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Crl.O.P.(MD).No.18302



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.18302 of 2023

P.Selvam

...Petitioner

Vs.

1.The Deputy Superintendent of Police,
Oomatchikulam Sub Division,
Madurai District.

2.The Inspector of Police,
Town Police Station,
Thirumangalam,
Madurai District.
Crime No.462 of 2021

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to call for the records with regard to the final report in C.C.No.655 of 2023 pending on the file of the learned Judicial Magistrate, Thirumangalam and set aside the same and direct the respondents to conduct further investigation of the case in Crime No.462 of 2021 pending on the file of the second respondent herein and file a final report afresh within the period stipulated by this Court.

For Petitioner

: Mr.N.Sathish Banu

For Respondents

: Mr.A.Albert James,
Government Advocate
(Criminal Side)



ORDER

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2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent Police.

3. The petitioner was working as a Supervisor in a TASMACH shop. One Murugeswari joined as a District Manager in TASMACH, Madurai South in the year 2013. One Saravanan was working as an Assistant under the said Murugeswari. The allegation is that the said Murugeswari was in the habit of demanding bribe from all the employees, who were working under her and also threatened them with suspension / termination / transfer, if her demands are not met. The petitioner was one such victim in the hands of Murugeswari.

4. The petitioner gave a complaint to take appropriate action against the District Manager on the ground that she is involved in fabricating all relevant records and she has indulged in large-scale misappropriation. After a long struggle, an FIR came to be registered in Crime No.462 of 2021. While registering this FIR,

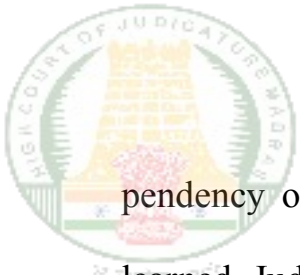


no one was named as an accused and there was absolutely no progress in the investigation. Hence, the petitioner filed Crl.O.P.(MD).No.16763 of 2022 seeking for transfer of investigation. This petition was disposed of by this Court by an order dated 09.11.2022 in the following terms:

“4. In view of the same, the Inspector General of Police, South Zone, Madurai is suo motu impleaded as necessary party/second Respondent considering the subject matter of the adjudication, the Respondents 2 to 4 already in this petition are ranked as Respondents 3 to 5

5. The Inspector General of Police, South Zone, Madurai is directed to withdraw the case from the file of the Inspector of Police, Town Police Station, Thirumangalam and hand over the same to an officer not below the rank of the Deputy Superintendent of Police on the assessment of the Inspector General of Police, South Zone, Madurai and complete the investigation. Also the Inspector General of Police shall nominate Deputy Inspector General of Police to supervise the investigation done by the Deputy Superintendent of Police and complete the investigation within a reasonable time.”

5. Pursuant to the above order, the Deputy Superintendent of Police, Umachikulam was appointed as the Investigating Officer. In spite of the same, there was no progress and the investigation was not completed. Hence, the petitioner filed a contempt petition before this Court in Cont.P.(MD).No.1629 of 2023. During the



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pendency of this Contempt Petition, the final report came to be filed before the learned Judicial Magistrate, Thirumangalam. The charge sheet was filed only against four named accused persons leaving out the name of the District Manager. In view of the same, it is alleged that in spite of sufficient materials available, the Police have intentionally left out the then District Manager of TASMAC, namely, Murugeswari. That apart, the documents that were collected during the course of investigation did not even form part of the police report that was filed before the Court below. It is under these circumstances the present petition came to be filed challenging the final report before the Court below and seeking for a further investigation.

6. In the considered view of this Court, the main grievance that has been expressed on the side of the petitioner is that the main accused person viz., Murugeswari was intentionally left out in the police report. That apart, some of the important documents that were collected during the course of investigation does not even form part of the police report.

7. The above grievance expressed by the petitioner does not warrant further investigation at this stage. Already more than ten years are over after the alleged occurrence and if further investigation is ordered, it will only further delay the process and the petitioner will never be able to see the light of the day. Hence,



the grievance expressed by the petitioner can be redressed with the available powers under Cr.P.C.

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8. The first grievance is that the main accused namely Murugeswari has not been added as an accused. The petitioner was the one who was instrumental in giving the complaint and therefore, the petitioner can always get into the witness box and explain the entire case. If ultimately, the petitioner is able to make sufficient allegations against the said Murugeswari while in the witness box and it *prima facie* makes out a case against the said Murugeswari, the trial Court can always exercise its power under Section 319 of Cr.P.C. and add any person as an accused. Therefore, for the purpose of adding the main accused in the final report, it is not necessary to conduct a further investigation and it is possible to add such accused persons even during the course of enquiry or trial.

9. The second grievance is with regard to the documents which are material to this case and which do not form part of the police report. If vital documents are not filed by the police in spite of collecting the same in the course of investigation, those documents can always be brought in during the course of trial by exercising the power and jurisdiction under Section 311 of Cr.P.C. The law on this issue is now too well settled. It is not as if the prosecution can never bring in documents which does not form part of the final report, during the course of trial.



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Ultimately, the trial is a process towards finding the truth and therefore, the trial Court has been given wide powers under Section 311 of Cr.P.C. to even bring in those documents which do not form part of the police report. While doing so, an opportunity must be given to the accused persons to defend this case effectively with respect to the new materials that are brought before the Court. This observation will sufficiently take care of the grievance expressed by the petitioner.

10. In the light of the above discussion, the main grievance that has been expressed by the petitioner has been sufficiently redressed with the observations made by this Court supra. Hence, the Court below can proceed further with the case by keeping in mind the above observations made.

11. In the result, this Criminal Original Petition is disposed of with a direction to the Court below to proceed further and dispose of C.C.No.655 of 2023 as expeditiously as possible.

28.11.2024

Index : Yes / No
Internet : Yes / No
Speaking Order/Non Speaking Order
TSG



Crl.O.P.(MD).No.18302

To
1.The Judicial Magistrate, Thirumangalam.

2.The Deputy Superintendent of Police,
Oomatchikulam Sub Division,
Madurai District.

3.The Inspector of Police,
Town Police Station,
Thirumangalam,
Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

TSG

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