



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.01.2022

Delivered on : 01.03.2022

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The Hon`ble Mr.Justice K.MURALI SHANKAR
CRL.OP(MD) . No.20843 of 2018
and Cr1.MP(MD)Nos.9627&9628 of 2018

D. Dhanasekar,
S/o.Dhatchinamoorthy ... Petitioner/Accused

Vs

1.The District Superintendent of Police,
Sivagangai District.

2.The Inspector of Police, Thiruppuvanam P.S.,
Sivagangai District.

3.S.Babu. ... Respondents/Complainants

PRAYER :- This petition is filed under Section 482 of Cr.P.C, to call for the records on the file of the Additional District Munsif cum Judicial Magistrate Court at Manamadurai and to pass an order of quash in the above said STC.No.373 of 2018 in Cr.No.445 of 2017.

For Petitioner : Mr.K.P.Ramesh, Advocate.

For Respondent
R1&R2 : Mr.M.Muthumanikkam,
Government Advocate (Cr1.Side)

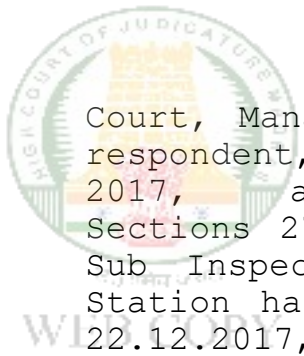
R3 : Mr.B.Aju Tagore

O R D E R

This Criminal Original Petition has been filed, by invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records relating to the case in STC No.373 of 2018, pending on the file of Additional District Munsif cum Judicial Magistrate Court, Manamadurai and quash the same.

2.The petitioner is the accused in STC No. 373 of 2018, on the file of Additional District Munsif cum Judicial Magistrate

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Court, Manamadurai. Based on the complaint lodged by the third respondent, FIR came to be registered in Crime No. 445 of 2017, against the petitioner, for the alleged offence under Sections 279 and 337 IPC. After completing the investigation, the Sub Inspector of Police, attached to the Tirupuvanam Police Station has laid the final report under Section 173 Cr.P.C dated 22.12.2017, for the same offences under Sections 279, 337 IPC and the case was taken on file as STC No.373 of 2018 and the same is now pending on the file of Additional District Munsif cum Judicial Magistrate Court, Manamadurai.

3.Admittedly, the third respondent / *defacto* complainant was working as a Head Constable in Thiruppachethi Police Station and the petitioner was working as a Junior Assistant in Panchayat Union Office at Kallal, at the time of alleged incident. The case of the prosecution is that on 17.10.2017 at about 4:30 AM near Tirupuvanam Sivan Temple, when the third respondent /*defacto* complainant was proceeding towards Tirupuvanam Sivan temple in a Tata Sumo car bearing registration No. TN 51 U 9696, the petitioner who was proceeding in a two wheeler bearing registration No. TN 63 AB 1708, without noticing the turning of Tata Sumo Car, had dashed against the Tata Sumo car and thereby caused damages to the said car and also simple injuries to the *defacto* complainant and that petitioner's rashness and negligence was responsible for the said accident. No doubt, the *defacto* complainant in his complaint itself has specifically admitted that the petitioner had suffered bleeding injuries on his left knee and forehead and that himself and two persons standing nearby had sent the injured petitioner to the Tirupuvanam Government Hospital, through a car, which was coming at that time.

4.But the case of the petitioner is that he came to his native place for the celebration of Deepavali festival, that on 17.10.2017 at about 4:15 AM, the petitioner, after dropping his mother at Tirupuvanam bus stand, was returning to his home in his Hero Honda Splender Pro two wheeler bearing registration No. TN 63 AB 1708, on the left side of the road towards west from east and at that time, the Tata Sumo Car bearing registration No. TN 81 M 9999, came in a rash and negligent manner and suddenly came to the extreme right side of the road and dashed against the petitioner, that the petitioner immediately was thrown out and sustained injuries all over his body, that two persons who were standing nearby in the Tea stall informed about the accident to his uncle Ramachandran, that the petitioner's uncle Ramachandran along with his son Meenakshi Sundaram came to the occurrence place and taken him to Tirupuvanam Government Hospital and after first-aid he was immediately taken to Madurai and was admitted as inpatient at MIOT Hospital, KK Nagar, Madurai.



5.It is the case of the petitioner that due to the said accident, he sustained fracture on his left leg, got head injury and minor injuries all over his body, that surgery was conducted at MIOT hospital and that thereafter he was discharged from the hospital on 25.10.2017. The petitioner has also produced the discharge summary issued by MIOT Hospital and whereunder, it is evident that the petitioner was admitted as inpatient on 17.10.2017 for the injuries suffered in a road accident, where, his two wheeler was hit by a car on that day and subsequently discharged from the hospital on 25.10.2017. The prosecution has not disputed the above factual aspects regarding his injuries and treatment.

6.Though the accident was alleged to have occurred on 17.10.2017, the third respondent gave the complaint only on 20.10.2017 and no doubt, he has mentioned that due to his work, he could not lodge the complaint immediately. As rightly contended by the learned counsel for the Petitioner, the third respondent / *defacto* complainant is not an ordinary person and he is the head constable working in a nearby police station at that time. Though some damages were allegedly caused to the car and also some minor injuries to the *defacto* complainant, he has not chosen to prefer the complaint, immediately after the accident. As rightly pointed out by the learned counsel for the petitioner, the investigation officer has not considered the delay in lodging the complaint. Moreover, it is not the case of the *defacto* complainant that he had immediately informed about the accident either to the officer in- charge of Thiruppachethi police station, where he was working or to the jurisdictional Police station i.e., Tirupuvanam police station. It is not in dispute that though the FIR came to be registered on 20.10.20217, the same was received by the jurisdictional Magistrate on 01.11.2017.

7.It is evident from the final report that after registering the FIR at about 8AM on 20.10.2017, the Sub Inspector of police/the investigation officer has examined the *defacto* complainant and the other alleged eye witnesses and recorded their statements under Section 161(3) of Cr.P.C on the same day. Moreover it is further evident that the investigation officer had visited the occurrence place at about 9 AM on 20.10.2017 and prepared the Observation Mahazar and rough sketch in the presence of two witnesses and also examined the said witnesses on the same day. As rightly pointed out by the learned counsel for the petitioner, in the written complaint lodged by the third respondent on 20.10.2017, he has not mentioned the names of the alleged eyewitnesses and he has only stated that two other persons, who were standing nearby, had sent the injured to the hospital through a car. But in the statements recorded under Section 161(3) Cr.P.C on the same day, the



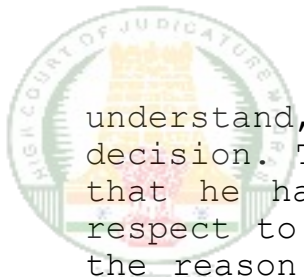
Vehicle Inspector that he inspected the vehicle on 16.12.2017 near police station and gave his report, as if, the documents were not produced.

10.It is pertinent to note that the Tata Sumo vehicle bearing registration No. TN 51 U 9696 was taken to the RTO office, Sivagangai on 23.10.2017 and it is evident that the Registration Certificate of the vehicle, Driving License of the driver and the particulars of the insurance were not furnished and the Motor Vehicle Inspector has specifically observed that the Registration Certificate and Driving License were not made available. As rightly contended by the learned counsel for the petitioner, the prosecution has not offered any reason or explanation, for not producing the said documents by the third respondent.

11.It is not the case of the prosecution that the second respondent had seized the Tata Sumo vehicle on 20.10.2017, the date on which the complaint was registered and that the second respondent alone had taken the vehicle to the Motor Vehicle Inspector. Even assuming that the second respondent alone had taken the vehicle to RTO office, they have not offered any explanation, for not summoning the documents relating to the vehicle from third respondent. As already pointed out, it is the specific case of the petitioner that the Tata Sumo vehicle involved in the accident was bearing registration No. TN 81 M 9999, but whereas, according to prosecution, Tata Sumo vehicle bearing registration No. TN 51 U 9696 alone was involved. Moreover, it is not known when the two wheeler of the petitioner was taken to the police station. When the Tata Sumo vehicle was subjected to motor vehicle inspection on 23.10.2017, it is not known, as to why the two wheeler which was very much available with the police station, was not subjected to Motor Vehicle inspection.

12.When the matter was taken up for final disposal, the learned Government Advocate (Criminal side) has produced the copy of statement, allegedly recorded from the petitioner and also the report of the second respondent on the completion of the enquiry, it is evident that a statement was allegedly recorded from the petitioner by the second respondent on 21.12.2017. As rightly pointed out by the petitioner, anyone can see some alterations in the month and date, in the statement, below the signature alleged to have taken from the petitioner. It is pertinent to mention that the petitioner all along has been saying that he has preferred a complaint on 17.10.2017 itself, through his uncle, but the receipt of the said complaint was not at all disputed by the respondent police anywhere.

13.The second respondent, while giving the gist of enquiry, has observed that since the petitioner was having defective eye sight, he was wearing spectacles. This court is at loss to



understand, as to how the second respondent has come to such a decision. The second respondent in his report has nowhere whispered that he had perused the medical records of the petitioner, with respect to alleged eye problems or enquired the petitioner about the reason for wearing the spectacles. The doctors are prescribing spectacles, even for certain headaches. In the pandemic period, most of us used to wear plain or other spectacles, as protective measure. Considering the above observation of the second respondent, it can easily be inferred that, even before commencing the enquiry, the second respondent has decided the result of the enquiry and he proceeded with the enquiry towards that result. In the report, the second respondent, by observing that the petitioner after coming to know about the registration of FIR No. 445 of 2017, on the basis of the complaint of the third respondent, has informed that he would take necessary action before the Court after filing of the charge sheet and that no further action was necessary on his complaint, closed the petition as no further action is necessary, as the complaint was a false one.

14. More importantly, when the second respondent has closed the complaint of the petitioner as a false one on 21.12.2017, this court is at loss to understand, as to why the result of the enquiry was not informed to this Court, when the Crl.O.P.(MD) No. 17296 of 2017 was taken up on 22.12.2017. As already pointed out, without disclosing the enquiry allegedly conducted on the complaint of the petitioner and the result of the same, has passed on a false information, as if, the FIR came to be registered on the complaint of the petitioner.

15. It is pertinent to note that right to fair investigation is not only a constitutional right, but natural right as well. The **Hon'ble Supreme Court**, in **Nirmal Singh Khalon v. State of Punjab**, reported in 2009(1)SCC 441 has specifically held that the right to fair investigation and trial is applicable to the accused as well as the victim and the relevant passage is extracted hereunder.

"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may



consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases."

16. The Hon'ble apex Court in **Navinchandra N.Majithia vs State Of Meghalaya And Others** reported in **AIR 2000 SCC 3275**, has observed that

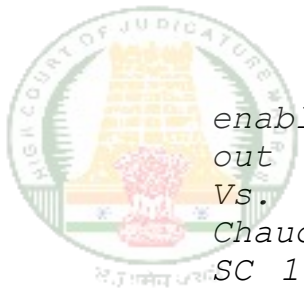
"The investigating police are primarily the guardians of the liberty of innocent persons. A heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication and there cannot be any kind of interference of influence on the investigating agency and no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it."

The Hon'ble Supreme Court, while highlighting the independence of the investigating agency has observed in

" The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence.... All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.... **A vitiated investigation is the precursor for miscarriage of criminal justice.**"

In **Babubhai vs State Of Gujarat & Other** reported in **2010(12) SCC 254**, the Hon'ble apex Court has held as follows:

"The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may



enable the court to record conviction but to bring out the real unvarnished truth". (Vide R.P. Kapur Vs. State of Punjab: AIR 1960 SC 866; Jamuna Chaudhary & Ors. Vs. State of Bihar : AIR 1974 SC 1822; and Mahmood Vs. State of U.P. AIR 1976 SC 69).

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The **Hon'ble Supreme Court in Dr.Subramanian Swamy vs Director, CBI & Another** reported in **2014(8)SCC 682** has held that

"Any investigation into the crime should be fair, in accordance with law and should not be tainted and that breach of rule of law, amounts to negation of equality under Article 14 of the Constitution of India."

Reiterating the above position in **Manohar Lal Sharma vs The Principle Secretary & Others, reported in 2014(2)SCC 532** the **Hon'ble apex Court** has held that

"Proper investigation into crime is one of the essentials__of criminal justice system and in a integral facet of rule of law"

It has been further held that

"Investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences."

17.On application of above legal position to the case on hand, this Court has no other option, but to say that the investigation conducted by the Sub-Inspector of police and thereafter by the second respondent/ Inspector of police are perfunctory and is vitiated. Since the third respondent/defacto complainant is a police official, the investigation was conducted in such a way to favour him and this Court is constrained to say that the investigation conducted was totally biased, unfair and tainted. Hence, this Court has no hesitation to hold that the charge sheet, which has been laid on the basis of tainted investigation, is liable to be quashed. Consequently the report closing the complaint of the petitioner, as no further action is necessary, is also liable to be quashed. But at the same time, this Court is of the view that the complaints preferred by both the petitioner and the third respondent are to be investigated fairly and in accordance with law and for that purpose, re-investigation is to be ordered.

18.In the result, **this Criminal Original Petition is allowed and the charge sheet in STC No.373 of 2018, on the file of**

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Additional District Munsif cum Judicial Magistrate Court, Manamadurai and the report closing the complaint of the petitioner, as no further action is necessary, are quashed.

19. The first respondent is directed to appoint another Inspector of police under his control, within 15 days immediately after receipt of this order and directing him to take up the investigation and file the final report, in the manner known to law, within three months thereafter. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

PNM

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 Additional District Munsif
cum Judicial Magistrate Court,
Manamadurai
2. The District Superintendent of Police,
Sivagangai District.
3. The Inspector of Police,
Thiruppuvanam P.S., Sivagangai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CRL OP (MD) No.20843 of 2018

Date : 01.03.2022

RD(29.04.2022) 9P 5C