



W.P.(MD)No.12899 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.12899 of 2023

and

W.M.P.(MD)No.10923 and 25966 of 2023

S.Atham Ali

... Petitioner

versus

1. The Director General of Police,
Office of Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.
2. The Superintendent of Police,
Office of the Superintendent of Police,
Ramanathapuram District.
3. The Inspector of Police,
CBCID Office,
Near Amma Park,
Sethupathi Nagar,
Ramanathapuram District.
4. The Inspector of Police,
Thiruvadanai Police Station,
Thiruvadanai,
Ramanathapuram District.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the 1st respondent to change the investigation from the file of the 4th respondent to 3rd respondent in connection with the crime No.265/2022 based on the petitioner's petition dated 03.04.2023.

For Petitioner : Mr.R.Anand
for M/s.R.Mahalingam

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

ORDER

This writ petition is filed for a Mandamus, directing the first respondent to transfer the investigation from the file of the 4th respondent to the file of the 3rd respondent in connection with the case in Crime No.265 of 2022.

2. The learned counsel appearing for the petitioner submits that the petitioner is a practising Advocate. He is said to have noted the impersonation made by the 11th accused in the proceedings in C.C.No.



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95 of 2017, which is pending before the learned Judicial Magistrate, Thiruvadanai. He also informed the same to the Head Clerk concerned, who in turn has verified the same and found that instead of one Abdul Rasub, who is the 11th accused in C.C.No.95 of 2017, one Riswan, S/o.Thameem Ansari was appearing on behalf of him as the 11th accused. According to him, the 11th accused is in abroad and he has never appeared before the trial Court and the trial went with the said Riswan as 11th accused. Therefore, the Head Clerk has lodged a complaint before the respondent Police and the same was registered in Crime No.265 of 2022 for the offence under Section 419 IPC. He further submits that the respondent Police has not conducted the investigation in a proper manner and the petitioner is apprehending that they are colluding with the accused. Hence, this writ petition has been filed.

3. It is reported by the respondent Police that in this case, after completion of investigation, final report was filed before the learned



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Judicial Magistrate concerned and the same is also taken on file as

C.C.No.182 of 2023.

4. In reply, the learned counsel appearing for the petitioner submits that the final report has been filed as against the said Riswan alone instead of adding all the accused persons, who have colluded with the 11th accused in conducting the entire proceedings in C.C.No. 95 of 2017. He further submits that this Court, by order dated 21.06.2023, granted an interim order, staying the entire proceedings in C.C.No.182 of 2023.

5. The 6th accused in C.C.No.95 of 2017 has filed an impleading petition and submits that he is not aware of the impersonation committed by the 11th accused. However, allegations have been made as against the 6th accused also. Therefore, he must also be heard in this petition.



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6. The learned Additional Public Prosecutor appearing for the respondent Police submits that the investigation in Crime No.265 of 2022 was completed and a charge sheet has also been taken on file in C.C.No.182 of 2023 on the file of the learned Judicial Magistrate, Thiruvadanai.

7. This Court has considered the rival submissions made.

8. The petitioner claims that he is the informant. Based on his information, a fraud, which has been played before the trial Court was detected. The 11th accused in C.C.No.95 of 2017, who is working at abroad has permitted another person to appear on behalf of him and the entire trial proceedings in C.C.No.95 of 2017 was proceeded with that person. The petitioner is a practising Advocate. He has found the mischief and informed the Head Clerk concerned, who in turn, verified the same and lodged the complaint and after completion of investigation, the final report has also been filed.



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9. The grievance of the petitioner is that impersonation is with the knowledge of all the accused in C.C.No.95 of 2017. According to him, all the accused in C.C.No.95 of 2017 are close relatives, who are hailing from the very same Jamath and they very well know that the 11th accused has been impersonated by another person Riswan. However, they have kept quiet in all the proceedings and enabled the trial Court to proceed with the trial with the said Riswan as the 11th accused. After the information provided by the petitioner only, it was identified and a complaint was also registered. In the process of impersonation, all the accused in C.C.No.95 of 2017 are having a role, but, the investigating agency has not conducted the investigation properly and filed the final report in a mechanical manner as against the said Riswan alone. The Investigating Agency, at least, ought to have registered a case as against the person on behalf of whom the impersonation was made. However, the learned Judicial Magistrate has taken the final report in a mechanical manner and also assigned



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C.C.No.182 of 2023. Therefore, the petitioner is apprehending that he cannot get a fair justice from the concerned Judicial Magistrate by filing a protest petition. Therefore, he seeks for transfer of investigation.

10. The learned counsel appearing for the petitioner has also relied on a Judgment of the Hon'ble Supreme Court in ***Devendra Nath Singh vs. State of Bihar and others*** reported in ***2023 1 SCC 48***, wherein, the Hon'ble Supreme Court has held as under:

“45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) Cr.P.C., in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C. could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) Cr.P.C. do not limit or affect such powers of the High



Court to pass an order under Section 482 Cr.P.C. for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.”

11. The petitioner is having a remedy by filing a protest petition before the concerned Judicial Magistrate. However, considering the apprehension of the petitioner, the manner in which the learned Judicial Magistrate has taken cognizance in Crime No.265 of 2022 and also the ratio laid down by the Hon'ble Supreme Court in the Judgment as cited supra, this Court is inclined to pass an order for re-investigation in Crime No.265 of 2022.

12. Accordingly, this writ petition is allowed. The Superintendent of Police, Ramanathapuram is directed to withdraw the case from the file of the 4th respondent and entrust the same to an honest and sincere police officer to find out the allegations made by the petitioner, the role of the accused persons in the process of



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impersonation made before the Court.

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13. The Police Officer, who was deputed by the Superintendent of Police to investigate the case in Crime No.265 of 2022, shall find out the real truth in that case and to file a report before the concerned Judicial Magistrate.

14. The learned Judicial Magistrate, Thiruvadanai, is expected to return the final report, which was already taken on file in C.C.No.182 of 2023, enabling the Police Officer to file a fresh report in Crime No. 265 of 2022. No costs. Consequently, connected miscellaneous petitions are closed.

11.07.2024

LR/ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



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B.PUGALENDHI, J.

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