



W.P. (MD) No.16253 of 2016

IN THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.09.2023	PRONOUNCED ON : 23.11.2023
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CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P. (MD) No.16253 of 2016 & WMP (MD) No.11889 of 2016

Karthikeyan S/o. Ramalingam

... Petitioner

Vs.

1. The Director General of Police,
Tamilnadu – 600 004.

2. Additional Director General of Police,
Crime Branch CID, Chennai-600 008.

3. The Superintendent of Police,
Dindigul.

4. The Inspector of Police,
Kodaikanal Police Station, Kodaikanal,
Dindugal District.

5. Deivam,
Inspector of Police,
Dindugul North Town Police Station,
Dindugul.

6. Azhagu Kannan,
Inspector of Police,
Crime Branch CID, Dindugul

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of



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India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in his proceedings in Rc. No.067740/Crime 3(1)/2016 dated 10.05.2016 and quash the same as illegal and arbitrary and consequently direct the 1st respondent to take action against the 5th and 6th respondents.

For Petitioner : Mr. V.M. Balamohan Thampi

For Respondents : Mr. R.M. Anbu Nithi [for R1 to R4]
Additional Public Prosecutor.

Mr. S. Vinoth Kumar [for R5].

JUDGMENT

This Writ Petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in his proceedings Rc. No. 067740/Crime 3(1)/2016 dated 10.05.2016 and quash the same and also to direct the 1st respondent to take action against the 5th and 6th respondents.

2. According to the petitioner, he purchased a lodge in Kodaikanal Town in the name and style of “Family Shop” from one V.P. Senapathi and Dr.Chandrika in 2004 by way of sale deed. After purchasing the said



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building, he changed the name of the building as K.A.S. Towers in the year 2005 and he is paying all the tax to the Municipality and the revenue department and records are also made out in his name. The vendor of the said building namely Senapathi and V.N.A.S. Chandran were business partners and also partners of the Golden Park Hotel at Kodaikanal. Due to the motive between the Senapathi and the said Chandran, he harassed the said Senapathi. As such, the 4th respondent has been instigated to file this complaint against this petitioner and 10 henchmen alleging that he along with 10 henchmen entered into said family shop of Senapathi and threatened the labours of the said Chandran with deadly weapons and also damaged the things of the lessee of the said building. The said Chandran instigated his labours to give the false complaint as against the petitioner herein and the said Chandran gave a complaint against the petitioner and FIR was registered in Cr. No.86 of 2006. The 1st complaint given by the labours of the said Chandran was withdrawn. At the time of alleged occurrence, the property was not belonging to the said Chandran and any labourers of the said Chandran were not working and thereby false complaint was given against the petitioner. Thereafter the investigation of the 4th respondent revealed that the complaint was false one and it was closed.



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2.1. While so, the 1st respondent transferred the case to the 6th respondent for investigation without having any basis and the said complaint in Cr. No.86 of 2006 was closed in the year 2011 itself. Whereas the 1st respondent transferred the case after passing 10 years to the CBCID through the impugned order. The 1st respondent failed to see that the said FIR in Cr. No.86 of 2006 was closed in the year 2011 itself after proper investigation conducted by the 4th respondent and filed closure report before the Judicial Magistrate, Kodaikanal in the year 2011 itself and after passing 10 years, the 1st respondent transferred the case to the 6th respondent for investigation without having any basis is against law. The 1st respondent failed to see that the order passed by the 1st respondent is without receiving any complaint from the defacto complainant and the impugned order passed by the 1st respondent in his impugned proceedings is liable to be quashed.

3. The 1st and 2nd respondents have filed a counter stating that the Kodaikanal Police Station have registered a case in Cr. No.86 of 2006 as against the petitioner and others for the offences under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC (N.P.) on the complaint given by one V.N.A.S. Chandran. Thereafter so many cases registered against the



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petitioner by the Kodaikanal Police and proceedings under Section 145 of Cr.P.C. also initiated by the revenue authorities and the present case was transferred vide order dated 10.05.2016 in proceedings in Rc. No. 067740/Crime 3(1)/2016 . Thereafter the case was transferred from the file of Kodaikanal Police Station to the file of CBCID, Dindigul through a Memorandum in Rc. No.C1/400/009001/2016 dated 26.05.2016 and the same was received vide General Memo No.G67/KKLPS/Kodai/16 dated 26.05.2016. Thereafter the Dindigul CBCID Police have registered the case in Cr. No.1 of 2016 for the offences under Sections 147, 148, 448, 323, 506(ii), 452 and 380 IPC. Thereafter, the petitioner also filed a petition in Crl.O.P.(MD) No.10130 of 2016 praying the Police not to harass the petitioner and the case was not closed through R.C.S. No.55 of 2011 on 18.04.2011. Therefore, the petition is liable to be dismissed.

3.1. The 4th respondent filed a counter stating that the averments made in the affidavit filed along with the Writ petition are denied as false. In fact, there are innumerable cases filed by the petitioner herein with a view to intimidate the respondent police. The allegations against the 5th respondent had its genesis relating to the alleged purchase of property by the petitioner herein viz., KAS Shopping Complex located at the heart of



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Kodaikanal and that both criminal and civil cases are pending. The complaint was filed by one S. Cheruba Selvaraj by stating that the said building was purchased by the petitioner herein by creating frivolous and false documents unsupported by consideration. Further, the said Cheruba Selvaraj filed a Criminal Original Petition in Crl. O.P. (MD) No.5231 of 2014 to register a case against the petitioner. Thereby, the case was registered in Cr. No.42 of 2014 under Section 420, 465, 506(i) of IPC on the file of District Crime Branch, Dindigul in Crl. O.P. No.8927 of 2014 dated 15.05.2014 and obtained an order “not to arrest” till 09.06.2014 and then the petitioner was enlarged on anticipatory bail vide order in Crl.O.P. (MD) No.8927 of 2014.

3.2. Based on the order passed in Crl. O.P. No.17619 of 2014, the case was transferred to Crime Branch CID, Dindigul and the investigation is pending and also the respondent elaborately stated about the pending cases against the petitioner and the petitioner has filed various criminal original petitions before this Court. The respondent police registered the case in Cr. No.86 of 2006 under Sections 147, 148, 448, 452, 323, 506(2), 380 and 109 (NP) of IPC on the complaint preferred by one Chandran



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stating that the petitioner herein accompanied by 11 persons barged into his woodwill Four storey building attacked Stalin, Ganesan, Navaneethakrishnan, Natrajan and Thangavelu and also extended life threat and that the statement by the petitioner that the FIR was closed in RCS No.55 of 2011 dated 18.04.2011 is false and in fact, on completion of investigation, final report was filed and the same is pending NTF. As per the order of the Director General of Police in his proceedings i.e., impugned proceedings, further investigation was ordered in Cr. No.86 of 2006 and accordingly the Inspector of Police, CBCID, Dindigul on receipt of CD file vide Memo No.G67/KKLPS/Kodai/16 dated 26.05.2016, registered a case in Cr. No.1 of 2016 under Sections 147, 148, 448, 323, 506(ii), 452 and 380 of IPC on 27.05.2016 at 11 hours. The investigation has just commenced and that the disputed question needs to be addressed only during the trial. The petitioner herein without even attending the enquiry, filed a petition before this Court in Crl. O.P. No.10130 of 2016 for a direction not to harass and the same is pending before this Court. The petitioner herein attempted to trample with the police officials by sending false allegations petitions as well as filing innumerable petitions either before the lower courts as well as before this Court with a view to intimidate the respondent police to prevent them from taking any action



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against him on crimes committed by him with impunity for personal enrichment. In fact, the petitioner herein has adopted the tendency to array the investigation officers in their personal capacity to deter them to proceed against his illegal acts. Therefore this petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the 4th respondent has registered a case in Cr. No.86 of 2006 for the offences under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC and thereafter the said case was closed vide RCS No.55 of 2011 dated 08.04.2011. The same was revealed to the petitioner through the copy application filed by the petitioner before the learned District Munsif cum Judicial Magistrate, Kodaikanal. In the said copy application, the Court has made endorsement that “this FIR was already closed in R.C.S. No.55 of 2011 dated 18.04.2011”. Therefore the said case was closed by the Court as early as on 08.04.2011. While so, the impugned proceedings was issued by the 1st respondent on 10.05.2016 by transferring the above said Cr. No.86 of 2006 on the file of the 4th respondent police. In fact, on the date of impugned proceedings, no case was pending. But the 1st respondent without considering the same, passed an impugned order.



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Therefore the impugned order is liable to be set aside.

5. The learned Additional Public Prosecutor appearing for the respondents would contend that the case was not closed as alleged by the petitioner and the case was pending before the 4th respondent police, Kodaikanal and the same was transferred by the impugned order of the 1st respondent and thereafter the 6th respondent has registered a case in Cr. No. 1 of 2016, after receipt of the CD file from the 4th respondent through Memo No.G67/KKLPS/Kodai/16 dated 26.05.2016 and registered case in Cr. No.1 of 2016 under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC and thereafter the investigation was completed and final report was filed before the learned Judicial Magistrate No.I, Dindigul. The same was taken on file in C.C. No.187 of 2018 and the same is pending for disposal. Therefore, at this stage, this petition is not maintainable and the same is liable to be dismissed.

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

7. The petitioners' contention is that FIR has been registered as



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against him in Cr No.86 of 2006 for the offences under Sections 147, 148, 448, 323, 506(ii), 452 and 380 of IPC and thereafter, it was closed by the learned Magistrate in R.C.No. 55 of 2011. In order to prove the above said facts, the petitioner has filed copy application seeking copy of the order passed by the learned Magistrate in that application. As per the order, the FIR in Cr. No.86 of 2006 was closed through R.C.S. No.55 of 2011 dated 18.04.2011. After the closure of the above said FIR, the 1st respondent passed an impugned order dated 10.05.2016 by proceedings, to transfer the case in Cr. No.86 of 2006, which was already closed, to the CBCID, Dindigul. Based on the above said order of the 1st respondent, the 6th respondent has registered a case in Cr. No.1 of 2016 and filed the final report and the same was taken on file by the learned Judicial Magistrate No.I, Dindigul in C.C. No.187 of 2018 and the same is also pending.

8. The respondents' contention is that the case was not closed as alleged by the petitioner and it is still pending and as per the order passed by the 1st respondent dated 10.05.2016, the case was transferred to the CBCID, Dindigul and then a fresh case was registered in Cr. No.1 of 2016 and the same was informed to the 6th respondent and a fresh final report was filed as against the accused. Based on the final report, cognizance was



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taken in C.C. No.187 of 2018 and the same is pending.

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9. Now the point is whether the case was closed or not.

10. According to the petitioner, the case was closed and he relied the endorsement made in the Copy Application filed by the petitioner, by the learned District Munsif cum Judicial Magistrate No.I, Kodaikanal. This Court also called for records and report from the Judicial Magistrate No.I, Kodaikanal. The learned Magistrate had also sent the copies of records. On perusal of the said records, it reveals that the case with respect to Cr. No.86 of 2006 was reconstructed and transferred to Judicial Magistrate No.I, Dindigul. But no other records found about the original records and RCS orders passed by the learned Magistrate. There is no date mentioned in the above copy of the records sent by the learned Magistrate, Kodaikanal, as to which date, the case records was sent to the court of Judicial Magistrate No.I, Dindigul. Therefore, it is admitted by both the parties that the case was transferred based on the order dated 10.05.2016 passed by the 1st respondent. Therefore, the records from the Kodaikanal Police ought to have sent after the order of the 1st respondent ie., dated 10.05.2016. But the endorsement made in the copy application would



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show that the case was closed in R.C.S. No.55 of 2011. Therefore, there is no clear cut records to show the status of the case.

11. Even according to the report of the learned Judicial Magistrate No.I, Kodaikanal, there is no clarity as to the status of the case and the records never revealed the transfer of FIR after reconstruction to the Dindigul Court. There is no records to show that the case was closed by the Court through R.C.S. No.55 of 2011. The mere endorsement made in the Copy Application filed by the petitioner alone, is not sufficient to prove that the case was closed through R.C.S. No.55 of 2011.

12. In this context, the learned counsel appearing for the petitioner has brought to the knowledge of this Court that already this Court passed an order in Crl. O.P. No.19089 of 2013 with regard to the case in Kodaikanal P.S. Cr. No.86 of 2006 to quash the FIR. In that case, the learned Government Advocate appearing for the State made a representation that on 18.04.2011 itself, the FIR has been closed by the Court concerned in R.C.S. No.55 of 2011. The order was made on 14.03.2018. The criminal O.P. was filed in the year 2013. The Kodaikanal police is the 1st respondent in that case and the defacto complainant was



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the 2nd respondent. While so, it is the duty of the 1st respondent police ie., Kodaikanal Police to place the correct particulars before the Court. But in the previous case ie., in CrI. O.P. No.19089 of 2013, the same Kodaikanal Police through the Government Advocate, has represented that the FIR in 86 of 2006 on the file of Kodaikanal Police Station was closed on 18.04.2011 through R.C.S. No.55 of 2011. The learned Magistrate has also made an endorsement in the Copy Application to the same effect. Therefore, it is clear that the case was closed in the year 2011 itself. In this context, the Kodaikanal Police also filed an application in the above said report to recall the order passed by this court and the same is pending for adjudication. The said petition also simultaneously heard and posted for orders by this Court. Once the case is closed by the learned Judicial Magistrate and the same was also informed to the High Court, there is no chance to further proceedings in this case.

13. However as per the FIR in Cr. No.86 of 2006, which was registered under Sections 147, 148, 448, 323, 506(2), 452 and 380 of IPC as against 11 accused persons, but the order passed by this Court in CrI. O.P. No.19089 of 2013 shows that Ramakarthikeyan, who was the petitioner therein, was arrayed as sole accused. The respondents have



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produced the copy of RCS Register and on perusal, it is seen that the R.C.S. No.55 of 2011 is pertaining to the case in Cr. No.86 of 2006 for the offences under Sections 341, 323 and 506(ii) IPC and the case was closed on the point of limitation. But the FIR in Cr. No.86 of 2006 on the file of Kodaikanal Police Station, the offences are under Sections 147, 148, 448, 323, 506(ii), 452 and 380 of IPC and no chance for closing on the point of limitation, since the offence under Sections 506(ii) and 380 of IPC are punishable upto 7 years. This shows the suppression of facts by the petitioner. Therefore it is clear that the order was obtained by suppressing the facts. Therefore the order in Crl. O.P. No.19089 of 2013 is liable to be recalled. The conduct of the parties shows that the order was obtained on fraud. Once the order was obtained on fraud, this Court has jurisdiction to recall the order by invoking provision under Section 482 of Cr.P.C.. Therefore this Court is inclined to recall the order passed by this Court in Crl. O.P. No.19089 of 2013 dated 14.03.2018.

14. Further this case was closed in the year 2011 itself. Then why, the petitioner has filed this Crl. O.P. No.19089 of 2013 to quash the FIR in Cr. No.86 of 2006 has to be explained by the petitioner and no proper explanation from the petitioner to that regard and this also creates doubt



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over the conduct of the petitioner. The petitioner has challenged the transfer of investigation, but based on the above said transfer, the case was investigated and now the case is pending for trial. At this stage, it is not appropriate to allow this Writ petition and the petitioner has to face the trial, and the Trial Court has to decide the case on its own merits without being influenced by any observation of this order.

15. Therefore as discussed above, this Court is of the opinion that this Writ petition has no merits and it deserves to be dismissed.

16. Accordingly, this Writ petition is dismissed. Consequently, the connected miscellaneous petitions, if any, are closed. Costs made easy.

23.11.2023

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To

1. The Director General of Police,
Tamilnadu – 600 004.
2. Additional Director General of Police,
Crime Branch CID, Chennai-600 008.
3. The Superintendent of Police,
Dindigul.
4. The Inspector of Police,
Kodaikanal Police Station, Kodaikanal,
Dindugal District.
5. The Inspector of Police,
Dindugul North Town Police Station,
Dindugul.
6. The Inspector of Police,
Crime Branch CID, Dindugul.



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P.DHANABAL,J

(mjs)

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