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Cont. P. (MD) No.838 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	25.08.2022
DELIVERED ON	30.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Contempt Petition (MD) No.838 of 2022

M. Bhuvaneswaran

Petitioner

v

Mr. T. Senthilkumar
The Assistant Commissioner of Police
Cyber Crime Cell
Madurai City
Madurai

Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, seeking to punish the respondent for wilfully and wantonly disobeying the order dated 21.04.2016 passed by this Court in Crl.O.P. (MD) No.6319 of 2016.

For petitioner	Mr. Hameed Ismail
For respondent	Mr. A. Thiruvadi Kumar Addl. Public Prosecutor

ORDER

Alleging that the order dated 21.04.2016 passed by this Court in Crl.O.P. (MD) No.6319 of 2016 has been wilfully disobeyed by the respondent, this contempt petition has been filed.

2 The minimum facts that are required for deciding this contempt petition are as under:



2.1 In Crl.O.P. (MD) No.6319 of 2016, this Court, *vide* order dated

21.04.2016, alleging noncompliance of which, this contempt petition has been filed, had issued the following directions:

"10 From a conspectus of the aforesaid facts, it is apparent that some vested elements have used the process of Court to ensure that the ticket given to Bhuvaneswaran is withdrawn and they have also succeeded in their endeavour, but they cannot be allowed to go scot-free for having planted a misleading statement in the social media, as if this Court had passed orders in Crl.O.P. (MD) No.6319 of 2016, when the truth is otherwise. The averments of Bhuvaneswaran in paragraph no.6 of his affidavit, which is extracted above, read with the impugned statement that has been extracted above, discloses the commission of cognizable offences, to be investigated by the Cyber Crime Cell, Madurai City Police in order to find out the persons responsible for planting and circulating the aforesaid statement.

11. Therefore, this Court directs the Assistant Commissioner of Police, Cyber Crime Cell, Madurai City to register a suo motu FIR and proceed with the investigation in accordance with law. With the above direction, Crl.O.P. (MD) No. 6319 of 2016 is closed."

2.2 Pursuant to the above directions, the Inspector of Police, Cyber Crime Cell, Madurai City, registered an FIR in Cr.No.11 of 2016 under Section 67 of the Information Technology Act, 2000.

2.3 After the registration of the FIR, there was no progress in the investigation of the case and therefore, Bhuvaneswaran (aggrieved person) filed a petition in Crl.O.P. No.5837 of 2022 to transfer the investigation in Cyber Crime Cell Cr.No.11 of 2016, to the CB-CID.

2.4 When Crl.O.P. No.5837 of 2022 came up for hearing, the Inspector of Police, Cyber Crime Cell, Madurai City, appears to have filed a counter affidavit, wherein, it is stated as under:



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"5. I humbly submit that, after getting report from the Forensic Science Laboratory, Chennai, the respondent police sent requisition to the "Admin/Legal Officer WhatsApp Inc., California, USA and request them to provide the particulars about the creator of the above said WhatsApp, but even after repeated request there is no reply from them.

6. I humbly submit that in this case, the respondent police totally enquired 9 witnesses and due to non information from the "Admin/Legal Officer WhatsApp Inc., California, USA", the respondent police closed the case as "undetected" on 09.04.2022 and sent the final report to the learned Judicial Magistrate No.1, Madurai and the same was not yet taken on file."

2.5 Alleging that the Assistant Commissioner of Police, Cyber Crime Cell, Madurai City, has committed contempt of Court, Bhuvaneswaran has filed the instant contempt petition.

3 On 25.08.2022, Mr. Senthil Ilanthiraiyan, Inspector of Police, Cyber Crime Police Station, Madurai City, was present before this Court.

4 Mr. Hameed Ismail, learned counsel for Bhuvaneswaran, contended that when this Court, in the order dated 21.04.2016 in CrI.O.P. (MD) No.6319 of 2016, had directed the Assistant Commissioner of Police, Cyber Crime Cell, Madurai City, to register a *suo motu* FIR and proceed with the investigation, Mr. Jesu Jeyapal, Assistant Commissioner of Police, Cyber Crime Cell, Madurai City, who was present in the Court on that day, *i.e.*, 21.04.2016, ought to have registered the *suo motu* FIR but, instead, the Inspector of Police, Cyber Crime Cell, has registered the *suo motu* FIR in Cr.No.11 of 2016 and without conducting the investigation properly, he has closed the case as "undetected" on 09.04.2022, which acts are contumacious



5 Refuting the aforesaid submissions, Mr. A. Thiruvadi Kumar, learned Additional Public Prosecutor, submitted that Mr. Jesu Jeyapal, who was present in the Court on 21.04.2016, was the Assistant Commissioner of Police, Central Crime Branch, Madurai City and was not the Assistant Commissioner of Police, Cyber Crime Cell, Madurai City. He further brought to the notice of this Court that the Cyber Crime Cell, Madurai City, was formed as a separate wing by the proceedings dated 13.11.2010 of the Director General of Police. He also produced a copy of the said proceedings which reads as under:

"ORDER:

The Government in their G.O.Ms.No.660, Home (Pol.12) Dept. dated 22.07.2010 have accorded sanction of the following police personnel/executive staff for each city by redeployment to Cyber Crime Cells at Trichy and Madurai Cities to form the separate unit.

1	Inspector of Police	01
2	Sub-Inspector of Police	01
3	Other ranks (Head Constables/Gr.I, Gr.II PCs)	04
	Total	06"

6 Placing reliance on the aforesaid proceedings, the learned Additional Public Prosecutor submitted that the Cyber Crime Cell, Madurai City unit, was headed by an officer of the rank of Inspector of Police and not by an officer of the rank of Assistant Commissioner of Police; therefore, though this Court had directed the Assistant Commissioner of Police, Cyber Crime Cell, Madurai City, to register a *suo motu* FIR, in the absence of the post of Assistant Commissioner in the said unit, the Inspector of Police,



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being the head of the unit then, registered the FIR in Cr. No.11 of 2016. He also produced a copy of the subsequent Government Order in G.O. (Ms.) No. 63, Home (Police-XIV) Department dated 08.02.2021 under which the Madurai Cyber Crime Police Station was formed in terms of Section 2(s) of the Code of Criminal Procedure, 1973. He further submitted that only after the constitution of a separate police station effective 08.02.2021, did the said Cyber Crime Police Station get the post of Assistant Commissioner of Police.

7 There appears to be sufficient force in the aforesaid submission of the learned Additional Public Prosecutor. Though in the order dated 21.04.2016 in CrI.O.P. (MD) No.6319 of 2016, this Court had referred to Mr. Jesu Jeyapal as the Assistant Commissioner of Police, Cyber Crime Cell, in reality, he was not holding the said post, inasmuch as, as rightly submitted by the learned Additional Public Prosecutor, the Cyber Crime Police Station itself was formed only on 08.02.2021 vide G.O. (Ms.) No.63, *supra*.

8 As regards the contention of the learned counsel for the petitioner that the Inspector of Police, Cyber Crime Police Station, has conducted a perfunctory investigation and closed the case in Cr.No.11 of 2016 as 'undetected', that cannot be the subject matter of contempt proceedings, inasmuch as, to be noted, this Court, in the order dated 21.04.2016, had only directed the police to investigate the case and had not



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directed that the police should file a final report in the case. If the police are unable to prosecute an offender for want of evidence, they cannot be hauled up for contempt. In any event, Bhuvaneswaran has the remedy either to file a protest application against the closure of Cr.No.11 of 2016 or pray for transfer of the investigation in Cr.No.11 of 2016, in the petition that has been filed by him in Crl.O.P. No.5837 of 2022, which is still pending on the file of this Court. For punishing a person under the Contempt of Courts Act, 1971, it should be shown that he had wilfully violated the order of the Court. In this case, there is no such wilful violation of the Court's order as contended by Mr. Hameed Ismail.

In the result, this contempt petition fails and is accordingly dismissed.

30.08.2022

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