



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02/03/2022

CORAM:

WEB COPY

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD) No.11243 of 2019

Ramesh : Petitioner/De-facto Complainant

Vs.

1.The Superintendent of Police,
Kanyakumari District at
Nagercoil.

2.The Deputy Superintendent of Police,
CBCID, Tirunelveli Range,
Tirunelveli.

3.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

: Respondents

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to transfer the investigation in Crime No.33 of 2018 from the 3rd respondent police to the 2nd respondent for fair and impartial investigation.

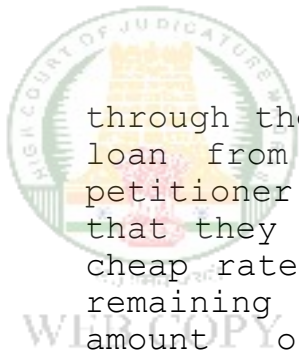
For Petitioner : Mr.K.P.Narayanakumar
For Respondents : Mr.SS.Madhavan
Government Advocate(Crl side)

O R D E R

This criminal original petition has been filed seeking transfer of the the investigation in Crime No.33 of 2018 from the 3rd respondent police to the 2nd respondent police for fair and impartial investigation.

2.The case of the petitioner in brief:-

The petitioner is running an independent business called 'M.P.N.Trading', which deals with cashew-net business. In the course of the above said business transaction, he developed acquaintance with the 4th accused namely Jeya Christ. He instigated the petitioner to develop his business with the help of A1 to A3. He informed that they got good business transaction with the foreign countries and



through them, cashew-nuts can be imported in cheap rate by availing loan from Axis Bank. In pursuance of the above said talk the petitioner met A1 to A3 in Kannyakumari. At that time, they assured that they would import cashew-nut from African countries in a very cheap rate and they demanded 20% of the amount as advance and the remaining amount shall be paid after receiving the shipment. The amount of Rs.46,85,809/- was deposited in the Account No.21040200000645 in the Federal Bank, Samy Thoppu Branch as detailed in the petition.

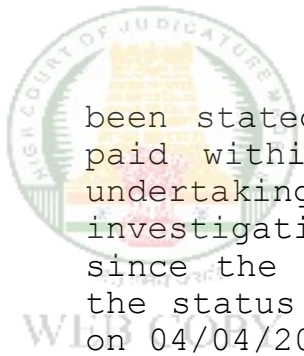
3.The petitioner paid Rs.64,74,000/-. During the course of the above said transaction, A1 to A3 used to message and told the petitioner that the cost of the commodities are low in rate, than expected and induced to order more quantity. Believing the words of the above said accused persons, the petitioner was slipped into the net trap, which was spread by the accused persons for squeezing money.

4.Right from the beginning, it appears that A1 to A3 acted with an intention to cheat the petitioner. The accused persons have also facing enquiry on the basis of the complaint given by one Mahendran before the District Crime Branch, Theni. On 29/06/2018, the petitioner filed a complaint. But no case has been registered. So he approached the jurisdictional Magistrate Court by filing a petition under section 156(3) Cr.P.C. Based upon the above said order only, the case was registered in Crime No.33 of 2018 for the offences under sections 420, 406, 120(b) and 506(i) IPC, on 27/11/2016.

5.The accused persons approached this court by way of filing anticipatory bail application and that came to be dismissed. Second anticipatory bail application was also filed by them and that also came to be dismissed. But the police did not take any action to arrest the accused persons. This petitioner has also suspected that one Assistant Manager of Axix Bank, Nagercoil Branch, has also involved in the offence. This has also been brought to light only during the course of investigation. It is also seen that the accused persons have influenced the investigation. After 2018, it appears that no proper action has been taken and no investigation has also been undertaken in the right direction. So, on the basis of that ground, this petition is filed seeking transfer of investigation.

6.Heard both sides.

7.The petition was filed in 2019 and during the course of hearing, several orders have been passed by this court directing the respondents herein to complete the investigation process and file a final report. More particularly, when the anticipatory bail was moved by one of the accused namely A.Sahaya Maclean Augustin Roy @ Maklin Ray in Crl.OP(MD)No.18564 of 2019, further direction was also

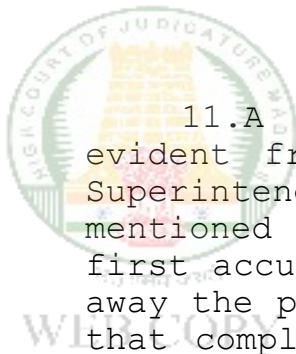


been stated that the entire amount due to the complainant will be paid within a period of four weeks. Based upon the above said undertaking, the respondent police was directed to continue with the investigation with regard to sale of the house of the first accused, since the first accused has got some *modus operandi* as set out in the status report, which was filed by the Superintendent of Police, on 04/04/2020. So on the basis of the above said status report, the Superintendent of Police was directed to monitor the investigation and file a status report on or before, 30/03/2020. In pursuance of the above, a status report has also been filed setting out the details of the investigation, that has been undertaken so far. The draft status report, which shows that since the anticipatory bail, that was filed by A1 and A2 came to be dismissed and finding that A1 is in abroad, look out notice has also been issued. For that purpose, the passport particulars of the first accused has been sought for by the concerned Department. Further when this petition was heard, the first respondent has submitted before this court, since the District Crime Branch has undertaken the investigation and look out notice has been issued against the first accused, after completing the investigation, final report will be filed within a short period of time. This is, dated 27/11/2020. Further, when the same was submitted before this court by the first respondent, by order, dated 29/11/2021, the first respondent was directed to file a final report, as no stay order has been granted by this court. Since it was submitted that the final report is also made ready and now more than two months lapsed, further progress is not known.

8.Now the grievance of the petitioner is that in spite of repeated dismissal of the anticipatory bail petitions, the first respondent has not taken any steps to arrest the accused persons. But from the perusal of the records and from the status report that has been filed by the first respondent, it is seen that proper steps have been taken by the first respondent. Because of the non-availability of A1 in India, they are not in a position to secure him.

9.Unless a strong case has been made out by the petitioner for transferring the investigation, the relief cannot be granted. Except stating that in spite of repeated dismissal of the anticipatory bail petitions, the accused have not been arrested, no other strong ground has been made out or alleged by the petitioner.

10.At one point of time, as mentioned earlier, because compromise talk was going on between the parties, it has failed for one or other reason. So the facts and circumstances of the cases clearly shows that there is no relationship between the accused persons and the first petitioner herein. So, absolutely no material or ground to sustain the relief that has been sought for by the petitioner.



11.A further development has also been taken, which has been evident from the complaint given against this petitioner to the Superintendent of Police, Kanniyakumari District, wherein he has mentioned that the other accused persons, who are brothers of the first accused are residing in Nagercoil and they are trying to sell away the property belonging to them and fled away from India and in that complaint, one Maklin Ray, who is the wife of Austin Ray has arrayed as 2nd accused. He has also stated that, that property has been sold to Rajkumar and 2nd respondent Maklin Ray, who is also a practising Advocate and they have also colluded with the first accused and other accused persons and purchased the property with a view to cheat the petitioner. They have been summoned and they also stated that they got nothing to do with the dispute between A1 to A3 and the petitioner.

12.In view of the above development, I am of the considered view that no purpose is going to be served to transfer the investigation, since it is at the fag end. After making enquiry with regard to further development, the first respondent is directed to file a report within a period of three months from the date of receipt of this copy of this order.

13.With the above said direction, this criminal original petition stands **disposed of**.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Superintendent of Police,
Kanniyakumari District at
Nagercoil.
- 2.The Deputy Superintendent of Police,
CBCID, Tirunelveli Range,
Tirunelveli.



3.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-9955[F] dated
04/03/2022)

CrI.O.P. (MD) No.11243 of 2019
02/03/2022

RS (06.05.2022) 5P-6C