



Crl.O.P.(MD)No.2396 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD)No.2396 of 2023

N.Sudharshan

... Petitioner

vs.

- 1.The Commissioner of Police,
Madurai City,
Madurai
- 2.The Deputy Commissioner of Police,
Madurai City,
Madurai
- 3.The Assistant Commissioner of Police,
Central Crime Branch,
Madurai City,
Madurai
- 4.The Inspector of Police,
Central Crime Branch,
Madurai City,
Madurai
- 5.M.Pitchaimani
- 6.Manivasagam
- 7.Natarajan



Crl.O.P.(MD)No.2396 of 2023

8.N.Karthik

9.K.Vignesh

10.T.Sakthivel

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to transfer the investigation in Crime No.25 of 2022 on the file of the 4th respondent herein to any other investigation officer or by appointing special officer.

For Petitioner : Mr.T.Balarathinakumar

For R1 to R4 : Mr.Thanga Aravindh.B
Government Advocate (Criminal Side)

ORDER

This petition has been filed seeking transfer of investigation in Crime No.25 of 2022 pending on the file of the 4th respondent to any other investigation agency.

2. The case of the petitioner is that he is having a jewellery shop in the name and style of N.S.Priya Jewelers. The 5th respondent (A1) is also having a jewellery shop in the name and style of P.M.Jewellers. The 5th respondent used to regularly purchase gold ornaments from the petitioner and pay the amount through bank transactions. The petitioner also used to



Crl.O.P.(MD)No.2396 of 2023

WEB COPY

issue bills to the 5th respondent for the gold ornaments sold. In the light of this previous business transaction, the 5th respondent purchased 1936 grams of gold ornaments worth of Rs.90,00,000/- (Rupees Ninety Lakhs only) from the petitioner. The petitioner also gave the bill for the purchase made by the 5th respondent. The 5th respondent handed over three cheques. When these cheques were presented for collection, it was returned with an endorsement "Insufficient funds".

3. The petitioner was shocked about this development, and he started enquiring and he came to know that the 5th respondent and her family members have not only cheated the petitioner, but also other persons from whom gold ornaments were taken and the money was not paid. According to the petitioner, nearly 10 Kilograms of gold ornaments were taken from the petitioner and four other persons, and all of them have been cheated in this case.

4. The petitioner gave a complaint to the 4th respondent and based on the same, a First Information Report came to be registered in Crime No.25 of 2022 on 19.07.2022 against respondent Nos.5 to 7 for the offence under Section 420 read with Section 406 of IPC. The petitioner was not satisfied



Crl.O.P.(MD)No.2396 of 2023

in the manner in which the investigation went on in this case and that apart, the prime accused, namely A1, was not even arrested in this case in spite of the anticipatory bail petition filed by A1 being dismissed by the Court. Ultimately, the police was able to recover only 87 grams of gold. It is under these circumstances, the petitioner came before this Court and sought for transfer of investigation.

5. When this petition was entertained, this Court passed an interim order directing the respondent police not to file a final report. In spite of the same, a final report was filed and it was informed to this Court on 15.11.2024. Upon hearing such submission, this Court passed the following order on 15.11.2024 :

“When the matter was taken up for hearing, the learned Government Advocate submitted that the investigation has been completed and a final report was filed before the learned Judicial Magistrate No.1, Madurai on 01.03.2023 through e-filing mode and the final report is yet to be taken on file.

2. The petition in Crl.O.P.(MD)No.2396 of 2023 has been filed seeking for transfer of investigation and this Court had already granted interim orders directing the respondent police not to file the final



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Crl.O.P.(MD)No.2396 of 2023

report. In spite of the same, the respondent police have filed the final report in this case.

3. Considering the grounds that have been raised in this petition, the fourth respondent has to necessarily file an affidavit before this Court. Based on the same, further orders can be passed. In the meantime, there shall be a direction to the learned Judicial Magistrate No.1, Madurai, not to act upon the final report filed by the respondent police in Crime No.25 of 2022, until further orders.

4. Post these petitions on 29.11.2024. In the meantime, the fourth respondent shall file an affidavit.”

6. When the matter came up for hearing on 29.11.2024, the 4th respondent filed a counter affidavit. The relevant portions of the same are extracted hereunder :

“3. I humbly submit that regarding the above said case, detailed investigation was conducted by the then Inspector of Police. During the course of investigation, it is found that the Accused No.1 to 3 has similarly cheated three other persons namely 1. Sudharsan (cheated gold-1966.215 grams), 2. Manoj Kumar (cheated gold-873 grams) and 3. Rajkumar (cheated gold-334 grams). Further the above said persons also requested to recover their respective gold jewels and hence they were arrayed as witnesses in this present case. Thereafter, the statements of the



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Crl.O.P.(MD)No.2396 of 2023

witnesses were recorded and found that the Accused No.1 to 3 has cheated more than Rs.5 crore from the de-facto complainant and other victims.

4. I humbly submit that in this present case, totally 6 persons were arrayed as accused. Further the Accused no.2, 4 & 5 were arrested and remanded to judicial custody and subsequently enlarged on bail and the confession statement of Accused No.2 was also recorded. Further the Accused No.3 & 6 has obtained Anticipatory Bail before the Learned Principal District Judge, Madurai. Further 86.830 grams of gold jewels and 8.521 kilogram of silver jewels and ornaments were recovered under aththachi from the Accused No.2. Further 2 four wheelers and mobile phone was also recovered. Further I humbly submit that the sections were altered from 406, 420 IPC @ 406, 420, 120(b) IPC.

5. I humbly submit that after the completion of investigation, the then Inspector of Police, Central Crime Branch, namely Tmt. Flower Sheela prepared a final report dated 25.01.2023 against the Accused No. 1 to 6. Meanwhile, one of the victim/ witness namely N. Sudharsan S/o. Nagarajan preferred a Direction Petition before this Hon'ble Court in Crl.O.P.(MD)No. 2396 of 2023 seeking transfer of investigation of this present case to any other investigating officer. When the matter was taken up for hearing on 07.02.2023, this Hon'ble Court was pleased to pass interim order as to not to file final report in this case and the same was extended further on 15.02.2023. Meanwhile, the petitioner has filed this present direction petition before this Hon'ble Court seeking direction to the respondent to file final report in this case.

6. I humbly submit that under such circumstances, the then Inspector of Police namely Flower Sheela has mistakenly filed the already



Crl.O.P.(MD)No.2396 of 2023

prepared charge sheet dated 25.01.2023 before the concerned Court on 01.03.2023 through online vide E-Filing No.107002104/2023. Further I humbly submit that after coming into knowledge and getting notified about the order of this Hon'ble Court dated 07.02.2023 in Crl.O.P.(MD)No.2396 of 2023, the then Inspector immediately froze the charge sheet dated 25.01.2023 in E-Filing No.107002104/2023 from getting main numbered and thereafter kept the same in abeyance from March, 2023.

7. I humbly submit that under such circumstances, I came to know that when this Hon'ble Court sought the status of pending cases before the Trial Courts, the concerned Trial Court unfortunately numbered the frozen charge sheet pending in E-Filing No.107002104/2023 filed by the then Inspector namely Flower Sheela and as such the same was taken on file by the Learned Judicial Magistrate No.I, Madurai in C.C.No.1993 of 2024 Date 14.10.2024 and posted for next hearing on 17.01.2025 for issue of service.”

7. The 4th respondent, by virtue of the above counter affidavit, has come up with a stand that the final report was filed without being aware of the interim order passed by this Court.

8. Heard Mr.T.Balarathinakumar, learned counsel for the petitioner and Mr.Thanga Aravindh.B, learned Government Advocate (Criminal Side) appearing for respondent Nos.1 to 4.



Crl.O.P.(MD)No.2396 of 2023

WEB COPY

9. The counter affidavit of the 4th respondent shows that the accused persons have not only cheated the petitioner, but also four other persons and the same *modus operandi* has been adopted against all the five persons. After having taken huge quantity of gold ornaments, which are all borne out by records, it is quite unbelievable that the police were able to recover only 87 grams of gold jewels and 8.5 Kilograms of silver jewels. Apart from that, the police were able to recover 2 four wheelers and a mobile phone.

10. In the considered view of this Court, this transaction was made by A1, along with the family members. The Investigating Officer should have secured A1 in this case, since the gold ornaments were handed over to A1 and custodial interrogation of A1 was very vital in this case to recover the gold ornaments. For reasons best known to the Investigating Officer, this step has not been taken. Accused Nos.2, 4 and 5 were arrested and they were later enlarged on bail. A3 and A6 had obtained anticipatory bail. Insofar as A1 is concerned, she conveniently went before the Court and surrendered, and executed a bond under Section 88 of Code of Criminal Procedure. Thus, in the entire investigation, the Investigating Officer has not even gone near A1 and that shows the manner in which the



Crl.O.P.(MD)No.2396 of 2023

investigation has taken place in this case. It is also brought to the notice of this Court that as against the petition filed by A1 under Section 88 of the Code of Criminal Procedure, which was allowed by the trial Court, it was put to challenge in Crl.R.C.(MD)No.50 of 2024. This Court by an order, dated 23.01.2024, directed the learned Judicial Magistrate No.I, Madurai to keep the order passed on 29.08.2023 in abeyance.

11. Apart from the above, when this Court has granted an interim order, the 4th respondent has proceeded to file a final report and this also shows the haste with which the 4th respondent wanted to some how close the investigation.

12. The materials placed before this Court are far from satisfactory. The gold ornaments, which were received by the accused persons and which were borne out by records, ought to have been recovered from the accused persons. Even without undertaking that exercise, a slipshod investigation has been done.

13. In the light of the above discussion, the final report filed by the 4th respondent before the learned Judicial Magistrate No.I, Madurai shall



Crl.O.P.(MD)No.2396 of 2023

not be taken on file by the learned Magistrate. There shall be a direction to the 4th respondent to hand over the case diary to the Additional Director General of Police, CB-CID, Chennai within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the Additional Director General of Police, CB-CID, Chennai shall assign an Officer in the rank of Inspector of Police from CB-CID and direct further investigation in this case. The further investigation shall be completed within a period of three months and a supplementary report shall be filed before the learned Judicial Magistrate No.I, Madurai.

14. In the result, this Criminal Original Petition is disposed of with the above directions.

06.12.2024
(1/2)

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Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No

To

1.The learned Judicial Magistrate No.I,



Crl.O.P.(MD)No.2396 of 2023

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 - 4.The Assistant Commissioner of Police,
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Madurai City,
Madurai.
 - 5.The Inspector of Police,
Central Crime Branch,
Madurai City,
Madurai.
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.2396 of 2023

N. ANAND VENKATESH, J.

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Crl.O.P.(MD)No.2396 of 2023

06.12.2024
(1/2)