



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2022

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.21200 of 2022

Franklin Rousvelt

...Petitioner/
Defacto Complainant

VS

1.The Inspector General of Police,
South Zone Madurai,
Madurai.

2.The Superintendent of Police,
Kanyakumari District,
Nagercoil 629 001.

3.The Additional Superintendent of Police,
Kanyakumari District.

4.Tr.Eswaran

5.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.

6.The Inspector of Police,
CBCID,
Nagercoil.

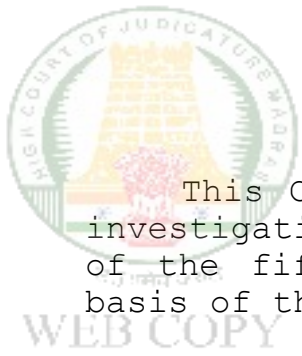
...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to transfer the investigation in connection with Crime No.115 of 2021 on the file of the 5th respondent to the 6th respondent, on the basis of the petitioner's representation dated 15.10.2022

For Petitioner : Mr.T.Arul

For R1 to R3,
R5 & R6

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

O R D E R

This Criminal Original Petition had been filed to transfer the investigation in connection with Crime No.115 of 2021 from the file of the fifth Respondent to the file of sixth Respondent, on the basis of the Petitioner's representation dated 15.10.2022.

2.The learned Counsel for the Petitioner would submit that the Petitioner had taken lease of about 77 acres from Mohammed Athif, S/o. Mohamed Farook for a period of 11 months. He had cultivated cloves and cardamom and engaged in the business of transporting the same to the neighboring district in Tamil Nadu. Whiles, there had been dispute between the landowner and himself. He had engaged 37 workers from North India who are engaged in day to day activities in the establishment. Whiles, on 31.12.2020 there was theft of 33 bags of cloves, 500 sacks of clove leaves and 4 ¼ tons of 81 sacks of clove sticks, 4 sacks of nutmeg and 6 sacks of Jathipathri worth about Rs.23,00,000/- His labourers had videographed the theft. Based on the information provided by the labourers, the Petitioner had given complaint to the fifth Respondent. The fifth Respondent was reluctant in registering the First Information Report since the owner of the land was influential. The Petitioner then moved the Court of the learned Judicial Magistrate and obtained direction under Section 156 (3) of Cr.P.C, based on which First Information Report was registered, who had not investigated the case till now.

3.It is the further submission of the learned Counsel for the Petitioner that while transporting the agricultural produce in taurus lorry the authorities of Thadikarakoram check post conducted vehicle check up and at that time the vehicle as well as the items in the vehicle do not contain any valid document as per the query to the forest officials. In spite of their check up they attempted to detain the vehicle. The vehicle was taken away forcefully. Based on the information from the forest officials, Keeriparai police has registered a First Information Report in Crime No.3 of 2021 dated 05.01.2021. This happened incidentally.

4.It is the submission of the learned Counsel for the Petitioner that in spite of registration of the First Information Report based on the direction of the learned Judicial Magistrate, Boothapandi the officials had not acted. It is the further submission that the third Respondent is interfering in the investigation. Therefore he had impleaded him as party-in-person as fourth Respondent.

5.The learned Government Advocate(Crl.Side) takes notice on behalf of Respondents 1 to 3, 5 and 6. He would further submit that the Petitioner had moved a petition for anticipatory bail under Section 438 of Cr.P.C based on the complaint of the land owner in Crime No.15 of 2020, wherein the then learned Single Judge of this

<https://www.mca.gov.in/> observed as follows:



"8(b) the Petitioners shall not disturb the possession and enjoyment of the estates namely Castle Rock, Black Rock belongs to the defacto Complainant".

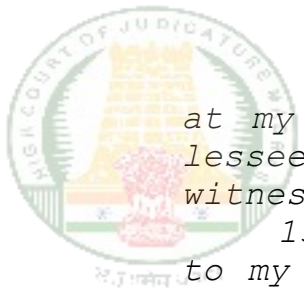
6.The learned Government Advocate (Crl.side) on instructions from the fifth Respondent would submit that the investigation in Crime No.115 of 2020 had fairly proceeded. The fifth Respondent had completed the investigation by examining 20 witnesses including the labourers from the North India employed by the Petitioner in his leased premises.

7.By way of rejoinder the learned Counsel for the Petitioner submitted that the order was passed through the Court proceedings through video conferencing. At that time the learned Single Judge was under the impression that the Petitioner was in possession of the property and therefore inspite of directing the accused the learned Single Judge by mistake had passed the order which was rectified in a petition filed in Crl.M.P(MD) No.6349 of 2020 in Crl.O.P(MD) No.10804 of 2020 dated 16.12.2020.

8.The learned Counsel for the Petitioner would submit that originally the Petitioner had taken on lease the property belonging to the accused, who is arrayed as accused in Crime No.115 of 2021, for which the lease agreement was entered into between him and the person, against whom the signature could not be obtained stating that he was in a foreign country and he will come down to Kanniyakumari. For the first lease period, a sum of Rs.13,00,000/- was paid. For the second lease period, they needed Rs.3,00,00,000/-, for which four persons have to sign, out of them three persons signed and one person is out of station. From that period onwards, there had been dispute, based on which the Petitioner herein had filed a suit in O.S.No.115 of 2020 pending before the learned Principal District and Sessions Judge, Kanniyakumari District at Nagercoil.

9.The learned Counsel for the Petitioner relied on the contents of the affidavit filed in the earlier writ petition in W.P.(MD) No.21967 of 2021, which reads as under:-

"12. I submit that on 29.08.2019 I went to the house of the respondents 9 to 12 accompanied by Petitioners 3 and 4. The lease deed dated 29.08.2019 was kept ready by the 12th respondent. Respondents 9 and 12 signed the lease deed in our presence. After respondents 9 and 12 signed the lease deed the 12th respondent took the lease deed inside the house and obtained the signature of his mother, the 10th respondent herein. There was no reason for us to doubt the signature of the 10th respondent. The 11th respondent was not available in the house. I was informed that he was out of station and that the 12th respondent would come to my house with the 11th respondent and the 11th respondent would sign the lease deed



at my house. I signed the document in my capacity as a lessee. Petitioners 3 and 4 signed the document as witnesses.

13.I submit that on 25.10.2019 the 12th respondent came to my house with the 11th respondent and the 11th respondent signed the lease deed in our presence in my house.

14.I submit that on 09.09.2020, the 5th respondent registered FIR.No.15 of 2020 against me and petitioners 2 to 4 for offence under Sections 148, 384, 403, 465, 468, 471 and 506(1) IPC."

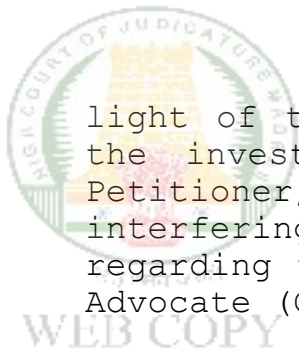
10.Based on the same, the land owners are alleged to have issued cheques totally for a sum of Rs.3,00,30,000/-.

11.It is the further contention of the learned Counsel for the Petitioner that when the suit was pending as a counter blast, the Respondents in the writ petition, private individuals, the land owners had given the complaint to the District Crime Branch against the Petitioner herein, which is pending in Crime No.15 of 2020 on the file of the District Crime Branch, Nagercoil. After registration of this case as a counter blast, the accused in this case are alleged to have given the counter complaint.

12.To the query of this Court as to why the charge sheet was not laid before the Court concerned, the learned Government Advocate (Crl.side) by way of reply would submit that the accused is to be arrested and the vehicle involved in the alleged offence had to be secured. To the further query of this Court as to whether necessary action was taken, the learned Government Advocate (Crl.side) would submit that the number given by the defacto complainant, the Petitioner herein was not correct. TN 76 W 8533 is the correct number. TN 76 AW 8533 is the wrong number. This Court had sought the CD file from the learned Government Advocate (Crl.side)

13.On perusal of the CD file, it is found that the Investigation Officer, the fifth Respondent had conducted investigation including Rajendran, the Forest Guard. Further, the learned Government Advocate (Crl.side) furnished the report of the Additional Superintendent of Police, Headquarters, in which he had conducted an enquiry regarding the allegations against the Officials and in that enquiry, he had stated that there is pending case against the Petitioner therein in Crime No.15 of 2020. As per the said complaint, it is the contention of the land owner that the Petitioner had committed forgery.

14.To the query of this Court to the learned Government Advocate (Crl.side) as to why they had not secure the vehicle, it is stated that the Investigation Officer had sent the details to all the Tollgates across India. The said submission of the learned Government Advocate (Crl.side) cannot at all be accepted in the



light of the fact that the Petitioner had made an allegation at the investigation is not proceeding fairly. On enquiry by the Petitioner, he had found out that the fourth Respondent is interfering in the investigation. The report of the enquiry regarding the investigation is also filed by the learned Government Advocate (CrI.side).

15.The Petitioner had impleaded the Additional Superintendent of Police, Kanniyakumari District as fourth Respondent. When there is specific allegations against the particular officer that he is interfering with the investigation and using his influence, the Court has to draw adverse inference against the fifth Respondent for his inability to complete the investigation, even though he had fairly conducted the investigation by recording the statements of the witnesses up to 20 witnesses including the Forest Guard, who had also given the complaint regarding the threat on him by the persons known as Mohammed, S/o.Amsa and Sabu, S/o.Amsa for preventing the Forest Guard from checking the vehicle. When it was proceeding viz., the Forest Check Post and for mandatory check-up, when the Forest Guard attempted to check the vehicle, he was threatened by the two persons using filthy language, based on which the FIR was registered in Crime No.2 of 2021 on the file of the Keeriparai Police Station, in which one Mohammed Athiem was arrested and other persons obtained bail.

16.In the light of the apprehension expressed by the Petitioner, in the light of the fact that on perusal of the CD file, the Investigation Officer had fairly conducted the investigation, but could not complete it and also considering the fact that the Additional Superintendent of Police, against whom the Petitioner makes allegations, had conducted the enquiry on the allegations and sent a report stating that it is privilege allegation, it cannot be accepted on perusal of the CD file produced before the Court by the fifth Respondent through the learned Additional Public Prosecutor. The fifth Respondent had almost completed the investigation. But he is unable to trace out the accused and secure the vehicle. Therefore, the Court can draw adverse inference that some external forces are preventing the fair investigation.

17.In the light of the above developments, the first Respondent is directed to appoint a Senior Officer not below the rank of Deputy Superintendent of Police to conduct the investigation in the connected cases also, (*) **Removed** Crime No.367 of 2020 on the file of the fifth Respondent and Crime No.15 of 2020 on the file of the District Crime Branch. The said case files are ordered to be withdrawn from the file of the Respondent Police and the same should be ensured that an Officer outside Kanniyakumari, who is in the assessment of the first Respondent, is fair and impartial in conducting the investigation. The first Respondent is directed to personally supervise the investigation.



18. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-III)

(*) Corrected as per the order of this court dated 20.04.2023 made in CRL.OP(MD) .No. 21200 of 2022

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/05 /2023

Sub Assistant Registrar(CS)

aav/mm

(*) To be substituted the order already despatched on 06.03.2023

To

1. The Inspector General of Police,
South Zone Madurai,
Madurai.
2. The Superintendent of Police,
Kanyakumari District,
Nagercoil 629 001.
3. The Additional Superintendent of Police,
Kanyakumari District.
4. The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
5. The Inspector of Police,
CBCID,
Nagercoil.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.ARUL, Advocate (SR-59481[F] dated 02/12/2022)

Crl.O.P (MD) No.21200 of 2022
02.12.2022

_RD(01/02/2023) 6P 8C

KB(09/05/2023) 6P 8C