



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2023

PRONOUNCED ON : 20.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.Nos.6174 & 17774 of 2021
and Crl.M.P.Nos.4076 & 9749 of 2021

Crl.O.P.No.6174 of 2021

R.P.Ramesh ... Petitioner /
De facto Complainant

versus

1.State Rep. by Inspector of Police,
Anti-Land Grabbing Special Cell,
District Crime Branch, Vellore. ... 1st Respondent /
Complainant

2.S.P.Elumalai
3.R.P.Elumalai
4.Jayalakshmi
5.Shanmugam ... Respondents 2 to 5 /
Accused Nos.1 to 4

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to direct transfer to the CB-CID, Vellore, for further investigation of the case related to C.C.No.343 of 2014 on the file of the learned Judicial Magistrate No.II, Vellore in Crime No.21 of 2011 on the file of the District Crime Branch, Vellore, under Section 173(8) of the Code of Criminal Procedure.

Crl.O.P.No.17774 of 2021



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R.P.Ramesh

...

Petitioner /
De facto Complainant

versus

1.State Rep. by Inspector of Police,
Anti-Land Grabbing Special Cell,
District Crime Branch, Vellore.

...

1st Respondent /
Complainant

2.R.P.Elumalai
3.Jayalakshmi
4.R.Shanmugam

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Respondents 2 to 4 /
Accused Nos.1 to 3

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For Petitioner
[in both Crl.O.Ps]

:

Dr.V.Suresh

For Respondent No.1
[in both Crl.O.Ps]

:

Mr.A.Gopinath
Government Advocate

For Respondent Nos.2 & 3
[in Crl.O.P.No.17774/2021] &
For Respondent Nos.3 & 4
[in Crl.O.P.No.6174/2021]

:

Mr.R.John Sathyan for
Mr.N.Dhamodharan

For Respondent No.4
[in Crl.O.P.No.17774/2021] &
For Respondent No.5
[in Crl.O.P.No.6174/2021]

:

Mr.Adithya Varadarajan

COMMON ORDER



These Criminal Original Petitions have been filed to direct the further investigation of the matters relating to C.C.Nos.343 and 344 of 2014 on the file of the learned Judicial Magistrate No.II, Vellore in Crime No.21 of 2011 on the file of the District Crime Branch, Vellore, by transferring the investigation to CBCID, Vellore.

2. The petitioner is the *de facto* complainant and he is a resident of Sathuvachari, Vellore; two cases have been originated from a single F.I.R. registered on the complaint dated 09.07.2011 given by the petitioner in Crime No.21 of 2011 for the offences under Sections 120(B), 420, 423, 465, 468 and 471 of IPC along with Section 82 of Tamil Nadu Registration Act, 1908; the subject matter involved in the F.I.R. is situated in two different places viz., E.B. Nagar, Vellore and Bhaktavatsalam Nagar, Vellore; the case in C.C.No.343 of 2014 relates to the property situated in E.B. Nagar, Vellore and for which, the petition has been filed in Crl.O.P.No.6174 of 2021 and the other subject matter is situated in Bhaktavatsalam Nagar and the connected case in C.C.No.344 of 2014 relates to Crl.O.P.No.17774 of 2021.



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3. The brief facts of the case:-

3.1. A-1 to A-5 are the family members of the original owner, namely, Bhaktavatsalam; he had four sons by name, T.B.Teekaraman, T.B.Umakanthan, T.B.Babu, T.B.Sachidanandan and wife Pachayammal; sons and wife of Bhaktavatsalam are the accused 1 to 5; they are the owners of the subject lands situated in Bhaktavatsalam Nagar and gifted a portion of the said land to the Vellore Municipality for public purposes like parks and public amenities in the year 2009 itself; after the DTCP approval obtained for the layout, the Gift Deed executed in favour of Vellore Municipality was revoked and some properties were divided into house plots with the connivance of A-6 to A-8 and the same were also sold to various persons; similar such acts were done in respect of the properties situated in E.B. Nagar.

3.2. The property in Bhaktavatsalam Nagar which were dedicated for public purposes measures an extent of 8,355 sq.ft. and the property dedicated in E.B. Nagar would measure an extent of 18,059 sq.ft.; so far as the property in E.B. Nagar is concerned, an extent of 3 acres 21



cents in Survey Nos.194/1, 194/2, 194/3A, 194/4, 194/3B, 195/1, 195/2, 195/3 and 195/4 was originally owned by Ellappa Naicker; he had two sons by name, Ponnusamy Naicker and Arunachala Naicker; Ponnusamy Naicker had left 5 legal heirs by name, Narayanasamy, Balaraman, Nagappan, Shanmugam and Elumalai; the legal heirs of Arunachala Naicker includes his wife Valliammal and son Loganathan; all the legal heirs had executed a power document in favour of S.P.Elumalai, son of Ponnusamy on 03.09.1985 for dividing the lands into house plots and get the layout approval; during that course, the subject property was gifted to Sathuvachari Selection Grade Panchayat by virtue of a registered Gift Deed in Document No.230/1986.

3.3. The subject matter of the Gift Deed which measures 8,925 sq.ft. should be used as a public road; in another layout an extent of 9,134 sq.ft. was gifted to Sathuvachari Selection Grade Panchayat by virtue of a registered Gift Deed bearing Document No.231/1986 and the said property should be used for public purposes and the rest of the properties have been sold as house sites.



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3.4. The owner-cum-Power of Attorney S.P.Elumalai is arrayed as A-1 in C.C.No.343 of 2014 in Crl.O.P.No.6174 of 2021. A-3 Jayalakshmi is the Panchayat Union President; A-2 R.P.Elumalai is the husband of A-3; A-1 to A-4 conspired together in order to enjoy an unlawful enrichment, had divided the properties settled in favour of the Panchayat, into house plots and sold the same; A-4 Shanmugam is the Executive Officer, who had also colluded with A-1 to A-3 and given plan approval for raising buildings by the purchasers; the accused had taken advantage of the situation where the properties that have been already gifted were kept idle by the Panchayat till the year 2008.

3.5. An another extent of 18,059 sq.ft. at E.B.Nagar and 8,355 sq.ft. at Bhaktavatsalam Nagar making together 26,144 sq.ft. was belonged to the family of the original owner Bhaktavatsalam in a family partition entered into between the legal heirs of the deceased Bhaktavatsalam on 11.11.1991. During the year 1999, the said Bhaktavatsalam and his sons had tried to get the layout approval for their



properties situated in Survey Nos.384/1, 384/2, 384/3, 384/4, 385/1, 385/2, 385/3, 385/4 and 488/14; an extent of 4801 sq.ft. in the above said Survey Numbers has been gifted in favour of the Sathuvachari Selection Grade Panchayat by a registered Document No.847/1999 for setting up a public park; the sons of Bhaktavatsalam have also executed a Settlement Deed bearing Registration No.848/1999 and gifted an extent of 3,554 sq.ft. for park purposes.

3.6. Subsequently with an intention to enjoy the unlawful enrichment, the executant of the Gift Deed had cancelled the same in the year 2000; thereafter, the said properties were divided into house plots and were sold to various third parties; A-2 is the Panchayat Union President and A-1, who is the husband of A-2 is the Executive Officer have also facilitated the purchasers by giving due approval for raising constructions. Since the accused in both the cases have cancelled the earlier Gift Deed and once again sold them in favour of the third parties, the petitioner had preferred the complaint.

4. The learned counsel for the petitioner submitted that despite the subject matter involved is huge and public properties have been



utilised for personal purposes, investigation has not been conducted in a proper manner and hence, a case has been registered by the Anti-Land Grabbing Special Cell and the investigation was carried out. Despite the registered documents are relevant for the purpose of the case, the first respondent police has not seized the documents through which the respective accused had cancelled the earlier Gift Deed.

4.1. In fact, the Investigating Officer has addressed the Ward Officer of Vellore Municipality to furnish the documents pertaining to the Bhaktavatsalam Nagar and E.B. Nagar. But the Vellore Municipality has sent a reply by stating that those files were not obtained by the Municipality from the Executive Officer so far. In a case of this nature, the offence against the accused cannot be proved without the production of the relevant documents including the Gift Deed executed by the original owner in favour of the Municipality. Since the production of all the documents is necessary and the witnesses should also been enquired on this, it is necessary to order for further investigation by transferring the matter to CBCID wing. He further submitted that in a case of defective investigation, the Court has to



adopt an active role in ordering reinvestigation. In support of his contention, he relied on the decisions of the Hon'ble Supreme Court in the following cases:-

[i] ***POOJA PAL vs. UNION OF INDIA AND OTHERS*** reported in ***(2016) 3 SCC 135***;

[ii] ***VINUBHAI HARIBHAI MALAVIYA vs. STATE OF GUJARAT*** reported in ***(2019) 17 SCC 1***; and

[iii] ***DEVENDRA NATH SINGH vs. STATE OF BIHAR*** reported in ***2022 SCC Online SC 1389***.

5. The learned Government Advocate (Crl. Side) for the first respondent submitted that along with the Charge Sheet, all the registered documents in respect of the subject properties have been filed and hence, it is wrong on the part of the petitioner to say that the investigation is defective and important materials were not filed before this Court. In the event of getting any new material subsequent to the filing of the Charge Sheet, the Investigating Agency which has taken up the investigation alone should request the Court to grant permission for further investigation. Once



the cognizance is taken based on the Charge Sheet and the process is issued, neither the Magistrate *suo moto* order nor an application be filed by the applicant for seeking direction for further investigation. The circumstances which warrants further investigation is only on the detection of the new material evidence. While exercising the powers under Section 482 Cr.P.C., the Court cannot issue directions impinging upon the power and jurisdiction of other authorities. In support of his above submissions, he relied on the decisions of this Court and the Hon'ble Supreme Court in the following cases:-

[i] **CHINNATHAMBI vs. STATE** reported in **2017 (1) MLJ (Crl) 641;**

[ii] **AMRUTBHAI SHAMBHUBHAI PATEL vs. SUMANBHAI KANTIBHAI PATEL AND OTHERS** reported in **AIR 2017 SC 774;** and

[iii] **DEVENDRA NATH SINGH vs. STATE OF BIHAR** reported in **2022 LIVELAW (SC) 835.**

6. Mr.R.John Sathyan, learned counsel for the respondents 2 and 3 has submitted that the petitioner did not appear before the Court and he has also refused to receive summons served on him. So the Court has

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issued witness warrant against L.W.1, who is the petitioner herein. A person who did not abide the orders of the Court and who did not have any respect has filed these petitions just in order to settle his personal vengeance against the respondents. His only intention is to keep the case alive for several years without any closure.

6.1. In fact, some of the accused have been discharged by the Court in the petition filed under Section 239 Cr.P.C. The petitioner, who did not even make his appearance to proceed the case, had chosen to file these petitions seeking transfer of investigation after several years only with a motive to cause mental agony to the respondents. The Investigating Agency has made a detailed investigation and produced all the material records before the Court.

6.2. After the case was taken cognizance, the petitioner has got no right to file a petition for reinvestigation. The Investigating Agency can seek permission of the Court for further investigation in the event of finding any new materials relevant to the case. The case cannot be kept pending eternally under the guise of reinvestigation to please the petitioner.



Since the petitions filed by the petitioner is just to drag on the proceedings, the same are liable to be dismissed.

7. The records would show that the F.I.R. has been registered as early as in the year 2011 and in which, the Charge Sheet has been filed in the year 2014. The case has been taken cognizance on the basis of the Final Report. A few accused have been discharged on the discharge petition filed under Section 239 Cr.P.C. The Charge Sheet appears clear on facts and the transactions pertaining to the subject properties have also been filed along with the Charge Sheet.

8. The statement of the witnesses connecting to the transactions have also been obtained and they have also spoken about the transactions made in connection with the subject properties. On perusal of the entire materials available on record, I cannot presume that the Investigating Agency had withheld some documents from the view of the Court. The learned trial Judge got satisfied with the materials produced and framed charges against the respondents. If the materials were not sufficient



enough to frame charges, the respondents to the proceedings would have got discharged like the other accused in whose favour the order of discharge has been passed on 27.04.2015 and 04.09.2015 respectively.

9. The learned Government Advocate (Crl. Side) for the first respondent submitted that once a case has been taken cognizance, it is the Investigating Agency, who has to file a petition for further investigation in the event of getting any additional materials relevant to the case. The position of law on this point is well settled in the judgment of the Hon'ble Supreme Court held in **AMRUTBHAI SHAMBHUBHAI PATEL vs. SUMANBHAI KANTIBHAI PATEL AND OTHERS** reported in **AIR 2017 SC 774**. In the said case, it is held as under:-

“47. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to



the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand ”

10. The above judgment has been followed by the Full Bench of this Court in the judgment rendered in **CHINNATHAMBI vs. STATE** reported in **2017 (1) MLJ (Crl) 641**. However, the learned counsel for the petitioner submitted that in an appropriate case, if the Court feels that the investigation has not been done in a proper manner, the inherent powers under Section 482 Cr.P.C. can be exercised to direct further investigation or even reinvestigation. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court held in **POOJA PAL vs. UNION OF INDIA AND OTHERS** reported in **(2016) 3 SCC 135** wherein it is held as under:-



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“59. Referring to its earlier decision in Karnel Singh v. State of M.P. (1995) 5 SCC 518, it was reiterated that in a case of a defective investigation, the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 of the Code or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It recalled as well its observations in Ram Bihari Yadav v. State of Bihar (1998) 4 SCC 517 that the courts are installed for justice-oriented mission and thus, if a negligent investigation or omissions or lapses due to perfunctory investigation are not effectively rectified, the faith and confidence of the people would be shaken in the law-enforcing agency and also in the institution devised for administration of justice.”

11. By applying the above judgment, it is submitted by Dr.V.Suresh, learned counsel for the petitioner that even though the Charge Sheet has been filed in extraordinary circumstances, in the interest of justice and to ensure honest and complete investigation, reinvestigation can be ordered. He further submitted that any criminal offence is an offence against



the society at large and it casts an onerous responsibility on the State and hence an order for reinvestigation should be granted.

12. Though there cannot be any quarrel on the submission of the learned counsel for the petitioner that in extraordinary and exceptional circumstances in the interest of justice and to ensure honest and fair investigation, the constitutional Courts can also order for reinvestigation and that should only be based on the facts or materials which are provided to discredit the genuineness on the part of the Investigating Agency to bring the complete facts before the Court.

13. The petitioner, who is the *de facto* complainant has alleged that the area which has been demarcated for public use by the original owners, who have already settled the said property in favour of the concerned local bodies have cancelled the same and reconveyed in favour of various third persons, in connivance of the officials of the local bodies and the Panchayat President and others.

14. In the judgment rendered in ***VINUBHAI HARIBHAI MALAVIYA vs. STATE OF GUJARAT*** reported in ***(2019) 17 SCC 1*** the



Hon'ble Supreme Court has held that a trial can be kicked off only after an investigation was done in a fair and just manner. In the words of the Hon'ble Supreme Court, it is stated as under:-

“18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.”

15. By applying the above logic, one can find out whether the investigation has been done in a fair and proper manner. The first respondent / Investigating Agency had brought the land owners and the Panchayat President and the Executive Officer of the local Panchayat as accused by producing all the relevant materials. Even in the Charge Sheet, the details about the transactions and the document numbers have been



mentioned to show the manner in which the offence has been committed. In a case of this nature, a fair investigation can be done only by examining the documents pertaining to the subject properties on the various transactions and obtaining the statements from the persons, who stood as witnesses. The first respondent / Investigating Agency has rightly undertaken the exercise and booked the offenders in a fair and proper manner. In fact, the trial Court has got satisfied with the materials produced in order to frame charges against the accused for the respective offences.

16. Though it is essential that an honest and complete investigation should be ensured, the Courts cannot interfere with the independence of the Investigating Agency by forming doubts without any basis. It is not the contention of the petitioner that some of the essential materials though brought by him were not taken into account. It is neither the statement of the petitioner that the new materials connecting to the case are available but the Investigating Agency is reluctant to collect the same.

17. The one and only submission made by the learned counsel for the petitioner is that, the documents pertaining to the



transactions which might prove the guilt of the accused were not filed before the Court. The statements have been obtained from the witnesses and the Charge Sheet also mentions about the documents with dates and other details. So there need not be any apprehension on the part of the petitioner that the first respondent has not acted in a fair and proper manner. At the time of filing the alteration report during July 2014 itself, the first respondent police had produced the Observation Mahazar, Rough Sketch, statement of the witnesses along with 27 registered documents obtained from the Registration Department and survey records recovered from the Revenue Department along with the documents obtained from the local Municipality at E.B.Nagar.

18. Similarly, in connection with the property situated in Bhaktavatsalam Nagar also at the time of filing the alteration report on 02.07.2014 itself, the prosecution has filed Observation Mahazar, Rough Sketch, statement of 16 witnesses along with 11 registered documents obtained from the Registration Department pertaining to the transactions and survey records recovered from the Revenue Department along with the



documents obtained from the local Municipality. In the context of the allegations made, the prosecution agency can be expected only to do this much.

19. It is absolutely unnecessary to order further investigation and reinvestigation, when the investigation has already been done by taking a right direction and in fair and proper manner. When there is no palpable or presumable deviation, the courts cannot order for re investigation. Especially in this case L.W.1, who is the *de facto* complainant / petitioner had even refused to receive summons and co-operate for early disposal.

20. After the charges have been framed, when summons is served upon L.W.1, he ought to have received the summons and deposed evidence. In fact, the trial Court had even issued witness warrant against the petitioner. The petitioner who did not obey the process of the Court should not find pleasure in filing this kind of petition without any basis. And that would only help to drag the proceedings unnecessarily. Since the petitioner has not brought any new material or convinced this Court that the



investigation has been done in a callous or perfunctory manner, I find no reason to grant the prayer sought by him.

21. Resultantly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

20 .01.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Judicial Magistrate No.II,
Vellore.

2.The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.Nos.6174 & 17774 of 2021
and Crl.M.P.Nos.4076 & 9749 of 2021



R.N.MANJULA, J.

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Pre-Delivery Common Order made in
Crl.O.P.Nos.6174 & 17774 of 2021
and Crl.M.P.Nos.4076 & 9749 of 2021

20.01.2023