



Crl.O.P.(MD) No.16526 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.16526 of 2022

M.Vigneshwar

...Petitioner

VS

**1.The Assistant Commissioner of Police (L&O),
Palayamkottai,
Tirunelveli City.**

**2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.**

**3.The Commissioner of Police,
Tirunelveli City.**

**(R3 has been *suo motu* impleaded
vide order dated 23.09.2022)**

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the second Respondent to include all the materials collected during the course of investigation inclusive of statements of witnesses recorded by the erstwhile Investigating Officer under Section 161(3) of Cr.P.C and other related documents in connection with the FIR in



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Crime No.256 of 2022 pending on the file of the first Respondent before the Court of the learned II Additional District Judge, PCR Court, Tirunelveli in view of the Revision Petition in Crl.M.P.(MD) No.8226 of 2022 in Crl.R.C. (MD) No.159 of 2021 dated 26.07.2022 along with charge sheet to be filed.

For Petitioner : Mr.R.Anand

For Respondents : Mr.R.Sivakumar
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to direct the second Respondent to include all the materials collected during the course of investigation and inclusive of statements of witnesses recorded by the erstwhile Investigating Officer under Section 161(3) of Cr.P.C and other related documents in connection with the FIR in Crime No.256 of 2022 pending on the file of the first Respondent before the Court of the learned II Additional District Judge, PCR Court, Tirunelveli.

2.The learned Counsel for the Petitioner submits that the Petitioner is an employee of one Jagatheesan. On the date of occurrence, on 06.10.2020, the Petitioner found that the JCB machines have caused damage to the property belonging to his owner. He questioned the persons, who were



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present in the place. At that time, one Vaikundaraja, who is the elder brother of the Petitioner's employer and his men came there and abused him by his caste name and also threatened him. Therefore, he lodged the complaint.

3.It is the submission of the learned Counsel for the Petitioner that the complaint had not been registered immediately. As the Petitioner apprehends danger to his life, he had appeared before the respondent police and had given a complaint. But the police had refused to register the case. Therefore, he appeared before the learned II Additional District Judge, (PCR) Court, Tirunelveli. Though the learned Special Judge also directed the respondent police to register the FIR, they had not done it. Subsequently, the Petitioner had filed Crl.R.C.(MD) No.159 of 2022 before this Court. As per the order dated 22.02.2022 passed in the said revision, the order passed by the Respondents dropping the investigation was set aside and they were directed to register the FIR and proceed with the investigation.

4.It is the further submission of the learned Counsel for the Petitioner that after this order was passed, FIR was registered and the statement under



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Section 161 Cr.P.C was recorded from the Petitioner as well as the other witnesses, who were present at the time of occurrence in the place of occurrence. The Assistant Commissioner, Law and Order, Palayamkottai, Tirunelveli City was the Investigation Officer. The investigation was proceeding on the right path. Subsequently, the Assistant Commissioner of Police was transferred and a new officer had taken charge. Now, the present Assistant Commissioner of Police/the first Respondent is believed to have removed the statements already recorded by the then Assistant Commissioner. Now, he is once again summoning the very same witnesses and putting questions to the witnesses. The statements of the witnesses are not recorded as a narrative. It is recorded as questions and answers. Therefore, the Petitioner suspects that justice will not be rendered to him.

5.Also, the time for filing the complaint had lapsed. Instead of the Investigation Officer, the second Respondent/the Inspector of Police had approached this Court and sought extension of time in Cr.M.P.(MD) No. 8226 of 2022 and this Court had granted two months time, vide order dated 26.07.2022. As per the same, as on 26.09.2022, the extended time had expired.



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6.It is the further submission of the learned Counsel for the Petitioner that as per the affidavit of the second Respondent in the Petition seeking extension of time in Cr.M.P.(MD) No.8226 of 2022, the pen-drive regarding the video footage has been subjected to forensic examination and the test results of the forensic examination are awaited. On receipt of the same, they are ready to file the final report before the Court concerned.

7.The learned Government Advocate (Crl.side) for the Respondents by way of reply submits that the investigation is almost completed. He would further submit that in Cr.M.P.(MD) No.8226 of 2022 not only the second Respondent had filed the affidavit but also the first Respondent had filed the supporting affidavit. He would further submit that as per the order of this Court, the extended time to file the final report expires on 04.10.2022.

8.The submission of the learned Counsel for the Petitioner cannot be accepted in *toto*, specifically the submission that the newly appointed Investigation Officer had removed the statements of the witnesses already



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recorded under Section 161 Cr.P.C. by the earlier Investigation Officer, the then Assistant Commissioner of Police, Palayamkottai.

9.To the query of this Court to the learned Counsel for the Petitioner as to how the Petitioner came to know that from the CD file, the statement of the witnesses already recorded under Section 161 Cr.P.C. by the then Investigation Officer had been removed, he is unable to give a satisfactory answer. If the submission of the learned Counsel for the Petitioner is accepted, the Petitioner is not a law abiding citizen. He is interfering in the due process of investigation.

10.As per the Police Standing Order and the procedures followed, adopted and accepted by the Court of law, the CD file of any Investigation Officer can be perused only by the learned Assistant Public Prosecutor in the Magistrate Court to assist the Investigation Officer before the Court of law.

11.The learned Additional Public Prosecutor in this Court or any lawyer appointed by the State on behalf of the investigation, the Judge



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dealing with the cases, the learned Judicial Magistrate concerned, the Sessions Judge concerned, the Judge of this Court dealing with the particular case in the Bench concerned, the Judge of the Hon'ble Supreme Court can also peruse the CD file. When that be the case, the Petitioner, who claims to be the victim, the defacto complainant, is presumed to have perused the CD file. That shows that the police are allowing the Petitioner to interfere with the investigation, which is found to be illegal. The Petitioner claims that the aggressor is more influential in meddling with the CD file maintained by the police office, which is the confidential matter till the final report is laid before the Court concerned. No person has authority to meddle with the CD file. The said line of submission by the learned Counsel for the Petitioner is condemnable.

12.While dictating the order, the learned Counsel for the Petitioner submits that only he had expressed his apprehension. That cannot at all be acceptable by this Court. Considering the apprehension expressed by the learned Counsel for the Petitioner, who is the defacto complainant, this Court *suo motu* impleads the Commissioner of Police, Tirunelveli City to monitor the investigation to avoid the controversies in future.



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13. In the light of the submission made by the learned Counsel for the Petitioner and the learned Government Advocate (Crl.side), the submission of the learned Counsel for the Petitioner is treated as apprehension and lingering doubt in the mind of the ordinary citizen of this country, as a complainant before the police, since they do not have control over the investigation. At the same time, this Court cannot direct the Investigation Officer to proceed in a particular manner. No Court of law in India has the right to dictate terms to the Investigation Officer. The Investigation Officer is within his/her powers to collect sufficient materials in the course of investigation and lay the final report or even refer the charge sheet. The then Investigation Officer was transferred and a new Investigation Officer took charge. There need not be any apprehension in the mind of the ordinary citizen of this country as a complainant.

14. Considering the apprehension expressed by the petitioner, the third Respondent/the Commissioner of Police, Tirunelveli City, is directed either to supervise the investigation by himself or herself or by way of any other superior officer in the rank of Joint Commissioner or Deputy Commissioner



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considering the future controversies that may erupt in this case and they are answerable to the Court of law. The third Respondent is to ensure that final report is laid before the Court concerned within the specified time without seeking further extension of time.

15. With the above direction, this Petition stands disposed of.

Internet: Yes./No

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Index: Yes/No

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To

1. The Assistant Commissioner of Police (L&O),
Palayamkottai,
Tirunelveli City.
2. The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
3. The Commissioner of Police,
Tirunelveli City.



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SATHI KUMAR SUKUMARA KURUP, J.

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