



Crl.O.P.(MD)No.11698 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.11698 of 2021 &
Crl.M.P.(MD)Nos.5990 & 5991 of 2021

Kodiankulam Kumar @ Rajkumar

... Petitioner

VS.

1.The Inspector of Police,
Palaiyamkottai Police Station,
Tirunelveli District.
(Crime No.1860 of 2009)

Subsequently transferred to
The Inspector of Police,
Crime Branch,
Palaiyamkottai Circle,
Tirunelveli District.

2.M.Jeyapal

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.602 of 2010 on the file of the Judicial Magistrate No.I, Tirunelveli and quash the same as against the petitioner.



CrI.O.P.(MD)No.11698 of 2021

For Petitioner : Mr.C.Susi Kumar
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor (Criminal Side)

ORDER

Seeking to quash the final report in C.C.No.602 of 2010 pending before the Judicial Magistrate No.I, Tirunelveli, the present Criminal Original Petition is filed.

2. The petitioner is arrayed as A3 in C.C.No.602 of 2010. The case of the prosecution in a nutshell is as follows.

The petitioner Kodiankulam Kumar @ Rajkumar (A3) and one Sankarakuthalingam (A4) with a common intention of taking out the settlement deeds marked as Ex.A1 and Ex.A2, in the suit in O.S.No.154 of 2009 on the file of the I Additional District Munsif Court, Tirunelveli, and approached Jeyapaul (A1), office assistant of Additional Public Prosecutor, Judicial Magistrate No.I and Albert (A2), Advocate Clerk of Government Pleader (PCR Court), who in turn requested M.Bulah (PW1), bench clerk of I Additional District Munsif Court, Tirunelveli to hand over the entire bundle in O.S.No.154/2009 to them. Accordingly,



CrI.O.P.(MD)No.11698 of 2021

M.Bulah, bench clerk handed over the bundle in O.S.No.154 of 2009 to A1 and A2, who in turn, handed over the bundle to A3. Subsequently, A3 and A4 took away the two original settlement deeds from the bundle and thereby, committed the offences punishable under Sections 120-B, 380, 420, 424 and 477 IPC read with Section 34 IPC. On the basis of the complaint given by Jeyapaul (A1), office assistant of Additional Public Prosecutor, Judicial Magistrate No.I, Tirunelveli, FIR in Crime No.1860 of 2009 was registered by the Inspector of Police, Palayamkottai Police Station and the Police after conducting investigation, laid a final report in C.C.No.602 of 2010 before the Judicial Magistrate Court No.I, Tirunelveli against all the accused including the complainant Jayapaul.

3. Mr.C.Susi Kumar, learned counsel appearing for the petitioner would contend that the petitioner has not committed any of the offences mentioned in the FIR and A1, A2 and A4 alone approached the office assistant of Additional Public Prosecutor, Judicial Magistrate No.I, Tirunelveli and took away the two settlement deeds which were marked as Ex.A1 and Ex.A2 in O.S.No.154 of 2009 on the file of the I Additional



Cr.O.P.(MD)No.11698 of 2021

District Munsif Court, Tirunelveli. It is his specific contention that on the date of occurrence, the petitioner was not at all present in the Court and in this regard, he relied upon Section 161(3) Cr.P.C. statement of M.Bulah, bench clerk. It is also his contention that both the settlement deeds were recovered from the custody of A1 only and therefore the final report against the present petitioner is liable to be quashed.

4. Per contra, Mr.R.M.Anbunithi, learned Additional Public Prosecutor (Criminal Side) would contend that the Police after conducting a proper investigation had laid a final report and there are no good grounds to quash the same.

5. A perusal of Section 161(3) Cr.P.C. statement of the witness, M.Bulah, bench clerk *prima facie* shows that Jeyapaul (A1), office assistant of Additional Public Prosecutor, Judicial Magistrate No.I and Albert (A2), Advocate Clerk of Government Pleader (PCR Court) approached her and requested her to hand over the entire bundle in O.S.No.154 of 2009 to them. At that time, Sankarakuthalingam (A4) was



CrI.O.P.(MD)No.11698 of 2021

standing in the same office. She handed over the bundle to A1, A2 and A4. All these three persons took away the bundle outside the Court premises and handed over the same to the present petitioner who wanted to take photostat copies of certain documents. When M.Bulah, bench clerk requested A1 and A2 to return the bundle, they had informed her that A3 would be handing over the bundle within half an hour as he wanted to take photostat copies of the settlement deeds. Subsequently, since these two documents were not returned, a complaint came to be lodged with the Inspector of police, Palayamkottai Police Station, Tirunelveli, and it was registered as FIR in Crime No.1860 of 2009. The Police after conducting investigation, laid a final report in C.C.No.602 of 2010 before Judicial Magistrate No.I, Tirunelveli and the case is now posted for trial. In the meanwhile, A1, A2 and A4 died.

6. The contention of the learned counsel for the petitioner is that the petitioner (A3) was not at all present at the place of occurrence. Even as per the version of prosecution, the petitioner (A3) was standing outside the Court premises. The petitioner (A3) is the defendant in O.S.No.154 of



Cr.O.P.(MD)No.11698 of 2021

2009 on the file of the I Additional District Munsif Court, Tirunelveli and the main documents relied upon by the plaintiff in the suit was two settlement deeds. Section 161(3) Cr.P.C. statements of witnesses recorded by the police *prima facie* shows that the present petitioner is benefited by taking away those two settlement deeds from the bundle and therefore, it can be easily inferred that only at his instance, A1, A2 and A4 got the entire bundle from M.Bulah, bench clerk. It is shocking to note that M.Bulah, bench clerk who handed over the original case bundles to total strangers has not been made as an accused. The original records can never be handed over to any persons including the parties to the suit. In the instant case, M.Bulah, bench clerk had committed a serious offence of parting with the Court records and therefore, the learned Judicial Magistrate No.I, Tirunelveli is directed to include her as an accused in the present case after following the due process of law. It is not known whether any disciplinary proceedings were initiated against the said M.Bulah, bench clerk.



CrI.O.P.(MD)No.11698 of 2021

WEB COPY

7. Coming to the facts of the present case, though the original settlement deeds were recovered from the custody of A1, it cannot be stated that A3 is not involved in the offence as he is the main beneficiary in taking away those two settlement deeds from the case bundle. As already observed, the statements of the witnesses recorded by the police under Section 161 (3) Cr.P.C. *prima facie* point out the same. In such circumstances, the Criminal Original Petition stands dismissed as devoid of merits. The Judicial Magistrate No.I, Tirunelveli is directed to submit a report to the Court after adding M.Bulah, bench clerk as an accused in C.C.No.602 of 2010. The departmental enquiry initiated against the said M.Bulah, bench clerk and the enquiry report, if any, shall also be sent to this Court. Consequently, connected Miscellaneous Petitions are closed.

02.02.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
mbi



Crl.O.P.(MD)No.11698 of 2021

WEB COPY

To

- 1.The Judicial Magistrate No.I,
Tirunelveli
- 2.The Inspector of Police,
Palaiyamkottai Police Station,
Tirunelveli District.
- 3.The Inspector of Police,
Crime Branch,
Palaiyamkottai Circle,
Tirunelveli District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CrI.O.P.(MD)No.11698 of 2021

R.HEMALATHA, J.

mbi

CrI.O.P.(MD)No.11698 of 2021

02.02.2024