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CrI.O.P.No.19726 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.19726 of 2022 and
CrI.M.P.No.12980 of 2022

N.Syamasundara Naidu

... Petitioner

Vs.

1.V.Dakshinamoorthy

2.B.H.Himagiribabu

3.State: represented by

The Inspector of Police,
D.C.B. (ALGSC) Vellore,
Crime No.10/2014.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to order transfer of the proceedings in CC No.10/2016 on file of Judicial Magistrate No.II, Vellore to any other District.

For Petitioner : Mr.S.Annakkodi

For R1 & R2 : Mr.K.Srinivasan, Senior Counsel for
Mr.G.Vinodh Kumar

For R3 : Mr.A.Gokulakrishnan,
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to order transfer of the proceedings in C.C.No.10 of 2016 on the file of the Judicial Magistrate Court No.II, Vellore to any other District.

2.The complaint is that the respondents 1 and 2 fabricated agreement of sale, dated 05.11.2012 to grab the petitioner's agriculture land in survey Nos.376/1B1 and 376/1C1 at Melathur Village, Gudiyatham Taluk, Vellore District by forging the petitioner's signature. In this case, the 3rd respondent after getting the report from the Handwriting Expert, dated 23.07.2003 filed the charge sheet before the learned Judicial Magistrate No.II, Vellore. In this case, the respondents 1 and 2 are charged and, facing trial for offence under Sections 120(b), 419, 420, 423, 447, 465, 468, 471 and 506(ii) and Section 82 of the Registration Act, 1908.

3.The petitioner made allegation that the prosecution was being conducted collusively to save the accused under the influence of a partner



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of the accused who is a prominent lawyer practising in Vellore and surrounding districts. The petitioner though brought the same to the knowledge of the trial Court, the trial Court failed to consider the same and proceeded with the trial, hence, he doubted the independent approach of the trial Court. He further made specific complaint about the theft of Court records, Falsification of records, Tampering of evidence in Court records, Antedating Court records, Obstruction of public justice and collusive approach of the prosecution. For the complaint of falsification of Court records and other evidence, he submitted that he filed vakalat which was found not available in the case bundle, hence, he filed a petition under Section 91 Cr.P.C., seeking vakalat, which according to the petitioner, the vakalat is in possession of the accused.

4.He further made a complaint that LW13/Handwriting Expert was examined as PW13 on 03.09.2021 and in the trial Court bundle, he found that page Nos.47 to 49, the reasoning sheet not available. Hence, the petitioner filed a copy application for these three pages in C.A.No.31 of 2017. Due to missing of these pages, the Copy Application could not be complied with. Further, the appearance of LW13 was not informed to the



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petitioner, LW13 suddenly appeared and on the same day, he was examined.

5.He further made allegation against the Advocate who is appearing for the accused. The petitioner had also changed his Advocate twice. When the petitioner was in London for taking treatment, he was forced to execute fresh vakalat, since his earlier vakalat was not available in the case bundle. The petitioner filed four Criminal Miscellaneous Petitions seeking various relief, but all the four petitions were dismissed on 24.02.2022 by the trial Court. As against one of the four orders, the petitioner filed Crl.R.C.No.605 of 2022 before this Court and this Court, by order, dated 21.06.2022 directed the trial Court to frame additional charges against the respondent 2 and 3/accused for offence under Sections 34, 109 and 467 IPC. He further complained that a certified copy of the agreement of sale with forged signatures bearing C.A.No.1050 of 2021 was filed by the prosecution on 23.09.2021 along with application to receive the documents in Crl.M.P.No.9148 of 2021. The certified copy in C.A.No.1050 of 2021 had gross mechanical copying error with missing forged signatures on the face of the record marked as



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Ex.P22 through the Investigating Officer. Further, he also made complaint against the Presiding Judge.

6.Learned Additional Public Prosecutor appearing for the 3rd respondent filed status report, the relevant portion of the same in extracted as follows:-

“5. It is submitted that after completion of investigation, the then investigation officer filed a charge sheet u/s.419, 120(b),420, 423, 447, 468, 465, 471 and 506(ii) IPC against the accused and submitted before the same before the Learned Judicial Magistrate, Gudiyatham vide C.C.No.10 of 2016 dt.04.11.2015. The next hearing is posted on 11.07.2023. As on date, the cross examination of P.W.1, P.W.2 and P.W.4 alone is pending.

6. It is submitted that the petitioner herein/ defacto complainant has habit of evading the processes / summons from the court with an intention to delay the proceedings. The petitioner herein had already filed various petitions only with an intention of delaying the case knowing that the case has reached the end stage.



7. *It is submitted that the petitioner/defacto complainant is a learned lawyer. The petitioner/defacto complainant had continuously gave wrong instructions to the prosecution to file a vague and vexatious petitions before this Court with an intention to distract the proceedings and if they refused to so do this petitioner has the habit of making false allegation as against the prosecution and the police.*

8. *It is submitted that the petitioner had filed a Crl.R.C.No.1164 of 2022 and the same was allowed by order dated 06.09.2022 permitting the defacto complainant to appoint private counsel of his own choice under section 302 Cr.P.C.*

Further preferred another revision in Crl.R.C.No.605 of 2022 and the same was allowed by order dated 21.06.2022 directing the trial court to frame additional charge.

9. *It is submitted that the petitioner is continuously making allegations against all the agencies which includes the judiciary and the law enforcing agency which includes the judicial Staves. The petitioner have continuously invoked various provisions of law, and brought the same to the High Court. Nevertheless it is his right. But barraging allegations after allegations keeping*



all the agencies continuously busy at this stage of the trial is for oblivious reasons. The Hon'ble Trial Court had conducted the trial in a fair manner, despite that the petitioner is not satisfied for unknown reasons.”

7.He submitted that the prosecution examined the Handwriting Expert whose evidence and report is in conformity to the case of the prosecution. The other issues raised by the petitioner/defacto complainant are unwarranted and it is his own imagination. In this case, almost all the witnesses were examined and cross examined, except for the petitioner/PW1, his wife/PW2 and the Investigating Officer/PW14. The evidence of PW1, PW2 & PW14 were recorded in chief and they have to be cross examined. If the petitioner and his wife appear before the trial Court and submit them to cross examination, the trial Court could be completed without further delay. The petitioner by filing this petition, stalled the progress of the trial. Hence, he prayed for dismissal of this petition.

8.Learned Senior Counsel appearing for the respondents 1 and 2 submitted that in this case, PW1 was examined on 07.06.2016 and PW2 shortly thereafter. Both left to London and not appeared before the trial



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Court and thereby, successfully dragging on the case. There is also a civil suit pending between the parties. Circumventing the same, the petitioner lodged the criminal complaint against the respondents 1 and 2. He further submitted that the issue in this case are the issue to be decided in the civil case and the respondents 1 and 2 shall prove their innocence before the trial Court. The petitioner, by filing one petition or other either before the trial Court or this Court, is dragging on the proceedings and prolonging the agony and suffering of the respondents 1 and 2. Hence, he prayed for dismissal of this petition and appropriate direction for completion of trial.

9.This Court on the specific allegation made by the petitioner against the Presiding Officer, had called for a report from the Presiding Officer. The report, dated 17.10.2022 is as follows:-

“I humbly submit that the petitioner in CC.No. 10/2016 has stated that the police as well prosecution has not co-operated with him in conducting the case and even after he has given complaint to the higher officials there is no proper response from them. He has stated that he has filed some petitions before this court and the same



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was returned for some reasons and there after he has filed some petitions before the court at that time the same was returned for the reason that here is no proper vakalat to represent him. when the case is handled by the prosecution side without obtaining the permission. The complainant was represented by his counsel Mr. Yaseer and Kumar and through them the complaint has filed the petitions again and at the time when this court asks for necessary authority for them to represent the case on behalf of the complaint and also for the vakalat from them to represent him. The said Advocates at the time informed the court that the vakalat already filed by them was not available in the bundle and they suspect the opposite side as the same was lost(theft) in the court and hence they have filed petition under section 91 of Cr.P.C.

At that time the opposite lawyer objected the same and questioned why they removed the vakalat from the bundle. The said vakalat was sent from United Kingdom without the Advocate seal and enrollment reference. The opposite lawyer has filed petition to know about the complainant's whereabouts as whether he is in united kingdom or not if so where he is residing and they also want to cross examine him and for that purpose they have



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filed a petition under section 311 of Cr.PC and the said petition is taken on filed and the same is pending enquiry as per the Directions of the Hon'ble High Court of Madras, the petitioner has to appear in person before the court on 01.09.2021 on that date the Advocate for the petitioner represented before the court and took adjournment for the reason the petitioner is not well and they have further informed the court that they filed another vakalat inlieu of the lost one based on that the petition u/s.91 of cr.p.c. filed and numbered in Crl.M.P.No.2304 of 2022 and same was dismissed on 10.05.2022. Further as per the directions of the Hon'ble High Court for speedy disposal the evidence of witness 14 was taken on that date. Further only the Advocates for the complainant the memo were returned to them. There is no return of memo by the court on its own accord. Further this court has ordered in several petitions filed by the complainant. This court issued memo to the concerned staff for vakalath missing and reply received, further enquiry was going on.

Further I humbly submit that the issue summon of LW13 on 04.08.2021 and 13.08.2021 by this court for trial in CC.No.10/2016, that was mentioned in the notes



paper, therefore LW13 appeared on 03.09.2021 by the said summon. So there is no grievance made by this court and registers were maintained authentically day by day. By the direction of Hon'ble High Court of Madras in Crl.R.C.No.605/2022 dt:21.06.2022, Addition of charges questioned to the Accused A1 and A2 on 18.07.2022.

I humbly submit that the petitioner filed Copy Applications on the file in CC.No.10/2016, The certified copies delivered to him within ten days from the received date. At the outset the xerox operator post of this court is vacant from the year 2018 to till the date, and following letter to the Hon'ble Principal District Court in Dis.No.442/2022, dated: 23.06.2022 for filling up the vacant. Further the court have one typist in this court, to attend for deposition, correspondence letter, e-court, Appeal, Statement and Copy application. The Copy Applications filed by the petitioner on this file, Each Copy Application has 200-500 Pages, there is no more sufficient A4 papers for those certified copies documents, and following subject letter to the Hon'ble Chief Judicial Magistrate in Dis.No. 481/2022, dated: 12.07.2022, for buying A4 paper request to allotment. I further submit that due to non available of Staff member in the cadre of



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Xerox Operator causes very much difficult to comply with day to day xerox operator work that to giving in the copy application.

On this file, the four Crl.M.P orders passeded to dismiss by this court, every petitions of the petitioner/Defacto Complainant carefully readed by me, and heard both sides arguments, the said petitions are not suitable for the following case because the trial of the case is partly completed, The Hon'ble High Court of Madras direction to complete the proceedings within three months time in Crl.O.P.No.842 of 2017 dated: 22.07.2022 on considering the fact and circumstances, the petitioner/Defacto Complainant petitions were dismissed by this court only by unbiased and proper reason is mentioned in the orders.

I humbly submit herewith that the petitioner/Defacto complainant is routine work has to file petition for delaying the completion of proceedings in CC.No.10/2016, he was non cooperation to the prosecution of formerly APP Gr-1. He filed petitions against prosecution side APP's and Higher Police Officials for to save the accused, but his petition only



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makes delaying the case for justice. I submit that the court may take effective steps and respectfully following the Hon'ble High Court of Madras for completion of this case.

I humbly submit that due to the above said reasons only the case could not be disposed and I humbly submit that in future every endeavor will be made by me to dispose the case as per the direction of the Hon'ble High Court. This court is always ready to dispose of the demands submitted by the petitioner legally.”

10.Considering the submissions and on perusal of the materials, it is seen that the following petitioner's apprehension are sorted out which are as follows:-

1)Vakalat not available in the case bundle – It is now seen that the vakalath is very much available in the case bundle and the petitioner is permitted to be represented through his counsel and he is assisting the public prosecutor following Section 301 Cr.P.C.

2)All the Criminal Miscellaneous Petitions filed earlier are now reached its finality.

3)On the plea of the petitioner, this Court in CrI.R.C.No.605 of



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2022 directed the trial Court to include Sections 34, 109 & 467 IPC, vide order, dated 21.06.2022.

4)PW13 is the Handwriting Expert through him Ex.P15 Handwriting Expert report marked.

5)The appearance of PW13 is only after issuance of summons from the trial Court. In view of the same, the appearance of PW13 before the trial Court cannot be attributed with any motive.

11.Thus, from the above, it is seen that the trial in this case has proceeded without any anomaly. Now, the case is pending for cross examination of the petitioner/PW1, his wife/PW2 and Investigating Officer/PW14. Due to which, the case is kept pending from the year 2016.

12.The apprehensions of the petitioner are misplaced for the above said reasons. In view of the same, this Court is not inclined to entertain this Transfer Petition. Hence, this Criminal Original Petition stands dismissed directing the petitioner and his wife and to appear before the trial Court and offer them for cross examination.



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13.The trial Court is directed to conclude the trial preferably within a period of three months from the date of receipt of a copy of this order. The connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

- 1.The Judicial Magistrate No.II,
Vellore.
- 2.The Inspector of Police,
D.C.B. (ALGSC) Vellore,
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.
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