



W.P.No.31485 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

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W.P.No.31485 of 2024
and W.M.P.No.34212 of 2024

Kutty Flush Doors and Furniture

Company Private Limited,

Represented by its Director

and Authorised Signatory P.K.Kader Kutty

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to the Government,
Home Department,
Secretariat, Chennai.
2. The Central Board of Investigation,
Represented by its Joint Director,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
3. The Inspector of Police,
Team-XVI, LFIW-1,
Central Crime Branch-I,
Crime No.213 of 2023,
Vepery, Chennai.
4. S.Arokiyam,
Deputy Commissioner of Police,
Central Crime Branch-III,
Office of the Commissioner of Police,
Vepery, Chennai.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the transfer of investigation from the file of the second respondent to the tile of the first respondent in Crime No.213 of 2023.

For petitioner : Mr.Abudu Kumar Rajarathinam, Senior Counsel
for M/s.Sharath Chandran

For respondents: Mr.K.Srinivasan, Spl.P.P. (CBI) - for R-2
Mr.S.Sugendran, Addl.P.P. for RR-3 and 1
No appearance for R-4

ORDER

The petitioner has filed the present Writ Petition praying for issuance of a Writ of Mandamus to direct the transfer of investigation from the file of the second respondent to the tile of the first respondent in Crime No.213 of 2023.

2. Facts, in brief, are as follows:

(a) The petitioner seeks issuance of a Mandamus to transfer the investigation in FIR bearing Crime No.,213 of 2023, dated 28.08.2023 from the third respondent to the second respondent.

(b) The prosecution case is that A1, using a fabricated Patta over the petitioner's property, with an intention to grab the property, conspired with A2 to A8 and executed a settlement deed in the year 2020 in favour of his son A2, by



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using the said Patta. A2 further executed four sale deeds in favour of A3 to A6 allegedly conveying the property in four portions. Hence, FIR was registered for the offences under Sections 447, 465, 467, 468, 471, 120-B and 34 of IPC. Further, A1, A7 and A8 were arrested and are out on bail.

(c) The investigation is deliberately influenced by the fourth respondent, who is the Deputy Commissioner of Police in the same Commissioner's office.

(d) A3 to A6 who are highly influential and wealthy persons, are resorting to all crooked ways, as a result of which, they have influenced the third respondent to file a report stating that A3 to A6 are bona-fide purchasers even before filing the charge-sheet in this case.

(e) The evidence on record reveals involvement of a racket of individuals in creating fabricated documents for land grabbing, who exert their influence in the Police Department to keep away from the clutches of law. Therefore, for the above reasons, the petitioner has filed the present Writ Petition for the prayer stated supra.

3. In this case, the FIR came to be registered on 28.08.2023 in Crime No.213 of 2023 on the file of the CCB, Chennai. On 05.01.2024, the bail was granted to A1 by the Metropolitan Magistrate, CCB, and CB-CID, Egmore, Chennai. In the connected Criminal Original Petition in 699 of 2024 (quash



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petition) filed by A3 to A6, the order came to be passed on 18.01.2024. Further, this Court, in O.A.Nos.250 and 251 of 2024 in C.S.No.71 of 2024, this Court passed order on 28.03.2024, granting interim injunction in respect of the property. In these O.As, counter affidavit was filed by A1 on 10.4.2024. Further, on 10.04.2024 itself, order was passed in CrI.M.P.No.3382 of 2024 under Section 156(3) Cr.P.C. Another FIR came to be registered on 07.05.2024. Summons were served by the second respondent to the petitioner on 01.06.2024. This Court granted injunction in the said O.As. on 28.06.2024.

4. Further, this Court passed order on 22.08.2024 in CrI.O.P.No.20277 of 2024 (quash petition filed by A7). Common affidavit was filed by A3 to A6 in CrI.M.P.No.51847 of 2024 (for return of documents) on 27.08.2024. An intervention petition is filed by the petitioner herein in CrI.M.P.No.51847 of 2024 on 02.09.2024. Further, the prosecution filed report in CrI.M.P.No.51847 of 2024 on 09.09.2024. The intervenor filed a Memo in the said CrI.M.P. on 10.09.2024. Subsequently order came to be passed in CrI.M.P.No.51847 of 2024 on 11.09.2024. On appeal by one V.S.Villivakkam Velu, before a Division Bench of this Court, in O.S.A.Nos.166 and 167 of 2024, the Division Bench permitted him to withdraw the O.S.A. Ultimately, on 12.09.2024, summons were issued by CCB-III Police to the petitioner-Company on 24.09.2024.



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5. The main contention of the petitioner-Company is that even pending investigation, one of accused filed for return of document(s), and the Magistrate called for a report form the Police authority, and status report was filed stating that the accused is a bona-fide purchaser. They had no objection to hand over the document(s). Therefore, as they were doubtful, the applicant(s) before the authority, sought for change of investigating agency/investigating officer who is conducting investigation and as there may not be fair investigation and there was also felt prejudiced, and that one of the accused was a bona-fide and even without filing charge-sheet, the steps are being taken for return of documents.

6. Learned Additional Public Prosecutor appearing for the respondents 1 and 3 submitted that the investigation is almost over and some of the accused had been arrested and the Court only ordered return of the document(s). The respondent(s)/Police has nothing to do with the order, if any passed by the Magistrate and the learned Addl.P.P. prayed to dismiss this Writ Petition.

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

8. It is seen from the records that the investigation is pending and the



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charge-sheet is yet to be filed. In these circumstances, one of the accused approached the Magistrate for return of the document(s).

9. Surprisingly, the authorities gave a clean chit for giving the necessary document(s). Therefore, the Magistrate/concerned Court observed that the accused (petitioner herein) was a bona-fide purchaser for valuable consideration without any notice of defect in title and therefore, the document(s) were returned.

10. The above procedure is unknown to the usual practice, that too, when the investigation is pending, when the suspected document(s) is returned by the Magistrate/Court concerned, at the instigation of the prosecuting agency. Therefore, the petitioner has lost hope with the investigation being conducted now by the fourth respondent (DCP). Therefore, the apprehension of the petitioner is genuine.

11. Hence, for the reasons stated above, the present investigating officer who is conducting investigation as of now, shall hand-over the investigation as discussed infra, and follow the procedures for transferring the investigation to CB-CID as prayed for by the petitioner.

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12. However, it is only the allegations which are being made out as against the third and fourth respondents herein. Therefore, the continuing investigation now cannot be transferred to the second respondent/CBI, as the officers themselves are being over-burdened in the appropriate cases.

13. Further, this Court also finds that the action of the third and fourth respondents herein, is not satisfactory.

14. Therefore, the investigation being now conducted by the agency shall stand transferred from the third respondent to the CB-CID, Chennai, Egmore, and the Director of CB-CID is directed to take up the entire case on file and proceed with the investigation. The third respondent / Inspector of Police and also the fourth respondent-S.Arokiyam, DCP, CCB-III, Vepery, Chennai, is directed to hand-over the file being investigated now, forthwith, to the Director of CB-CID, Egmore, Chennai.

15. The action of the third respondent and fourth respondent, is highly condemnable and the same is also deprecated, as the investigation though is now being under-way. The third respondent-Inspector of Police went to the



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extent of giving no objection to the Magistrate/Court concerned in handing over the accused person(s) even before filing of the charge-sheet, which clearly shows that no legal procedures had been followed.

16. Hence, the first respondent/State, Home Department, Chennai, and the fourth respondent-S.Arokiyam, DCP, CCB-III is directed to shift the investigating process from the third respondent to the CB-CID, Egmore, Chennai and place the third and fourth respondents herein to any insensitive posts and not for the post of investigating officer and appropriate departmental action be instituted against them.

17. With the above observations and directions, the present Writ Petition is allowed to the extent indicated above. Consequently, the miscellaneous petition is closed. There shall be no order as to costs.

18. Before parting with this case, it is to be noted that as far as the Magistrate who passed order of return of documents, in this case, is concerned, the Registry of the Madras High Court is directed to call for explanation from him/her involved in the process to return the document(s), that too, which relates to the name of the accused concerned, causing prejudice in the mind of



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the third respondent-Inspector of Police and the fourth respondent-S.Arokiyam, DCP. Hence, the Registrar General of this Court is directed to give training to the concerned Magistrate/Judicial Officer through the Tamil Nadu State Judicial Academy, Chennai.

27.11.2024

CS

Office to note: Issue order copy on 29.11.2024

To

1. The Registrar General, High Court, Madras.
2. The officer-in-charge, CB-CID, Egmore, Chennai.
3. Secretary to the Government,
Home Department,
Secretariat, Chennai.
4. The Central Board of Investigation (CBI),
Represented by its Joint Director,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
5. The Inspector of Police,
Team-XVI, LFIW-1,
Central Crime Branch-I,
Crime No.213 of 2023, Vepery, Chennai.

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