



Crl.O.P(MD).No.12481 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.12481 of 2021

Vijayalakshmi

...Petitioner

Vs

1. The Commissioner of Police
Madurai City
Madurai

2. The Inspector of Police
C.B.C.I.D
Madurai District

3. The Inspector of Police
Central Crime Branch
Madurai City

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to withdraw the case in Crime No.24 of 2018 from the file of the third respondent and entrust to the file of the second respondent with a direction to conduct investigation and file charge sheet within a period that may be stipulated by this Court.

For Petitioner

: Mr.R.Gandhi, Senior Counsel
for Mr.J.Karthikeyan

For Respondents

: Mr.M.Sakthikumar
Government Advocate(Crl.Side)



CrI.O.P(MD).No.12481 of 2021

ORDER

WEB COPY

This Criminal Original Petition has been filed to withdraw the case in Crime No.24 of 2018 from the file of the third respondent and entrust to the file of the second respondent with a direction to conduct investigation and file charge sheet within a period that may be stipulated by this Court.

2. According to the petitioner he is a victim and prosecution witness in a case registered in Crime No.24 of 2018 on the file of the third respondent police. At the instance of one Sivakumar a case in Crime No.24 of 2018 was registered for the offences under Sections 406 and 420 of IPC as against one Shobiya. The case of the prosecution is that one Shobiya a prime accused in Crime No.24 of 2018 duped several innocent persons by making false representation that she is doing fish commission business and in case of investment the capital amount will be returned along with higher interest. Without knowing her fraudulent intention several innocent people including the petitioner had deposited money to the tune of Rs.6.5 Crores and after receipt of amount she converted the same into jewels and absconded. Thereafter at the instigation of one Sivakumar a case in Crime No.24 of 2018 has been registered and during the course of investigation the truth came out that the cheated money was converted into gold ornaments and ingots by the accused. She was arrested and remanded



Crl.O.P(MD).No.12481 of 2021

to judicial custody. When she was in custody no recovery was made by the third respondent. In the meantime the said Sobhiya while she was custody along with other accused conspired together and came out from jail by using bogus sureties. The third respondent has not taken any steps to recover the jewels from the hide out places. The case has been registered as early as on 05.07.2018. The third respondent neither conducted any effective investigation nor taken any action against the accused, however public money is not recovered from the accused so far. The third respondent has not even traced the accused and conducted proper and effective investigation. Unless in-depth investigation is ordered to be carried out by the second respondent the prime accused could not be secured. Hence the petitioner gave representation dated 03.09.2020 to the first respondent seeking transfer of case from the file of the third respondent to the file of the second respondent. Since no action was taken, he has filed the present petition.

3. The third respondent filed counter alleging that on 05.07.2018 at about 12.00 hrs a complaint was forwarded from the Madurai City, Commissioner of Police in C.No.272/camp/cop/MC/2018 to the third respondent that one Shobiya duped several persons by making false representation that she is doing fish commission business and in case of investment the capital amount will be returned along with higher



Crl.O.P(MD).No.12481 of 2021

interest and the defacto complainant had given Rs.6,20,000/- and the Shobiya had given the undertaking letter in Rs.20/- Non Judicial Stamp paper and then she escaped. After that the defacto complainant came to know that the said Shobiya cheated more than 40 peoples for a sum of Rs.6.5 Crores and after receiving complaint the police registered a case for the offences under Sections 406 and 420 of IPC and the same was forwarded to the Judicial Magistrate No.I, Court, Madurai. The Investigation Officer came to know that 40 persons were cheated by accused. The Investigation Officer examined so many witnesses and he came know that one Duraipandi who is pawn broker stated that the said Shobiya had pledged 372 sovereigns of gold jewels to him. Thereafter the investigation officer recovered 180grams and 130 M gold ornaments and one pair of silver anklet and Rs.50,200/- and four mobile phones and recorded confession statement from her. Further the investigating officer sent the signature of the Shobiya for verification to Regional Forensic Scientific Laboratory, Madurai on 03.08.2018 and waiting for verification report. Thereafter he examined other witnesses and further statement was recorded and he came to know that Rosari and her son Siril Raj are also colluded with the Shobiya and they are also participated in the crime and altered the sections from 406,420 of IPC to @ 120(B),406,320,506(i) of IPC r/w. Section 34 of IPC and added Rosari and her son Sirilraj as accused and they have cheated a total sum of Rs.60,10,69,500/- Further the investigation officer had given



Crl.O.P(MD).No.12481 of 2021

request for call details records and tower location of the accused 2 and 3 on 18.08.2020 and the Call Details Report shows that one of the victim Kavitha and the daughter of Rosai Amalini regularly contacted the Rosari and now all the accused are absconding. In the meanwhile the said Shobiya got bail by giving fake sureties for which another First Information Report has been registered in Crime No.655 of 2019 on the file of the Anna Nagar Police Station, Madurai in Crime No.120(b),193, 419, 420, 467, 468 and 471 of IPC and the same is pending. The Investigation Officer was also searching the accused and formed special investigation team and the investigation is done in a right way and there is no necessity to change the investigation. Further the investigation is done in a proper and prescriptive manner according to law and hence the petition is liable to be dismissed.

4. The learned Senior Counsel appearing for the petitioner would contend that the First Information Report has been registered in the year 2018 and still now no effective steps have been taken to recover the jewels. During investigation one pawn broker Duraipandi stated that 372 sovereigns of gold jewels were pledged to him but no steps were taken to recover the said jewels and only recovered 180gram and 130M gold ornaments, one pair of silver anklet and Rs.50,200/- and four mobile phones. In this case more than 40 persons have been cheated apart from this petitioner and the investigation officer failed to



Crl.O.P(MD).No.12481 of 2021

investigate the case in a fair manner. If the investigation is transferred to the file of the second respondent they will investigate the case in a fair manner and thereby investigation has to be transferred from the file of the third respondent to the file of the second respondent.

5. The learned Additional Public Prosecutor appearing for the respondents would contend that the third respondent is conducting the investigation in a proper and fair manner .He had examined some of the witnesses and recovered some articles from the accused. Thereafter they altered the sections according to law and some of the accused are still absconding. The first accused got bail and thereafter executed sureties and thereafter she came out on bail by showing bogus sureties and they failed to appear before the Court for which another case has been registered in Crime No.655 of 2019 and thereby investigation is going in a proper way and there is no need for change of investigation.

6. Heard both sides and perused the materials available on record.

7. On perusal of the records, it is observed that the First Information Report has been registered on 05.07.2018 but still investigation is going on. In this case more than 40 persons were



Crl.O.P(MD).No.12481 of 2021

cheated by the accused and more than Rs.6.5 Crores were involved in this case. Though the third respondent conducted investigation but not completed so far and only recovered some of the articles. This Court has also passed order dated 05.10.2021, wherein it is held that:

“5. Status Report has also been produced before this Court. I am of the considered view that two months time from the date of receipt of a copy of this order is granted to the third respondent herein to show the progress in the investigation and even after the expiry of two months period, if no progress is made, further order will be passed by this Court”

8. In spite of that order dated 05.10.2021 there is no progress in the investigation and no steps have been taken to recover the jewels which were pledged before the pawn broker. As far as main accused is concerned after coming out on bail the bail was cancelled and she is still absconding and she was not secured by the third respondent. The newly added accused are also absconding.

9. Considering the nature of offence and also the amount involved in this case and also considering the progress of investigation it is appropriate to entrust the investigation from the file of the third respondent to the file of the second respondent.



CrI.O.P(MD).No.12481 of 2021

10. In view of the same, the third respondent is directed to hand over the entire case records in Crime No.24 of 2018 to the file of the second respondent within a period of one week from the date of receipt of a copy of this order and the second respondent is directed to take appropriate steps to investigate the case and file final report as early as possible. The second respondent is directed to file status report within six months.

11. With the above direction, the Criminal Original Petition is disposed of.

07.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
aav

To

1. The Commissioner of Police
Madurai City
Madurai
2. The Inspector of Police
C.B.C.I.D
Madurai District
3. The Inspector of Police
Central Crime Branch
Madurai City
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P(MD).No.12481 of 2021

P. DHANABAL,J.

aav

Crl.O.P(MD).No.12481 of 2021

07.08.2023