

In the High Court of Judicature at Madras

Dated : 04.7.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.29335 of 2022
& Crl.M.P.No.17939 of 2022

Palani Balaji

...Petitioner

Vs

- 1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- 2.The Superintendent of Police,
Kallakurichi District.
- 3.State rep.by the Inspector
of Police, Thirukovilur Police Station.
- 4.Saravanan
- 5.Vinoth
- 6.Vishnu
- 7.Veeran
- 8.Vijayaragavan
- 9.Bhuvaneshwari
- 10.Arunkumar
- 11.Narayanasamy

R4 to R11 impleaded as per order dated 13.3.2023
in Crl.M.P.No.3658 of 2023 by GCSJ

...Respondents

PETITION under Section 482 of the Criminal Procedure Code
praying to direct the respondent to re-investigate the case in C.C.No.
33 of 2022 on the file of the learned Judicial Magistrate, Thirukovilur.

For Petitioner : Mr.G.Murugendran
For Respondents 1 to 3 : Mr.A.Gopinath,
Government Advocate (Crl.Side)

ORDER

This is a petition filed by the petitioner seeking for
reinvestigation of the case pending in C.C.No.33 of 2022 on the file of
the learned Judicial Magistrate, Thirukovilur.

2. The case of the petitioner is stated as hereunder :

(i) The petitioner, who is the defacto complainant, lodged a
complaint before the second respondent to the effect that on
13.2.2013, one Mr.Saravanan executed a mortgage deed dated
13.2.2008 for a sum of Rs.1 lakh. As the said Mr.Saravanan was not
able to replay the amount, he executed another mortgage deed dated
24.11.2008 after cancelling the earlier mortgage deed dated
13.2.2008. Further, due to his financial crunch, the said Mr.Saravanan

executed a power of attorney dated 16.4.2009 in favour of the mother of the petitioner and based on that, a sale deed came to be executed in favour of the petitioner on 24.6.2010 and it was registered as Doc. No.3026 of 2010. Thereafter, the petitioner was in possession and enjoyment of the property.

(ii) After the execution of the said sale deed, the said Mr.Saravanan cancelled the said power of attorney document dated 16.4.2009 and executed a fresh power of attorney document dated 17.12.2012 and based on that, subsequent sale deeds were created. In the complaint, the petitioner alleged that the accused persons numbering seven committed offences under Sections 143, 420, 467, 468 and 471 of the Indian Penal Code.

(iii) Based on the complaint given by the petitioner, a first information report came to be registered by the third respondent in Cr.No.557 of 2013.

(iv) The first grievance raised by the petitioner is that the final report was filed nearly after eight years before the Judicial Magistrate, Thirukovilur only on 01.3.2022. The petitioner, on going through the final report and the statements recorded, which were filed along with the same, came to understand that the entire investigation had been

done in a slipshod manner and if the proceedings are allowed to go on based upon the present final report, it will end up in acquittal of all the accused persons. It is under these circumstances, the petitioner approached this Court seeking for reinvestigation of the case.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for respondents 1 to 3.

4. This Court had the advantage of going through the entire materials and considered the submissions made by the learned counsel on either side.

5. The case in hand is a sample as to how an investigation should not be done by the Police. The statements and other materials filed along with the final report virtually demolish the final report and if such proceedings are allowed to be continued, it will tantamount to mockery on the criminal justice system.

6. The first information report was registered on 29.11.2013. Once the first information report came to be registered, the

investigation under Chapter-XII commences. It is only in the course of investigation, the statements of witnesses are recorded by the Police under Section 161(3) of the Criminal Procedure Code (for short, the Code). Therefore, considering the scheme of the Code, if at all the statements are recorded from the witnesses, it can happen only after 29.11.2013. However, to the shock and surprise of this Court, it is found that most of the witnesses have been examined on 30.4.2013 and some of the witnesses have been examined on 02.5.2013. It means that the witnesses were examined and their statements were recorded even before the first information report was registered in this case.

7. There is yet another infirmity prima facie seen in this case. This is a case involving cheating and forgery of documents. Under such circumstances, it is not known as to why the Investigating Officer prepared the rough sketch and the observation mahazar. The rough sketch and the observation mahazar are relevant factors under the Indian Evidence Act in view of Section 7. These documents will basically reflect the occasion, cause or the effect of the facts in issue. Therefore, unless and otherwise a case requires preparation of a rough

sketch and an observation mahazar, it cannot be mechanically followed in all cases and more so in the case involving cheating and forgery of documents wherein the crime has to be established only based on documents, which have been used for the purpose of committing the crime.

8 The power of this Court to order for fresh/de novo investigation or reinvestigation was recognized by the Apex Court in the case of ***Vinay Tyagi v. Irshad Ali [reported in 2013 (5) SCC 762]***. Useful reference can be made to the judgment of the Apex Court in the case of ***Pooja Pal Vs. Union of India [reported in 2016 (3) SCC 135]***.

9. It will also be useful to take note of the judgment of the Apex Court in the case of ***Neetu Kumar Nagaich Vs. State of Rajasthan [reported in 2020 (16) SCC 777]*** wherein the relevant portion is extracted as hereunder :

"Normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the

investigation has not been conducted in a proper and objective manner, as observed in Kashmeri Devi Vs. Delhi Administration [(1988) Suppl. SCC 482], fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. The power may also be exercised if the court comes to the conclusion that the investigation has been done in a manner to help someone escape the clutches of the law. In such exceptional circumstances, the court may, in order to prevent miscarriage of criminal justice, direct de novo investigation as observed in Babubhai Vs. State of Gujarat [(2010) 12 SCC 254]. A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. The observations in this context in Babubhai (supra) are considered relevant at paragraph 45 as follows:

'45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court [Ganeshbhai Jakshibhai Bharwad Vs. State of Gujarat 2009 SCC OnLine Guj 12130] makes a fresh investigation'."

10. The Apex Court held that the powers of this Court under Section 482 of the Code can be exercised in a proper case to order de novo investigation/reinvestigation. But, such an exercise should be done only in very rare cases depending upon the facts and circumstances of the case.

11. The case in hand, if it is permitted to reach to its logical end, will only ultimately result in acquittal of all the accused persons due to the slipshod investigation conducted by the third respondent. In fact, based on the materials that are available, even to conduct a trial in this case will be a wasteful exercise. Under such circumstances, this Court deems it fit to exercise its jurisdiction under Section 482 of the Code and order for a de novo investigation/reinvestigation in this case. In any event, the entire case is based on documentary evidence and therefore, whoever is reinvestigating the case has to merely record the statements, go by the documents that have already been seized and lay a final report before the jurisdictional court concerned.

12. In the light of the above discussions, the proceedings in C.C. No.33 of 2022 on the file of the learned Judicial Magistrate are

quashed. The investigation in Cr.No.557 of 2013 on the file of the third respondent Police is transferred to the file of the Deputy Superintendent of Police, Thirukovilur, who shall conduct a fresh investigation by recording statements of the witnesses after collecting relevant materials. The Deputy Superintendent of Police, Thirukovilur shall complete the investigation within a period of four months from the date of receipt of a copy of this order and shall lay the final report before the concerned jurisdictional court against the accused.

13. In the result, this criminal original petition is allowed in the above terms. Consequently, the connected Crl.M.P. is closed.

04.7.2023

Index : Yes

Neutral Citation : Yes

Speaking Order : Yes

To

- 1.The Director General of Police, Dr.Radhakrishnan Salai, Mylapore, Chennai-4.
- 2.The Superintendent of Police, Kallakurichi District.
- 3.The Deputy Superintendent of Police, Thirukovilur.
- 4.The Inspector of Police, Thirukovilur Police Station.
- 5.The Judicial Magistrate, Thirukovilur.
- 6.The Public Prosecutor, High Court, Madras.

RS

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N.ANAND VENKATESH,J

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