

(2009) 07 MAD CK 0019

In the Madras High Court

Case No : Criminal O.P. No. 17191 of 2008 and M.P. No. 1 of 2009

K.C. Palanisamy, Managing Director, M/s. Cheran Holdings
Private Ltd. and M/s. KCP Associates Holdings Private Ltd.

APPELLANT

Vs

The Additional Superintendent of Police, Economic Offences
Wing No. II, Chennai and The Deputy Superintendent of
Police, Economic Offences Wing No. II, Chennai 600 002

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Citation : (2009) 2 LW(Cri) 1254

Hon'ble Judges : R. Reghupathi, J

Bench : Single Bench

Advocate : S. Ananthanaryanan, for the Appellant; J.C. Durairaj, Govt. Advocate
for Respondents and Mr. Ashok Kumar for Mr. C.D. Johnson for Intervener, for the
Respondent

Final Decision : Dismissed

Judgement

R. Reghupathi, J.—The petitioner has come up with the present Petition seeking to direct further investigation of the case in Cr. No. 23 of

2005 on the file of the 2nd respondent through the Inspector of Police, the Central Bureau of Investigation, Shastiri Bhavan, Chennai.

2. For better appreciation of the issue having regard to the prayer sought for, the factual aspects involved are projected below in a compact

manner. Based on a complaint dated 19.03.2005, preferred by the petitioner with the second respondent herein, a case in Crime No. 23 of 2005

was registered on 26.04.2005 as against one Siddartha Ray and 13 others, for offences under Sections-120(b) read with 420, 465, 468, 471 and

478 IPC. and pending investigation therein, the petitioner was arrested on 31.01.2008 with reference to Crime Nos. 776/07 and 54/08 on the file

of C.C.B., Chennai. While so, by order dated 10.03.2008 passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in M.P.

Nos. 677 and 678 of 2008, the petitioner was granted bail with one of the conditions that he should stay at Nagercoil, and report before the Chief

Judicial Magistrate, Nagercoil, daily at 10 A.M. until further orders and later, during May, 2008, the condition to stay at Nagercoil was modified

and the petitioner was directed to stay at Dindigul and appear before the Chief Judicial Magistrate, Dindigul. On 20.05.2008, the Deputy

Superintendent of Police, E.O.W. II, Chennai, issued summons for appearance of the petitioner before him on the same day at 12 Noon in respect

of Cr. No. 23 of 2005 and it was replied that the petitioner could not appear on account of the condition imposed by the court to stay at Dindigul

and appear before the CJM daily and that he would appear as soon as the condition was relaxed. Subsequently, another summon was issued by

the very same officer on 29.05.2008 for appearance of the petitioner within five days from the date of the summons. The petitioner sent a telegram,

dated 02.06.2008, stating that since he was complying with the conditional order passed by the court, he could not make personal appearance

before the officer and that the case should not be concluded without affording reasonable opportunity to him. However, the Deputy Superintendent

of Police proceeded with the enquiry and filed final report on 13.06.2008, referring the case as civil in nature.

3. Learned counsel appearing for the petitioner, by adverting to a common order passed by this court on 22.02.2007 in CrI. O.P. No. 31375 of

2006 and two other petitions, whereby, after considering the plea of the petitioner seeking transfer of investigation to the CBI from the file of the

Economic Offences Wing No. II and rejecting the same, a direction was issued to respondent No. 4 therein, shown as 1st respondent in the

present case viz., the Additional Superintendent of Police, EOW-II, Chennai, to proceed with the investigation and file final report within a period

of "six months from the date of receipt of copy of the order; would submit that, in spite of such specific direction, investigation was not taken up by

the Additional Superintendent of police (ADSP) but by an officer below such rank i.e., Deputy Superintendent of Police (DSP), who throughout

the course, pursued the investigation with a bias and partisan attitude towards the petitioner, denying the opportunity to project the case and

present the documentary materials in support of his claim. According to the learned counsel, the way in which summons came to be served upon the petitioner in respect of the complaint lodged by him while he was complying with the condition imposed by the court, confining his movements with a particular place, and the haste with which final report came to be filed would go to show the unfair approach of the Investigating Officer towards him and further, the specific direction of this court for investigation by the ADSP has been purposely flouted; hence, this is a fit case for ordering further investigation preferably to CBI.

4. Per contra, learned Government Advocate, by pointing out that the post of Additional Superintendent of Police was scrapped as early as on 12.06.2007, would submit that since the time-frame fixed for completion of investigation by order dated 22.02.2007 was already over, a Miscellaneous Petition in M.P. No.1 of 2008 in Crl. O.P. No. 31375 of 2006 was filed for extension of time and, by order dated 17.04.2008, time was extended by two months after hearing both sides. According to him, the petitioner was not co-operative throughout, therefore, investigation of the case was concluded after proper enquiry with the available materials and final report came to be filed on 13.06.2008, referring the case as dispute of civil nature and such report was also served on the petitioner on 16.06.2008; under such circumstances, there is no valid reason for further investigation into the matter and, if the petitioner still feels aggrieved, he may resort to the other mode available by filing private complaint before the Magistrate concerned to prosecute the accused in accordance with law.

5. The proposed accused, by filing a petition to intervene in the matter, seeks permission to get impleaded and make submissions and the counsel appearing for the petitioner strongly objected to the same by stating that it is for the court to decide and entrust the task of further investigation to a particular Agency and the proposed accused need not be heard as they have no right of audience.

6. I have meticulously examined the materials available on record having regard to the rival submissions made on either side. In a way, the present petition for further investigation is the second round of litigation, for, in the previous course, the plea of the petitioner was for transfer of investigation to the CBI. Similar contentions were raised in the said case in Crl.

O.P. No. 31375 of 2006 and, on a close perusal of the common order passed, it could be seen that investigation was taken up by the ADSP, E.O. Wing-II, Chennai, and allegations have been leveled against the said Officer. After re-cording the submission made on instructions by the learned Government Advocate to the effect that the allegations against the officer are baseless, the learned Judge, while refusing to accede to the request of the petitioner, by observing:

It is also pertinent to note that the fourth respondent is a superior police official viz., Additional Superintendent of Police of Economic Offences

Wing, and as such he is a competent police official to investigate a case like the instant case.

(Sic) concluded as follows:

However, considering that the petitioner has come forward with certain apprehension, this Court is of the view that in the interest of justice to

direct the Investigating Agency, viz., fourth respondent herein to expedite the investigation and to complete the same and file the final report within

a period of six months from the date of receipt of copy of the Order of this Court.

Thus, in the light of the conclusion reached by the learned Judge and the observations made in the course of the order, it is quite obvious that a

clear and explicit direction was issued to the ADSP to investigate and file final report within the time-frame stipulated. It appears that,

subsequently, the post of ADSP has been scrapped by order dated 12.06.2007 and investigation was pursued by the DSP. Though it is

contended by the counsel for the petitioner that the Investigating Officer was bias throughout and he purposely issued summons while movements

of the petitioner was confined with a particular place on account of the condition imposed while granting bail, so as to deprive him of the

reasonable opportunity of hearing and establishing his case, this Court is not able to appreciate such contention. However, since a specific direction

was issued by this court for investigation of the case by an officer not below the rank of Additional Superintendent of Police and such post was in

the meantime scrapped, while seeking for extension of time, the prosecution should have obtained clarification with reference to the ranking of the

officer undertaking the task of investigation. On a perusal of the orders passed for extension of time, it seems that no such clarification was sought

for at the instance of the respondent-police. Inasmuch as investigation has been pursued and concluded by an officer below the rank of the one

actually directed by this Court by way of earlier orders passed in CrI. O.P. No. 31375 of 2006 and presently, the post of ADSP is non-existent, I

am of the considered view that instead of ordering transfer of investigation, an officer not below the rank of Superintendent Police in the same

Agency viz., Economic Offences Wing-II, Chennai, be directed to re-open investigation of the case in Crime No. 23 of 2005.

Accordingly, the Superintendent of Police attached to Economic Offences Wing-II, Chennai, is directed to investigate into the case registered as

Crime No. 23 of 2005 with the assistance of his subordinates and file final report in due compliance with the procedure involved, within a period of

three months from the date of receipt of copy of this order. The petitioner is directed to co-operate with the investigation by appearing before the

Superintendent of Police, E.O.W.II, Chennai, on summons and he may adduce oral and documentary evidence before the officer in support of his

claim.

7. With the above direction, the Criminal Original Petition is disposed of. Miscellaneous Petition is closed.