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CRL MP(MD).



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 02/12/2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) . No.8347 of 2021
in
CRL OP(MD) . No.12047 of 2021

KR.Annamalai ... PETITIONER/3rd PARTY/DEFACTO COMPLAINANT

Vs

1.G.Tamilselvam ...RESPONDENT/PETITIONER/ACCUSED NO.2

2.State Rep.by
The Inspector of Police,
K.Pudur Police Station,
Madurai.
Cr.No.701/2021 ... RESPONDENT/RESPONDENT/COMPLAINANT

For Petitioner :Mr.RM.Arun Swaminathan,Advocate

For Respondents :Mr.K.Suyambulinga Bharathi, Advocate
for R.1

Mr.T.Senthil Kumar,
Additional Public Prosecutor,for R.2

PETITION Under Sec.439(2) of Cr.P.C.

PRAYER :-

For Cancellation of Bail granted by this Court in Crl.OP(MD)
No.12047 of 2021, dated 23.08.2021.

ORDER : The Court made the following order :-

The defacto complainant has filed this application to cancel
the bail granted to the first respondent / second accused by this
Court in Crl.OP(MD)No.12047 of 2021, dated 23.08.2021.

<https://www.mhc.tn.gov.in/judis>

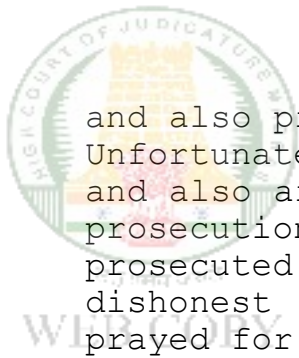


2. According to the petitioner, the first accused / Tamilselvan S/o.Veluchamy, along with the second accused / Tamilselvan S/o.Ganesan, have stolen away stainless steel springs belong to the Bharat Heavy Electrical Limited (BHEL) Company to an extent of 4,624.800 kgs, worth about Rs.36,41,414/-. The first respondent / second accused was arrested on 23.07.2021 and 525 numbers of springs to an extent of 150 kgs were recovered from him. The bail applications filed by the accused before the Judicial Magistrate Court were defended by the State that out of the stolen property, viz., 4,624.800 kgs of stainless steel springs, they have recovered only 150 kgs and the remaining are yet to be recovered from the accused. On that objection, the bail applications were dismissed. Thereafter, the first accused was released on statutory bail. However, in the bail application filed by the first respondent / second accused before this Court in Crl.OP(MD)No.12047 of 2021, the second respondent Police represented that 60% of the stolen property was recovered and 40% of the property alone is yet to be recovered. On that representation, this Court granted bail to the first respondent / second accused. Therefore, the petitioner has moved this application to cancel the bail.

3. Learned Counsel for the petitioner submitted that the representation made before this Court is false and that only 3% of the stolen articles have been recovered so far and the balance articles are yet to be recovered. Both the accused have criminally conspired and stole the stainless steel springs belonging to BHEL, a Government of India undertaking. However, the first respondent / second accused projected as if he is a recipient of the stolen property.

4. He has relied upon the complaint, the final report filed by the second respondent Police and the petitioner's affidavit in Crl.OP(MD)No.14124 of 2021, which was filed by him for a direction to take custody of the prime accused so as to seize the balance stolen properties weighing. In that petition, the petitioner / defacto complainant has averred that out of 4624.800 kgs of stolen properties, 150 kgs (3%) alone have been recovered so far and 4424 kgs of stolen properties are yet to be recovered.

5. The first respondent / second accused has approached this Court in Crl.OP(MD)No.12047 of 2021 seeking bail under Section 439 (2) Cr.P.C., that he was arrested in connection with the case in Crime No.701 of 2021 on the file of the K.Pudur Police Station for the offence under Sections 381, 441 IPC. In that petition, he has stated that he is a neighbour to the complainant's company and is also a friend of the first accused. He has purchased some material from the first accused believing that the first accused is the Manager of the Company and the materials sold are waste materials. On receipt of the summons from the investigating officer, he appeared before the respondent Police and stated the entire facts



and also produced the waste materials, which was available. 1. Unfortunately, the respondent Police implicated him as an accused and also arrested him. He further stated that, even according to the prosecution case, he has received the stolen property and therefore, prosecuted for the offence under Section 411 IPC alone. There was no dishonest intention in purchasing the alleged stolen property and prayed for bail.

6. In that bail application, it was represented by the respondent Police that 60% of the stolen properties have been recovered and the remaining 40% of the properties alone are yet to be recovered.

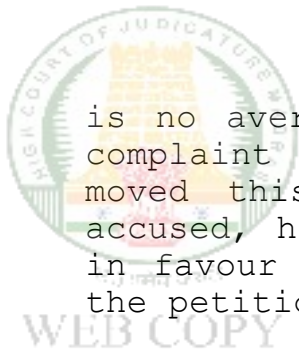
7. Considering the submission that the second accused is only a recipient of the stolen property and on the representation of the respondent Police that 60% of the stolen articles were recovered and also considering the period of incarceration, this Court, by order dated 23.08.2021, granted bail to the second accused with a condition to report before the respondent Police daily at 10.30 am, until further orders.

8. Since the petitioner / defacto complainant has established a case that only 3% of the stolen properties alone have been recovered so far and that the bail was obtained on a false representation, this Court ordered notice to the respondents.

9. The first respondent / second accused entered appearance and the learned Counsel submitted that the second accused has been implicated as an accused only through the confession statement of the first accused, as a recipient of the stolen properties. Therefore, the first information report, which was originally registered for the offence under Section 381 IPC, was altered for the offence under Sections 381 & 411 IPC.

10. He further submitted that as per Section 25 of the Evidence Act, the confession statement of a co-accused is not admissible in evidence, even assuming that there was some recovery pursuant to the same. In fact, even as per the confession statement, the first accused sold the springs to different persons and sold the last consignment alone to the second accused. The said portion of springs was also handed over to the Police.

11. He further submitted that the respondent Police has concluded the investigation and also filed the final report before the learned Judicial Magistrate VI, Madurai, on 27.01.2022. The same was taken on file in C.C.No.228 of 2022 and the trial has also commenced on 18.05.2022. PW1 was examined and the case was posted for further examination of the witnesses on 10.08.2022. There is no reason for cancelling the bail at this stage. Moreover, there is no violation of the conditions like tampering of witness either during investigation or during the trial by the second accused. There



is no averment that this accused is delaying the trial. The complaint itself is a foisted one. Though the defacto complainant moved this petition to cancel the bail granted to the second accused, he has not moved any petition as against the bail granted in favour of the first accused, who was working as the Manager in the petitioner company. Therefore, he prayed for dismissal.

12.The Sub-Inspector of Police (Crime), K.Pudur Police Station, has filed a status report on behalf of the second respondent that they received the complaint from the petitioner / defacto complainant on 12.07.2021 for the theft of Emitting Electrode Springs numbering 17250 and the same has been registered in Crime No.701 of 2021. The accused persons were arrested on 23.07.2021. The bail petition filed by the first accused was vehemently opposed, however, he was released on statutory bail. Similarly, the bail petitions filed by the second accused were vehemently opposed and were dismissed by the learned Judicial Magistrate VI, Madurai, in Cr.M.P.Nos.2212, 2213, 2232 of 2021 and by the learned Principal District and Sessions Judge, Madurai, in Cr.M.P.No.3703 of 2021. However, the bail petition filed by the second accused before this Court in Crl.OP(MD)No.12047 of 2021 was allowed and he was released on bail.

13.The status report further reads that 12 witnesses have been examined, their statements were recorded under Section 161(3) Cr.P.C., and final report was also filed and pending in C.C.No.228 of 2022 before the learned Judicial Magistrate VI, Madurai and posted on 21.09.2022 for the examination of LWs.2 to 5.

14.This Court considered the rival submissions made by the learned Counsel on either side and perused the available materials, including the CD file pertaining to Crime No.701 of 2021 on the file of the K.Pudur Police Station, Madurai.

15.The petitioner / defacto complainant has lodged a complaint before the second respondent Police on 12.07.2021 that he is residing at Chennai and running a small scale industry, namely, Siva Springs at SIDCO Industrial Estate, Madurai. He used to get orders from Bharat Heavy Electricals Limited (BHEL) for job works. The petitioner Company would receive work order and raw materials from BHEL and convert the same into coil type springs and thereafter, return it to BHEL.

16.The complaint further reads that on 27.04.2019, he got a work order from BHEL along with raw materials worth about Rs.36,41,414.05/-. He completed the work, however, due to the lock-down announced by the Government during the Covid-19 period, the finished goods were not handed over to BHEL owing to transport restrictions. The first accused was working as a Manager of the petitioner's Company and on 07.07.2021, the officials from BHEL informed him that they will inspect the finished goods through video



call for taking delivery. Hence, the petitioner instructed the Manager / the first accused to keep ready in the company for the video call on 07.07.2021 at 02.00 pm. But, when the petitioner tried to call the first accused, the mobile phone was switched off and thereafter, he verified and found that the goods were missing. He came to Madurai on 10.07.2021, verified the CCTV footages and found that on 07.07.2021 at about 01.05 pm, the first accused locked the company and took the keys with him. He also left his two wheeler with key. As per the statement of his wife, the first accused did not return thereafter. Therefore, the petitioner has lodged the complaint before the respondent Police as against his staff Tamilselvan S/o.Veluchamy and as against his wife, Arockya Therasa.

17. Based on his complaint, the police visited the place of occurrence and found that out of 18000 numbers of Electrode Emitting Springs, 750 Springs were in the complainant's premises itself. Therefore, a revised complaint was obtained from the complainant. The respondent Police has also examined one Suresh, Manager - Outsourcing Department, BHEL, Ranipet, Vellore District, on 16.07.2021 and have also collected the job work agreement and the challan dated 27.04.2019. As per this challan, pursuant to the job work, the BHEL supplied 4624.800 kgs of stainless steel wire with diameter of 2.7 mm, worth about Rs.36,41,414.05/-.

18. The respondent Police arrested the first accused / V.Tamilselvan on 23.07.2021 at about 08.10 am and recorded his confession statement. Pursuant to his confession statement, the second accused / G.Tamilselvan was also arrested on the same day at about 09.45 am and 545 Emitting Electrode Springs were recovered from him in the presence of two witnesses. Thereafter, the respondent Police has filed an alteration report altering the offence from Section 381 IPC to Sections 381, 411 IPC. Arockiya Therasa, wife of the first accused, who was originally arrayed as the second accused, was also removed from the accused list. The recovered Emitting Electrode Springs were also produced before the learned Judicial Magistrate VI, Madurai, on 30.07.2021.

19. The first respondent / second accused has filed bail applications before the Judicial Magistrate Court and also before the Principal Sessions Court. The petitioner / defacto complainant intervened in that applications and submitted that the accused have stolen away 4624 kgs of Emitting Electrode Springs and only 150 kgs [3%] alone have been recovered so far. On that ground, the bail applications were dismissed. However, in the bail application filed by the second accused before this Court in Crl.OP(MD)No.12047 of 2021, it was projected that 60% of the stolen properties have been recovered from the second accused and taking note of the same, this Court has granted bail to the first respondent / second accused, by order dated 23.08.2021. Now, the petitioner / defacto complainant has established that other than the 3% of the stolen properties, <https://www.mca21.in/judis> recovered from either of the accused and the bail was



granted by this Court based on the misrepresentation.

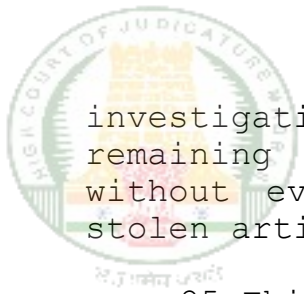
20. Perusal of the CD file shows that the investigating officer was very well aware of the ground on which the bail was granted to the second accused. The investigating officer has also recorded the same in the CD file on 27.08.2021, but failed to make any further steps to bring it to the knowledge of this Court about the said misrepresentation.

21. The complaint was lodged for the missing of 4624.800 kgs of Emitting Electrode Springs, numbering about 17250. The case was registered on 12.07.2021 and the complainant's side witnesses were also examined. The Manager, Outsourcing Department of BHEL has also given his statement along with the agreement and challan for handing over of the materials to the defacto complainant. Only thereafter, the first accused was arrested on 23.07.2021 and on the same day, the second accused was arrested and 545 Emitting Electrode Springs were also recovered from him. These Springs said to have been stolen on 03.07.2021, were recovered intact from the second accused's shop on 23.07.2021.

22. The first respondent / second accused submitted that he is running a small scrap shop, a neighbour to the defacto complainant's company and also a friend of the first accused. He received the stolen articles from the first accused under the impression that they are scrap materials. This is the stand taken by him in the bail application filed before this Court in Crl.OP(MD)No.12047 of 2021. The same were already considered and it is a matter for trial.

23. From the records, it appears knowing that 4424 kgs of stolen properties are yet to be recovered, the investigating agency has filed the final report in a hurried manner, when the petitioner approached this Court by way of filing Crl.OP(MD)No.14124 of 2021 for a direction to the Police to take custody of the accused so as to recover the entire stolen properties. The application in Crl.OP(MD)No.14124 of 2021 was taken up for hearing on 23.11.2021 and on that date, the respondent Police submitted that within two days, the final report would be filed. By recording that submission and also considering the fact that the initial period of 15 days from the date of arrest on 23.07.2021 was over by then, this Court disposed of the said application filed by the petitioner with a direction to the trial Court to conclude the trial as expeditiously as possible.

24. Perusal of the CD file reveals that the final report was made ready as on 31.07.2021 itself, but no material is available on which date the final report was filed before the trial Court. The first respondent / second accused produced a typed set of papers and also enclosed the copy of the final report dated 31.07.2021, which was filed and taken on file by the learned Magistrate on 27.01.2022. Perusal of the above materials in the CD file discloses that an



investigating agency has not taken any steps to recover the remaining stolen articles. The final report has been prepared without even ascertaining as to what happened to the remaining stolen articles.

25. This is a clear case of perfunctory investigation. The investigation is the prerogative of the investigation agency. Whoever high he may be, a victim of any crime has to depend upon the investigation agency. A fair justice can be done, only on the materials placed before the Court by the investigation agency. The responsibility of the investigation agency in the criminal justice system plays a major role and they are, in fact, the kingpins in the criminal investigation system. If this is the attitude of the investigation agency, then there will not be any orderliness in the society.

26. In this case, the victim is the Bharat Heavy Electricals Limited, a Government of India undertaking. They have entrusted 4624.800 kgs of stainless steel material to the petitioner / defacto complainant with a job work to convert the same as Emitting Electrode Springs. The petitioner has also completed the said work. However, the completed goods could not be delivered owing to the lock-down restrictions. Taking advantage of this situation, the crime had taken place. The investigating agency has also ascertained the quantity of steels entrusted to the petitioner Company for this job work, by examining the officials from BHEL and other materials. The case which was registered on 12.07.2021 was concluded on 31.07.2021 without even ascertaining the fate of the remaining stolen articles.

Conclusion:-

27. In view of the foregoing discussions and reasonings, this Court, though the trial has already commenced, feels that proper justice would be rendered to the victim only by recovering the remaining stolen articles. Therefore, this Court, invoking the power under Section 482 Cr.P.C., orders for a reinvestigation in Crime No.701 of 2021 on the file of K.Pudur Police Station, Madurai. The final report in C.C.No.228 of 2022 pending on the file of the learned Judicial Magistrate VI, Madurai, is hereby recalled for the purpose of reinvestigation.

28. The Commissioner of Police, Madurai City, Madurai, shall entrust the investigation in Crime No.701 of 2021 to an Officer of eminence and shall also monitor the investigation either by himself or by the Deputy Commissioner of Police.

29. The Commissioner of Police is also expected to take disciplinary proceedings as against the investigating officer in Crime No.701 of 2021 for the perfunctory investigation.



30. Since the bail in Crl.OP(MD)No.12047 of 2021 was obtained by misrepresentation that 60% of the stolen articles were recovered, this Court is inclined to cancel the bail. Accordingly, this miscellaneous petition is allowed and the bail granted to the first respondent / second accused in Crl.OP(MD)No.12047 of 2021 is hereby cancelled.

sd/-
02/12/2022

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/12/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.VI
MADURAI.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT
- 3 THE INSPECTOR OF POLICE
K.PUDUR POLICE STATION, MADURAI.
- 4 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE COMMISSIONER OF POLICE,
MADURAI CITY,
MADURAI.

+1 CC to M/s.M.CHANDRASEKARAN, Advocate (SR-14267[I] dated
02/12/2022)

ORDER
IN
CRL MP(MD) No.8347 of 2021
IN
CRL OP(MD) No.12047 of 2021
Date :02/12/2022

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PKP/SSS/SAR-3/09.12.2022/8P/8C

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