



WEB COPY



Crl.O.P.No.19861 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19861 of 2022

Selvam

... Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai – 600 007.

2.The Inspector of Police,
Anna Nagar Police Station,
Chennai – 600 040.
[Crime No.22/2022]

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to direct the first respondent to transfer the investigation in Crime No.22 of 2022 on the file of the Inspector of Police, Anna Nagar Police Station, the second respondent herein to some other competent Investigating Officer to secure the ends of justice.



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For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner/defacto complainant in Crime No.22 of 2022 filed this petition seeking transfer of investigation.

2.The grievance of the petitioner is that the petitioner lodged a complaint before the second respondent, though FIR was registered in Crime No.22 of 2022 for the offence under Section 408 IPC, the gold inclusive of cash worth Rs.7 lakhs which has been misappropriated by A1 Arun Bala Singh, an employee of the defacto complaint, no action has been taken by the second respondent to retrieve and to recover the misappropriated amount. It is further submitted that though the complaint was given on 11.01.2022 and the petitioner lost valuable jewellery to the tune of Rs.27.780 grams, no action has been taken, the accused in this case has not been arrested, interrogated and no steps taken to recover the jewels. The petitioner sent a representation to the first respondent Commissioner of



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Police on 02.08.2022 seeking transfer of investigation, but no action has been taken so far. Hence, the above petition is filed.

3.Heard Mr.R.Sankarasubbu, learned counsel appearing on behalf of the petitioner.

4.Learned Additional Public Prosecutor filed a counter and submitted that based on the petitioner's complaint on 30.09.2021, C.S.R.No.649 of 2022 registered and thereafter, a case in Crime No.22 of 2022 for the offence under Section 408 of IPC was registered on 11.01.2022. He would submit that the Investigating Officer visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses, examined the witnesses and recorded their statements. He further submits that the accused Arun Bala Singh was arrested on 11.07.2022 and gave a confession that he worked as Anna Nagar Branch Manager of petitioner's Company and since he had loans and was in need of money, he misappropriated the money and jewels of the petitioner's Company. Further, the accused devised a plan and as per his plan, on 20.09.2021 when



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there was opening balance of Rs.7 lakhs in the business, he purchased 27.780 grams of gold from a customer and paid Rs.1,15,500/- from Company's account, the transaction was informed to the Head Office through Whatsapp, thereafter he had taken away the balance of Rs.5,84,500/- and gold jewellery of 27.780 grams, switched off his mobile, locked the office and escaped to Coimbatore. Further on the way to Coimbatore the accused sold the jewels to some unknown persons on the pretext of urgent need of money for medical expense and thereafter, he lead a happy life in Coimbatore using the money. He further submitted that on 11.07.2022 the accused was arrested near 14 Shops Bus stand in Anna Nagar. He would submit that earnest steps have been taken to recover the misappropriated amount and since the accused had spent the money over a period of time lavishly for his personal luxury and pleasure, money could not be traced. Hence, after completion of investigation, charge sheet filed listing witnesses L.W.1 to L.W.8 and the materials collected before the learned V Metropolitan Magistrate, Chennai on 31.01.2023, the same was taken on file as C.C.No.2057 of 2023 and summons have been sent for the appearance of the accused. He further submitted that the grounds sought for



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transfer of investigation is without any material, now investigation has been completed and charge sheet has been filed. Hence, he prayed for dismissal of the above petition.

5.Learned counsel for the petitioner submitted that the primary grievance of the petitioner is that despite the petitioner giving details of gold jewellery, CCTV footage in the office and other particulars, the respondent police had not taken any steps to recover the misappropriated amount. He further submitted that following the Criminal Law Amendment Act, steps can be taken to attach the properties of the accused who had misappropriated the petitioner's Company amount of Rs.5,84,500/- and gold jewellery of 27.780 grams.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case already investigation has been completed, charge sheet filed which was taken on file in C.C.No.2057 of 2023 on the file of the learned V Metropolitan Magistrate, Chennai and now the case is posted for appearance of the accused. The second respondent police to serve



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summons to the accused and ensure the presence of the accused before the Trial Court without any delay. The prosecution can very well file a petition to attach the properties of the accused acquired using the misappropriated amount. This Court in W.P.No.11221 of 2015 observed that the Schedule to the Criminal Law Amendment Ordinance, 1944 was amended by the Criminal Law [Tamil Nadu Amendment Act, 1997] with effect from 12.08.1997, on account of which the restriction that the offences must have been committed in relation to the State or its instrumentalities was taken away and now, the State of Tamil Nadu has the power to initiate proceedings even in respect of offences against private persons. Thus, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties by the offender. The Ordinance provides for procedure to effect attachment. Therefore, liberty is given to the petitioner to identify and list out the properties for the purpose of attachment and the Trial Court to take appropriate steps in this regard since Section 408 IPC is a Scheduled offence as per Criminal Law Amendment Act schedule.



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Index : Yes/No
Speaking Order/Non-Speaking Order
cse

To

1. The Commissioner of Police,
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2. The Inspector of Police,
Anna Nagar Police Station,
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3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

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