff in transfer forms in order to enable him to the 7 tanker lorries. Believing the honey quoted words of first defendant the 2nd plaintiff also signed necessary papers regarding the lorries.

Therefore, the very averments had been wantonly suppressed in this FIR. Therefore, it is the submission of the learned Counsel for the second Respondent that this petition itself is not maintainable.

4. The learned Counsel for the Petitioner submitted that what had been argued by the learned Counsel for the second Respondent cannot be accepted. Considering the fact that the prayer in the suit in O.S.No.663 of 2005 is for the dissolution of the partnership firm. It is a dealership for the Indian Oil Corporation. Therefore, the submission of the learned Counsel



for the second Respondent cannot be accepted. Further, he would submit that the subject matter of the suit settled between the plaintiff and the defendant is only the issue with the dealership. Therefore, that does not have a bearing regarding the dispute between the Petitioner and the second Respondent with regard to the criminal case pending on the file of the learned Judicial Magistrate, Perambalur.

5. The submission of the learned Counsel for the Petitioner is that this Court had to pass direction to the Investigation Officer to proceed with the investigation cannot at all be accepted, considering the fact that the statement of the Petitioner herself is recorded by the Investigation Officer. Further, as per the settled position of the law as laid down by the Hon'ble Supreme Court in various rulings that the Investigation Officer cannot be directed to conduct the investigation in a particular manner. If the Petitioner/ defacto Complainant is not satisfied with the Investigation Officer, the Petitioner/defacto Complainant herself can lodge a private complaint before the Magistrate. Also regarding trial, the trial Judges are guided by the evidence of the witnesses. Based on the evidence of the witnesses, charges can also be altered by the trial Judges either by Magistrate or by Sessions Judges.

6. Here, it is the case of the Petitioner herein/defacto Complainant that her brother in the guise of selling the lorries had obtained her signature, had taken control of the vehicles and sold them without handing over any money to her. That is the gist of the complaint. For the same, lorries need not be seized. It is borne out of documents. It is the subject matter of the trial. The Investigation Officer cannot be directed by the Court to seize the lorries. Only then the trial can proceed. The Petitioner/defacto Complainant cannot guide the Investigation Officer. If the Petitioner/defacto Complainant is not satisfied, she can during her deposition speak about her view of the issue instead of sticking to the statement as recorded by the Investigation Officer. Trial Courts are not governed by the statements of witnesses recorded under Section 161 of Cr.P.C. by the Investigation Officers. The witnesses are free to speak out the fact of the criminal cases. Based on the facts, new facts also can be discovered by the learned trial Judges in the course of the trial. If the trial Judge feels that the vehicles are to be seized, the trial Judge can pass appropriate orders at the relevant time. That cannot be a ground to file this petition under Section 482 of Cr.P.C. and stall the trial.



7. In the light of the above, this Criminal Original Petition is dismissed with a direction to the learned Judicial Magistrate, Perambalur to issue fresh summon to the same prosecution witnesses and dispose of the same within a reasonable time of three months from the date of receipt of a copy of this order. The Petitioner is directed to co-operate with the trial. It is for her either to speak out or to leave.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Perambalur.
2. The Inspector of Police,
District Crime Branch,
Perambalur.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.29858
+1cc to Mr.R.Vivekananthan, Advocate, S.R.No.30184

Crl.O.P.No.32079 of 2019
and
Crl.M.P.No.17603 of 2019

SR(CO)
CT 26/05/2022