



Crl.OP(MD)No.12307 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02/09/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.OP(MD)No.12307 of 2019

V.K.Karthick,
Area Manager,
National Bulk Handling Corporation Pvt. Ltd. (NBHC),
No.43A, Sambandha Moorthy Street,
Madurai. : Petitioner

Vs.

- 1.The Superintendent of Police,
Virudhungar District,
Virudhunagar.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Rajapalayam,
Virudhunagar District.
- 3.The Joint Director,
Central Bureau of Investigation,
73, Athikulam Main Road,
Palanisamy Nagar,
Ramnad Reserve Line, Athikulam, Madurai-625 007.
- 4.K.Venkatesh
(Impleaded as per the order
of this court, dated 15/10/2018
made in Crl.MP(MD)No.8860 of 2019
in Crl.OP(MD)No.12307 of 2019)
- 5.The Manager,
Axis Bank,
Rajapalayam Branch.
R5 is *suo-motu* impleaded as per
order of this court, dated 29/04/2024
in Crl.OP(MD)No.12307 of 2019)
- 6.V.Kasirajan : Respondents
(R6 impleaded as per the order,
dated 06/08/2024 in Crl.MP(MD)No.6376 of 2024
in Crl.OP(MD)No.12307 of 2019)



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Prayer: This Criminal Original Petition is filed under section 482 of the Criminal Procedure Code to transfer the investigation with regard to the petitioner's complaints, dated 06/02/2018, 10/05/2018, 02/01/2019 and 30/05/2019 from the file of the 1st and 2nd respondents to any other independent Investigating Agency including the third respondent.

For Appellant : Mr.B.Vijay Karthikeyan

For R1 and R2 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

For 3rd Respondent : Mr.C.Muthu Saravanan
Special Pubic Prosecutor
for CBI

For 4th respondent : Mr.R.Gandhi,
Senior Counsel
for Mr.R.Alagumani

For 5th Respondent : Mr.P.Pethurajesh

O R D E R

This Criminal Original Petition is filed to transfer the investigation with regard to the petitioner's complaints, dated 06/02/2018, 10/05/2018, 02/01/2019 and 30/05/2019 from the file of the 1st and 2nd respondents to any other independent Investigating Agency including the third respondent.



2. The facts in brief:-

The petitioner herein sent complaint on various dates as mentioned in the petition to the second respondent the Inspector of Police, Rajapalayam South Police Station, Rajapalayam, with the following averments:-

He is working as Area Manager in National Bulk Handling Corporation Private Limited (NBHC), Madurai. The Company is having Cluster/Regional Offices all over the country. It is dealing with warehousing service, apart from collateral management service to various Banks and Financial Institutions. As per the terms of agreement called 'Collateral Management Agreement' with the Axis Bank, it advised the complainant to take over the Godown situated at SRI VENKATESHWARA GODOWN, 25B, China Suraikai Patti, Street Rice Mill Road, Tal, Rajapalayam, Virudhunagar District. The Bank appointed the complainant as Collateral Manager of the Bank to manage the commodities namely Paddy Raw BPT of one Kasirajan, who is the borrower). The Godown was taken on lease by the borrower from one K.Venkatesh the warehouse owner. As per the agreement, dated 10/03/2017, the borrower handed over the said Godown to the company on 02/01/2017. The borrower stored 3927 bags of commodities in the Godown. Based upon the representation made by the borrower, the company issued storage receipts, which were in-turn pledge marked in



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favour of Axis Bank, Rajapalayam Branch. The company provided security services in that Godown. But on 03/01/2018, the warehouse owner K.Venkatesh suddenly put his lock in the Godown and restricted the Company employees from entering and performing their duty. The matter was brought to the notice of the Bank and the Borrower. But till date, the warehouse owner has not allowed the company employees to enter into the said Godown. As mentioned above, the above said complaints and copies of the complaints were sent to various authorities.

3.Now this criminal original petition came to be filed by the petitioner on the ground that on 05/05/2018 with the help of the police officials, the petitioner entered into the Godown and it was decided to shift the paddy bags from the said Godown. During the shifting process, V.Kasirajan and Venkatesh were present. At that time, it was found that there is a short of 1239 paddy bags. The value of the missing bags is Rs.25,00,000/-. During that period, the entire premises of Sri Venkateswara Industries was under the security control and supervision of K.Venkatesh. So, without the knowledge of the K.Venkatesh, no one can enter. On further enquiry, it was revealed that the above said K.Venkatesh and V.Kasirajan with the help of he employees of the petitioner's company namely Sevgapandiyan looted 1239 paddy bags worth about



Rs.25,00,000/-. Over the occurrence, a complaint was lodged on 06/02/2018 to the Deputy Superintendent of Police, Rajapalayam, which was forwarded to the Rajapalayam South Police Station. Further complaint was sent on 10/05/2018 to the Inspector of Police, Rajapalayam South Police Station. Since there was no action, again another complaint was sent on 02/01/2019. Another representation was sent on 30/05/2019. But till date, no proper action is taken. So, this petition is filed seeking transfer of the enquiry/investigation in the complaint of the petitioner to the 3rd respondent herein.

4.Subsequently, K.Venkatesh was impleaded as 4th respondent, the Manger, Axis Bank, Rajapalayam Branch was impleaded as 5th respondent and Kasirajan was impleaded as 6th respondent,

5.Before we enter into the respective submissions made by the parties, the record of proceeding requires to be briefly summarized.

6.When the matter was taken up for hearing on 15/10/2019, the learned counsel for the petitioner and the 4th respondent namely K.Venkatesh submitted before this court that the matter may be referred to the mediation for amicable settlement, since there is possibility of



settlement between the parties. On that account, the matter was referred to the mediation. But no settlement could be arrived at between the parties.

7. When the matter was taken up for further hearing on 11/02/2022, the learned Additional Public Prosecutor was required to inform the court as to the stage of the complaint/FIR. It was submitted to the court that after enquiry, the complaint was closed. The parties namely the complainant and the private respondents were permitted to receive the copy of the closure report from the Enquiry Officer and thereafter, the matter was listed on various dates. But later, it was informed to the court that the enquiry is not yet over and it is still pending. The affidavit filed by the Enquiry Officer was also placed on record. The learned Additional Public Prosecutor would submit that since the matter was referred to the mediation and there was no settlement between the parties, awaiting further orders from this court in this petition, it is kept pending. This is the sequence of record of proceeding before this court.

8. Now the short point arises for consideration is whether in the light of the subject complaint, any exceptional case has been made out by the petitioner to entrust the enquiry to the third respondent.



9.The learned Special Public Prosecutor appearing for the third respondent would submit that they got their own limitation to take up the complaint only if the subject of the complaint is above 3 Crores. Another limitation, according to the third respondent is that now the State Government has withdrawn the consent for investigation or enquiry to be undertaken by the CBI in respect of the issue arises within the state of Tamil Nadu. We will come to that issue later.

10.Now the learned counsel appearing for the petitioner would submit that this is not the first occurrence in the Godown. Similar occurrence took place previously also. Over which, Crl.OP(MD)No.298 of 2019, ordered on 24/05/2018, Crl.OP(MD)Nos.1696 and 203 of 2019, ordered on 30/04/2019, investigation/enquiry was transferred to CBI. He has also placed those orders before this court. I am not going to enter in that issue for the simple reason that whether any exceptional case has been made out by the petitioner to transfer the case to the third respondent alone will be taken into consideration.

11.As mentioned above, it is a simple complaint stating that the 4th respondent K.Venkatesh has put up a lock over the lock in the Godown and the petitioner's company officials were prevented from entering into it.



Later on 05/05/2018, they entered into the premises and found theft of storage. So, they suspected the 4th respondent and his own employee by name Sivugapandiyan. So, the subject complaint can be taken up by the second respondent himself. This is not the exceptional case, which requires investigation to be undertaken by the special agency.

12. Simply because in like complaint, the third respondent has undertaken enquiry, it need not been followed in subsequent cases also. Under the facts and circumstances, every order has its own circumstances. Here, as mentioned above, the subject complaint does not require any special agency to look into that aspect.

13. The learned counsel appearing for the petitioner would rely upon the number of judgments to impress upon the court that even a complaint can be transferred to a special agency for enquiry or investigation as the case may be. Even as per the judgment of this court in ***Rakindo Developers (P) Ltd., and The Commissioner of Police, Greater Chennai, Egmore, Chennai-600 008 and three others [2009(3)CTC 43]***, the only criteria for transferring the enquiry or investigation to the special agency is as to whether rare and exceptional case has been made out.



14.Here, as mentioned above, nothing of this sort has been brought on record that the third respondent is competent to conduct the enquiry in this matter.

15.The learned Government Advocate (Criminal side) would submit that a direction may be issued to the 2nd respondent in this regard to complete the enquiry so that it will give finality.

16.The learned counsel appearing for the petitioner would submit that even though the complaint was given in 2018, there is no progress in the enquiry and the second respondent is giving contradictory statement before the court. At one point of time, he has stated that the complaint was closed. At another point of time, it is stated that enquiry is still pending, since the matter was referred to the mediation.

18.No doubt that the second respondent is not consistent in its stand before this court. But Mr.R.Meenakshi Sundaram, the learned Additional Public Prosecutor after verification of the records has made a statement before this court that enquiry is still pending and the complaint was not closed. His statement is placed on record. Even though, in such matters the accused have not shown, but however, they have been impleaded. They are represented by Advocates.



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19.The learned Senior counsel appearing for the 4th respondent would submit that this petition itself is not at all maintainable and it is nothing, but indirect method of pressurizing the second respondent herein to register the FIR. According to him, the subject complaint itself does not require any registration of the FIR. I am not going into the allegation of the matter. It is within the exclusive jurisdiction of the second respondent herein to find out the truth and further course of action to be taken. So, I find absolutely no special circumstance has been brought on record by the petitioner. So, the transfer request is rejected.

20.Even though, the learned Special Public Prosecutor appearing for the third respondent would submit that they are bound by the above two restrictions, it will not bind the High Court or the Hon'ble Supreme Court as the case may be to transfer the investigation/enquiry to the third respondent if any exceptional has been made out.

21.In the result, this petition is **dismissed** with a direction to the second respondent herein to complete the process of enquiry within 15 days from the date of receipt of a copy of this order. After completing the enquiry, depending upon the out come of the preliminary enquiry, further steps may be taken, if it is required. The



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petitioner is at liberty to prosecute the complaint, if
aggrieved over the out come of the enquiry, if goes against
him.

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To,

- 1.The Superintendent of Police,
Virudhungar District,
Virudhunagar.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Rajapalayam,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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