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CrI.O.P(MD)No.19251 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.11.2022

DELIVERED ON : 25.11.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P(MD).No.19251 of 2022

and

CrI.M.P(MD).No.13020 of 2022

Ananda Kumar

: Petitioner

-Vs-

- 1.The Superintendent of Police,
Office of the Superintendent of Police,
Dindigul District
- 2.The Deputy Superintendent Of Police,
Office of the Deputy Superintendent of Police,
Kodaikanal,
Kodaikanal Taluk, Dindigul District.
- 3.The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal Town,
Dindigul District.
Crime No.641/2021.

: Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to C.C.No.239/2022 on the file of the learned Judicial Magistrate No.II, Kodaikanal, Dindigul District in Crime No.641/2021,



on the file of the third Respondent with regard to the Final Report No.71/22 filed by the third Respondent and set aside the same and issue a direction directing the third Respondent or any other competent authority to do reinvestigation by considering the video evidence, dated 20.10.2021 and original complaint, dated 22.10.2021, given by the Petitioner/defacto-complainant in Crime No.641/2021, on the file of the third Respondent and file a fresh final report before the learned Judicial Magistrate No.II, Kodaikanal, Dindigul District, within a stipulated time fixed by this Court.

For Petitioner : Mr.P.Murughadasan

For Respondents : Mr.B.Nambi Selvan
Additional Public Prosecutor

ORDER

This criminal original petition had been filed seeking to set aside the C.C.No.239/2022, on the file of the learned Judicial Magistrate No.II, Kodaikanal, Dindigul District and to issue a direction directing the third Respondent or any other competent authority to do the reinvestigation by considering the video evidence, dated 20.10.2021 and original complaint, dated 22.10.2021, given by the Petitioner/defacto-complainant in Crime No. 641/2021, on the file of the third Respondent and file a fresh final report before the learned Judicial Magistrate No.II, Kodaikanal, Dindigul District.



2.It is the case of the Petitioner that the Petitioner had purchased a property in S.No.914/1 in Kumburvayal Village from one Karupannan S/o.Kariamuthu.

3.It is the contention of the learned Counsel appearing for the Petitioner that one Mark Antrobus @ Aruldurai had purchased the property in the same survey number through forged documents. As though there is a joint patta, one Ellango, S/o.Kallanai, had also colluded with the said Mark Antrobus @ Aruldurai along with one other person by name, Rajkumar S/o Ramasamy, who are all the members of the Mother Earth Trust. They had transferred the property belonging to the vendor of the Petitioner, namely, Karupannan S/o.Kariamuthu, in S.No.914/1, which is measuring a total extent of five acres. They had created a sale deed for 3.43 acres, which originally belonged to the vendor of the Petitioner. Subsequent to that, they had filed a suit in O.S.No.460 of 2018 before the learned Sub Judge, Palani. In the written statement, the Petitioner herein, had vehemently objected to the contents in the plaint in O.S.No.460 of 2018 and also the Petitioner had filed a petition, seeking rejection of the plaint. While so, the said Mark Antrobus @ Aruldurai along with his henchmen barged into the Petitioner's house and attacked him. The Petitioner had given a complaint and the Petitioner's vendor/Karupannan had



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also given a complaint. The third Respondent recorded the CSR.No.48 of 2019, dated 26.01.2019. The Petitioner, subsequently, approached the Madurai Bench of Madras High Court by filing a petition in Crl.O.P(MD)No.6226 of 2019, in which, by order dated 27.04.2019, a direction was issued for grant of police protection. The third Respondent therein, willfully disobeyed the direction and had not taken any action. The Petitioner had furnished a video footage, recording the act of trespass committed by the Mark Antrobus @ Aruldurai and his henchmen by damaging the fence and removing the fence of the Petitioner. He had furnished it to the Investigation Officer, but he had not taken care of it and to examine the issue.

4.When the case came up for hearing, the learned Additional Public Prosecutor submitted that the charge sheet had already been filed and this Court has no power to order for re-investigation or for further investigation. Therefore, this petition is to be dismissed.

5.The learned Counsel appearing for the Petitioner invited the attention of this Court of the ruling of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 835 [Devendra Nath Singh -vs- State of Bihar and others]** invoking the powers of under Section 482 of Cr.P.C., this Court can order for



investigation, re-investigation, further investigation, since the allegations made against the accused persons are found *prima-facie* attracting the offence under Sections 147, 141 of IPC etc., Providing video footage by the Petitioner herein vehemently was not accepted by the Investigation Officer. On that score, the Petitioner seeks for further investigation. The relevant portion of the above said decision of the Hon'ble Supreme Court is extracted as follows:

“Code of Criminal Procedure, 1973; Sections 482 and 173(8) – In an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C. could be exercised to direct further investigation or even reinvestigation – The provisions of Section 173(3) Cr.P.C. do not limit or affect such powers of the High Court to pass an order under Section 482 Cr.P.C. for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice – The question of opportunity of hearing in such matters would always depend upon the given set of facts and circumstances of the case – While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provisions of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

Code of Criminal Procedure, 1973; Section 173(8), 156(3), 190(1)(c) – Where the Magistrate is of the opinion that the result of investigation in the form of report filed before him is not satisfactory, he may also order investigation in terms of Sections 156(3) and/or 173(8) Cr.P.C. or he may straightaway take cognizance under Section 190(1)(c) Cr.P.C.”



6.The submission of the learned Additional Public Prosecutor objecting to further investigation cannot be accepted by viewing the same from the angle of the victim.

7.The contention of the learned Additional Public Prosecutor is that the learned Judicial Magistrate does not have the power to order for a fair investigation or further investigation after taking cognizance of the offence. The learned Judicial Magistrate has vast discretion to consider the final report either to reject the final report or to accept the final report or to order for further investigation before taking cognizance of the offences. After taking cognizance of the offences, the Magistrate's power to order for further investigation or for re-investigation is ousted.

8.In the light of the submissions of the learned Additional Public Prosecutor, the complainant herein having approached this Court seeking further investigation under Section 482 Cr.P.C., is found acceptable. Post cognizance, the Magistrate has no power. Therefore, the submission of the learned Counsel appearing for the Petitioner seeking further investigation is found acceptable, especially, when the Petitioner had handed over the video footage of the conduct of the accused in forcefully damaging the fence and



trespassing into the property of the defacto complainant. The Investigation Officer has not considered the said evidence. Hence, the Petitioner had come before this Court, seeking further investigation.

9.In the light of the ruling of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 835 [Devendra Nath Singh -vs- State of Bihar and others]**, this Court directs further investigation. The Investigation Officer shall record the statement of the Petitioner and other witnesses cited by the Petitioner along with the video footage already furnished by him and file a supplementary charge sheet before the Court of the learned Judicial Magistrate No.II, Kodaikanal.

10.With the above direction, **this Criminal Original Petition is disposed of.** Consequently, connected miscellaneous petition is closed.

25.11.2022

Index : Yes / No
Internet: Yes / No
Speaking Order / Non-Speaking Order
Neutral Citation : Yes / No
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SATHI KUMAR SUKUMARA KURUP, J.

lr

To

1.The Judicial Magistrate No.II,
Kodaikanal, Dindigul District.

2. The Superintendent of Police,
Office of the Superintendent of Police,
Dindigul District

3. The Deputy Superintendent Of Police,
Office of the Deputy Superintendent of Police,
Kodaikanal,
Kodaikanal Taluk, Dindigul District.

4. The Inspector of Police,
Kodaikanal Police Station,
Kodaikanal Town,
Dindigul District.

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

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