



Crl.O.P.No.27982 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 19.10.2022	Orders Pronounced On .02.2023
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Crl.O.P.No.27982 of 2018
and Crl.MP.No.16257 of 2018

1.M.P.Vairakannan
2.S.Doraisamy
3.V.Elangovan
4.D.Rajkumar
5.K.A.Prabaharan

... Petitioners

Vs.

1.The State by The Inspector of Police,
B4 High Court Police Station,
Crime No.13 of 2018,
Chennai City.

2.The Joint Registrar [Writs],
High Court,
Madras – 600 104.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.13 of 2018 on the file of the first respondent police and quash the same.



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For Petitioners : Mr.N.Manokaran
For Respondents
R1 : Mr.L.Baskaran
Government Advocate [Crl. Side]
R2 : Mr.R.Sunil Kumar

ORDER

The petitioners/accused in Crime No.13 of 2018 on the file of the respondent police for the offences punishable under Sections 419, 467, 468, 471 and 420 109 I.P.C. have filed this quash petition.

2.The first petitioner is a person who attested the affidavit filed in support of the writ petition in W.P.No.17215 of 2018. The second petitioner is a Senior Advocate who has put more than 48 years of practice. The other petitioners, namely, petitioners 3 to 5 are his juniors. The above case came to be registered on the complaint lodged by the second respondent. In the name of one N.P.Velmurugan, a writ petition in W.P.No.17215 of 2018 was filed before this Court seeking closure of TASMAL shop No.7145 situate at J.J.Nagar, Narasingapuram Village,



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Attur Taluk, Salem District. The villagers and residents of J.J.Nagar, 4th Ward, Narasingapuram Village presented a petition to the District Collector, Salem during Jamabhandi on 07.06.2018 seeking to consider the representation and to close the TASMAL Shop No.7145. Since the representation was not acted upon, a writ petition was filed before this Court in W.P.No.17215 of 2018 and this Court by order dated 10.07.2018 disposed of the writ petition with a direction to the first respondent therein to consider the representation of the petitioner [N.P.Velmurugan] therein. Thereafter, on 27.09.2018 again the writ petition was listed for being mentioned and one Mr.Neelakandan, learned counsel representing Mr.P.Subramaniam, learned counsel on record for the petitioner/N.P.Velmurugan made a categorical submission that the petitioner/N.P.Velmurugan had not signed the affidavit. Thereafter, this Court passed an order on 27.08.2019 directing the Registry to take immediate action, based on which the Registry lodged a complaint and a case in Crime No.13 of 2018 registered. Recording the same, W.P.No.17215 of 2018 was finally disposed of on 09.11.2018.



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3.The complaint is that N.P.Velmurugan had not signed the affidavit, his name has been misused and some person forged his signature and filed the case. For this reason, a case was registered. On perusal of the representation, it is seen that the representation has been given by the general public signed by more than 70 persons and the signature of N.P.Velmurugan in the representation as General Secretary, DMK political party is not denied. The representation is not denied and the grievance of shifting the TASMAC Shop No.7145 is also not in dispute. The only contention of N.P.Velmurugan is that he has not signed in the affidavit filed in support of the writ petition. The petitioners are Advocates and attesting witness to the affidavit. At this juncture, it would be appropriate to extract the earlier order passed by this Court on 31.11.2018:

“Mr.M.Mohamed Riyaz, Additional Public Prosecutor, takes notice for the first respondent. The learned counsel for the petitioners is permitted to issue notice and serve typed set of papers on the Standing Counsel for the Registrar General, High Court, Chennai.

2.A shocking incident which will send an alarm bell to all the Advocates practising the noble profession of law,



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has happened in this case. The petitioners are Advocates, who are practising before this Court. Particularly, the second petitioner is a Senior Advocate, who has appeared in land mark cases and has been practising in this Court for nearly forty eight years. One person claiming himself to be N.P.Velmurugan from J.J.Nagar, Narasingapuram Village, Attur Taluk, Salem District approached the second petitioner and also introduced himself as a person, who was referred by one of the old clients of the second petitioner. He handed over all the papers and other materials and gave instructions to the juniors of the second petitioner and requested a Writ petition to be filed before this Court for closing a Tasmac Shop and Tasmac Bar. He also submitted the representation made by the general public belonging to the locality. The second petitioner bonafide believed the statements made by this person claiming himself to be Velmurugan and he gave suitable directions to the juniors to prepare the case. The concerned person had also signed the affidavit and also the vakalat as Velmurugan. Thereafter, the Writ petition was filed and it was numbered as W.P.No.17215 of 2018.

3.The matter came up for hearing before this Court on 10.07.2018. This Court after hearing the second petitioner, passed a final order directing the concerned



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officials to take appropriate action, on the representation made by the said Velmurugan.

4. Thereafter, certain shocking developments started happening in this case. A mention was made by a counsel named Mr.P.Subramaniam, to post the Writ petition under the caption "for being mentioned". The matter was posted under the said caption on 27.09.2018. At that time, a submission was made before this Court stating that the above said Velmurugan has been impersonated and some one else has managed to forge signatures in the affidavit as well as in the vakalat and has obtained an illegal order before this Court. On the said day, the real Velmurugan was present before this Court and he made a categorical statement that he did not approach the counsel for the purpose of filing any Writ petition before this Court and the Writ petition has been filed without his knowledge and therefore, suitable action must be taken.

5. This Court after taking into consideration, the facts and circumstances of the case, directed the respondent police to register a complaint after obtaining the complaint from Velmurugan.

6. Pursuant to the order passed by this Court, the respondent police have now registered an F.I.R. in Crime No.13 of 2018, on 15.10.2018, against the petitioners for



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an offence under Sections 419, 467, 468, 471 and 420 IPC. This FIR has now been put to challenge before this Court in the present petition.

7.Mr.N.Manokaran, learned counsel for the petitioners would submit that the respondent police instead of proceeding against the actual accused, who had impersonated and forged the signature of Velmurugan, has proceeded to show the petitioners, who are Advocates, who appeared in this case, to be accused persons. The learned counsel would submit that the respondent police ought to have registered an F.I.R. against unknown accused persons and must have investigated this case and must have found out the real culprit, who had impersonated and forged the signatures of Velmurugan. The learned counsel would further submit that these petitioners should have been actually made as a witness since ultimately it is these petitioners who will be able to identify the person, who actually approached them for the purpose of filing the Writ petition. The learned counsel also submitted that if the present position continues, any Advocate, who is practising before Court can get caught in a situation like this and there is no mechanism for an Advocate to find out the real identity of a person, who approaches him for the purpose of filing the case. The



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learned counsel would further submit that registration of an F.I.R. is a very serious business which involves the liberty of a person guaranteed under Article 21 of the Constitution of India. Therefore, an F.I.R cannot be registered against anyone and everyone and the police must be careful in naming the accused person in the F.I.R. In this case, the police has grossly failed in following the proper procedure in registering the F.I.R. and without any materials, the petitioners have been shown as an accused and the only reason that has been given in the F.I.R. for showing these petitioners as accused, is the order passed by this Court on 27.09.2018. A careful perusal of the order shows that this Court never directed the complaint to be filed against these petitioners.

8.It is clear from the above that it is a knee-jerk reaction on the part of the respondent police for registering an F.I.R. against the petitioners, who are practising Advocates before this Court. This Court strongly condemns the respondent police for having shown these petitioners as accused persons. The respondent police is directed to alter the F.I.R. and mention at column 7 "unknown accused persons". The names of these petitioners shown in the F.I.R. is hereby quashed.

9.The respondent police is directed to investigate



the case further in order to identify the person, who actually introduced himself as Velmurugan before the petitioners. The learned counsel for the petitioners would submit that the petitioners will help the police in finding out the actual accused person, who impersonated Velmurugan.

10.This case will be a eye-opener for all the Advocates, who are practising before various Courts, to verify the identity of the client who approaches them to file a case. As on today, there is no mechanism to do this exercise. The Advocate-client relationship has been placed at a very high pedestal and that is why the communication between the Advocate and the client is considered to be a privileged communication which cannot be used in evidence in view of the bar under Section 126 of the Indian Evidence Act 1872. Due to change in times, a stage has come where the Advocates will have to find a mechanism to identify the persons, who are approaching them for the purpose of filing a case. This is not a happy development.

11.This Criminal Original Petition will be kept pending till the respondent police identifies and proceed against the actual culprit who had impersonated the above said Velmurugan. This case is posted for further hearing



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on 10.01.2019 and the respondent police is directed to file a status report with regard to the various steps taken by them in the course of investigation.

12.Post this matter on 10.01.2019.”

4.The contention of the learned counsel for the petitioners is that one A.Mani Bharathi sent a registered post on 03.11.2018 from Attur, in which he had stated that he is the Convener of SC/ST Wing, Attur Town of DMK political party. The Town Secretary N.P.Velmurugan handed over the representation and cash of Rs.25,000/- and directed him to approach the second petitioner's office at Y.M.C.A. Building, Chennai and hand over the same along with the particulars of the case. The said A.Mani Bharathi consulted one Jothi, Town Deputy Secretary of DMK political party, thereafter came to Chennai and handed over the particulars in the office of the second petitioner as per the directions of N.P.Velmurugan. Further, when the affidavit was prepared, the said A.Mani Bharathi contacted N.P.Velmurugan who informed him to sign the affidavit on his behalf. This clearly shows that it is Mr.N.P.Velmurugan, who took steps for filing the writ petition. He would further submit that in the letter of the said A.Mani



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Bharathi, it is stated that N.P.Velmurugan thereafter had compromised with Mani @ Manish, Town Deputy Secretary of ADMK political party at Attur who was running the bar in the TASMACH shop. For this reason, there have been a turn around by N.P.Velmurugan. The objection and protest for TASMACH shop No.7145 is not denied, the representation dated 07.06.2018 never denied and the direction is only to consider the representation. He further submitted that the order of this Court dated 30.11.2018 clearly extracts the working condition, methodology and procedure adopted in filing the writ petitions, the Advocates taking instructions and act in good faith. For some obvious reasons, turn around is made by the said N.P.Velmurugan, for which the petitioners who are Advocates cannot be prosecuted. Further, pendency of the case in Crime No.13 of 2018 without any progress only causing a blot in the career of the upcoming Advocates who aspire to adorn various positions, as Law Officer or in the Judiciary. Hence, prayed for quashing the case.

5.Learned Government Advocate [Crl. Side] filed a status report and submitted that on the directions issued by this Court on 30.11.2018, the



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petitioners' name were deleted from the FIR and the same has been altered in Column No.7 as “unknown accused persons”. Further, the alteration report dated 25.02.2019 has been filed before the jurisdictional VII Metropolitan Magistrate, George Town, Chennai. He would further submit that the witnesses N.P.Velmurugan, K.K.Manish, A.Arul Prakash and A.Ravi were examined by the Investigating Officer. Further, requisition was made to the Registrar [Writ Section], High Court of Madras to appear for enquiry but there was no positive response. He further submitted that on 26.02.2019 requisition was sent to the Registrar [Writ Section] to produce original Court documents pertaining to W.P.No.17215 of 2018 for the purpose of investigation which is yet to be submitted. The petitioners were also examined and their statements recorded. He further submitted that status report was filed along with statements of Mr.T.Gajendran, S.I. of Police and Mr.T.Parasuraman, Head Constable, who gone to Narasingapuram on 05.10.2020 and enquired Kokila, wife of N.P.Velmurugan since he was out of Town in connection with political work. They also enquired one Selvam, N.Sankar and the Village Administrative Officer of Narasingapuram Village and recorded their



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statements who have stated that in Narasingpuram Village there is no other person in the name of Velmurugan except the Town Secretary of DMK Political party. He further sought some time to identify the person who signed in the name of N.P.Velmurugan and also to collect documents to proceed with the investigation.

6.Considering the submissions made and on perusal of the materials, it is seen that this Court in its order dated 30.11.2018 dealt in detail about the facts and circumstances of the case, due to turn around by the clients for some reason or other, the position of the Advocate has become precarious and chances of Advocates being falsely implicated is very much there. One thing is certain from the facts of the case, utmost it can be said that the petitioners can be termed as witnesses for the allegations made in Crime No.13 of 2018. From the statements and perusal of the materials, it is seen that the writ petition in W.P.No.17215 of 2018, filed based on the representation of the Villagers and residents of Narasingapuram Village in which N.P.Velmurugan is first among the Signatories. The facts and contents in the representation not denied by anyone, more particularly,



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N.P.Velmurugan. The only objection of N.P.Velmurugam seems to be that he has not signed the affidavit for which Mani Bharathi in his letter dated 03.11.2018 categorically stated that he was directed to sign as N.P.Velmurugan in the affidavit. In sum and substance, the representation and the contents in the affidavit are not denied as false. The affidavit and representation does not contain any false statement. The political persons making a turn around according to the situation happens for various reasons. On 27.09.2018, the said N.P.Velmurugan appeared before this Court and stated that he has not signed in the affidavit as well as in the Vakalatnama filed in W.P.No.17215 of 2018 but not denied the representation, this Court had only given a positive direction to consider the representation submitted by the Villagers in common. In view of the same, keeping this case pending would serve no purpose. In sum and substance, the contents in the affidavit and the particulars provided are not denied by anyone, more particularly, N.P.Velmurugan/petitioner in W.P.No.17215 of 2018. This Court finds investigation is hit a road block. In view of the facts and circumstances of the case, no useful purpose will be served by keeping the investigation pending, hence keeping the case pending without any progress would only



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further harm the reputation and career of the petitioners. In view of the same, this Court finds that continuation of investigation would amount to abuse of process of law.

7. Therefore, the case in Crime No.13 of 2018 pending on the file of the first respondent is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation: Yes/No
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To

1. The Inspector of Police,
B4 High Court Police Station,
Crime No.13 of 2018,
Chennai City.

2. The Joint Registrar [Writs],
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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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