



Crl.O.P.(MD)No.2284 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **05.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.2284 of 2024

A.Hariharan

... Petitioner/Defacto Complainant

Vs.

1.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.

2.Piramagnayagam

... Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 439(1)(b) r/w 482 of Cr.P.C., to cancel the bail order passed by the learned Judicial Magistrate No.I, Tirunelveli, in Cr.M.P.No.1699 of 2024, dated 23.01.2024.

For Petitioner : Mr.C.Mayilvahana Rajendran

For Respondents : Mr.S.Manikandan

Government Advocate (Crl. side) for R1

Mr.R.Ramanujam

for M/s.Gandhi Associates for R2

ORDER

This petition has been filed to cancel the bail order passed by the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P.No.1699 of 2024, dated 23.01.2024.



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2.The petitioner is the defacto complainant and he made a complaint before the respondent police against the second respondent/accused and the same was registered in Crime No.614 of 2022 for the offences under Sections 205, 206, 419, 465 and 468 of IPC. After completing the investigation, the first respondent police filed a charge sheet before the concerned Court and the same was taken on file in C.C.No.99 of 2024 before the learned Judicial Magistrate No.I, Tirunelveli. Since the second respondent/accused was not arrested, after filing the charge sheet, he filed an application under Section 88 of Cr.P.C., before the trial Court. The trial Court vide its order dated 23.01.2024 allowed the petition and accepted the said application under Section 88 of Cr.P.C., and directed the second respondent to furnish two sureties and further, directed to appear before the trial Court regularly, failing which, Non-Bailable Warrant will be issued. Challenging the said order passed by the trial Court, the present petition is filed.

3.1.The learned counsel for the petitioner would submit that the petitioner is running a hotel under the name and style of Maduram Hotels along with his brother in Tirunelveli City and having good reputation in Tirunelveli City. On 10.04.2017, a complaint was filed before the District



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Consumer Forum, Tirunelveli by one G.Natchiyar against Maduram Hotel and another complaint was filed by one Rosely and the same were taken on file in C.C.Nos.79 of 2017 and 75 of 2017. The above said complaints have been filed by the second respondent, who is an Advocate, on behalf of them. The petitioner also engaged an Advocate to defend the cases.

3.2.He would further submit that the petitioner met the second respondent to settle the case out of Court in order to avoid the litigation and the second respondent demanded a sum of Rs.13,500/- to settle the case out of Court. The petitioner gave a sum of Rs.27,000/- to settle the above said two cases out of Court. Further, the second respondent, who has the habit of filing frivolous complaints as against the petitioner's hotel, has filed 80 complaints and threatened the petitioner by demanding more money and further the second respondent filed several complaints by forging the signatures of his relatives, friends and junior. Hence, the petitioner lodged a complaint before the first respondent. But the first respondent did not register an FIR against the second respondent. Hence, the petitioner filed a writ petition before this Court in W.P.(MD)No. 19881 of 2022 for mandamus to direct the first respondent to take action on his complaint dated 28.12.2021. Pursuant to which, initially CSR was



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assigned against the second respondent and thereafter, the FIR in Crime No.614 of 2022 for the alleged offences under Sections 205, 206, 419, 465 and 468 of IPC was registered against the second respondent. After registering the FIR, the respondent police conducted investigation without securing the second respondent for custodial interrogation and filed a charge sheet before the trial Court and thereafter, the second respondent filed the above said application under Section 88 of Cr.P.C., before the trial Court and the same was allowed by the trial Court, which is not sustainable one.

3.3. Aggrieved by the manner in which, the enquiry was conducted by the respondent police, the petitioner filed a petition in Crl.O.P.(MD)No.7096 of 2023 seeking transfer of investigation from the first respondent to CBCID and the said petition was disposed of on 19.04.2023 directing the Assistant Commissioner of Police, Palayamkottai to monitor the investigation. But the Assistant Commissioner of Police did not monitor the case as directed by this Court. Hence, he filed another petition before this Court in Crl.O.P. (MD)No.14337 of 2023 seeking transfer of investigation to CBI. Thereafter, the respondent police filed a charge sheet on 20.01.2024. Again, the very same issue came up before this Court on 22.01.2024 and



without issuing notice under Section 41-A of Cr.P.C. to the second respondent, the first respondent police hurriedly filed a charge sheet before the trial Court and subsequently, that petition was disposed of. However, in the meanwhile, the second respondent filed an application under Section 88 of Cr.P.C., before the trial Court for execution of bond and the same was accepted, which is not sustainable one.

4.The learned counsel for the second respondent would submit that the first respondent police filed the charge sheet before the trial court and thereafter, the second respondent filed the application under Section 88 of Cr.P.C., before the trial Court for execution of the bond and the same was accepted by the trial Court and directed the second respondent to execute the bond with two sureties on condition to appear before the trial Court and the said condition is not yet violated and in the absence of any violation of the condition, the present petition is filed by the petitioner, which is not sustainable one. Eventhough the said order is contrary to the order passed by this Court, the remedy available to the petitioner is to file a contempt petition before this Court and if there is any breach or violation of the order passed under Section 88 of Cr.P.C., he has to file a petition under Section 446 or 447 of Cr.P.C. before the trial Court itself. Hence, without invoking the power available to the petitioner, filing the



present petition is not sustainable one. He would further submit that the second respondent is a practising Advocate of the said Court, where the cases are pending. After considering the *bona fide* on the part of the second respondent, the trial Court accepted the application under Section 88 of Cr.P.C., and granted bail and directed the petitioner to execute two sureties and further imposed a condition to appear before the trial Court on each and every hearing date and there is no violation of the condition imposed by the trial Court. Hence, the present petition filed by the petitioner is misconceived. Accordingly, he prayed for dismissal of this petition.

5.Heard the learned counsel on either side.

6.Admittedly the second respondent is a practising Advocate before the trial Court and it is alleged that in order to wreck vengeance against the petitioner, the second respondent has lodged several complaints on behalf of his clients as against the petitioner before the District Consumer Forums, for which, the petitioner made a complaint before the first respondent police. Pursuant to the direction issued by this Court, the first respondent police registered a case in Crime No.614 of 2022 for the above said offences and initially, the second respondent was



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not secured. Even then, the first respondent filed a charge sheet before the learned Judicial Magistrate No.I, Tirunelveli in C.C.No.99 of 2024. It is an equally undisputed fact that this Court in CrI.O.P.(MD)No.7096 of 2023 has issued several directions and subsequently final order was passed. However in the present case, the impugned order is for acceptance of the bond application under Section 88 of Cr.P.C., produced by the second respondent and if there is any violation of the impugned order, the remedy available to the petitioner is to file appropriate application before the trial Court itself by invoking the power available under Sections 446 and 447 of Cr.P.C. Without doing so, filing the present petition is not sustainable one. Hence, the prayer sought for by the petitioner is misconceived.

7.Considering the facts and circumstances of the case and also considering the fact that the second respondent has scrupulously complied with the conditions imposed by this Court and no supervening circumstances were brought to the notice of this court as enumerated by the Apex Court in the case of ***Daulat Ram – Vs – State of Haryana (1995 (1) SCC 349)*** and therefore, the prayer as sought for by the petitioner cannot be acceded to.



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8. Accordingly, this petition is dismissed. However, liberty is granted to the petitioner and the first respondent to work out their remedy in terms of the orders passed by this Court in Crl.O.P.(MD)No.7096 of 2023, dated 19.04.2023 and Crl.O.P.(MD)No.14337 of 2023, dated 22.01.2024.

05.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
SJI

To

1. The Judicial Magistrate No.I, Tirunelveli.
2. The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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