
(2009) 09 MAD CK 0319
In the Madras High Court
Case No : Criminal O.P. No. 3811 of 2009

N. Sampath

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 220, 323, 347, 388, 420

Citation : (2010) 1 LW(Cri) 569

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Ilanthirayan, for Sai, Bharat and Dan, for the Appellant; I. Paul Nobel Devakumar, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The present petition has been filed by the de-facto complainant in Cr. No. 2/2009 registered on the file of District Crime Branch, Cuddalore praying for an order directing the Superintendent of Police, Cuddalore, Cuddalore District (the second Respondent herein) to withdraw the entire case diary in the above said case from the Inspector of Police, District Crime Branch, Cuddalore (first Respondent) and hand over the same to the Deputy Superintendent of Police, CBCID, Cuddalore for proper and further investigation of the case.

2. The facts leading to the filing of the present petition are as follows:

The Petitioner herein is running a lorry broker office and he used to buy and sell used lorries and arrange finance for them. One Subramanian of Koothappankudikadu in Thittakudi Taluk was also engaged in the very same business. Due to some misunderstanding, the relationship between the Petitioner and the said Subramanian got strained pursuant to which the said Subramanian preferred a complaint on the file of Thittakudi police station alleging theft of his lorry. Purporting to act in furtherance of the investigation of the said case, the

Petitioner herein was taken by one Chinnadurai, the then Sub-Inspector of police, Thittakudi to the said police station on 23.11.2008 at about 22.00 hours. He had also seized two lorries bearing Regn. Nos. TN-72 R-5972 and TN-28 AC-5024 sold by the Petitioner to Sivakumar of Potthiramangalam and Dhandapani of Thittakudi respectively. The said Sub-Inspector of police again took the Petitioner to Namakkal on 25.11.2008 and brought him back to the Thittakudi Taluk police station along with two other lorries bearing Regn. Nos. TN-46 C-1002 and TN-28 AD-4685, which had been sold by the Petitioner to Shanmugam and Sakthivel respectively. The said lorries had been previously owned by one Selvaraj. The above said lorries seized by the Sub-Inspector of police were later on parked in front of the house of the above mentioned Subramanian, who gave the complaint alleging theft of his lorry.

3. Under such circumstances, the Petitioner preferred a complaint to the Deputy Inspector General of Police, Villupuram naming 1) Thiru. Kanniappan, the then Deputy Superintendent of Police, Thittakudi, 2) Thiru. Kumarabalan, the then Inspector of Police, Thittakudi Police Station and 3) Thiru. Chinnadurai, the then Sub-Inspector of Police, Thittakudi police station as the named accused, alleging demand and receipt of bribe and misuse of their official capacity, besides other offences. Pursuant to a direction issued by the Deputy Inspector General of Police, a case was registered on the file of District Crime Branch, Cuddalore against the seven persons in Cr. No. 2 of 2009 for the alleged offences punishable under Sections 323, 220, 388, 347, 465, 467, 468, 471 and 420 IPC. The said case was registered on 26.01.2009 and the persons arraigned as accused in the said case were as follows: 1) Subramanian, son of Vadamalai, 2) Gopinathan, son of Subramanian, 3) Senthil, son of Subramanian, 4) Velavan, son of Subramanian, 5) Chinnadurai, Sub-Inspector of Police, Thittakudi police station, 6) Kumarabalan, Inspector of Police, Thittakudi police station and 7) Kanniappan, Deputy Superintendent of Police, Thittakudi.

4. In the said complaint it had been alleged that, at the first instance, when the Petitioner had been taken to Thittakudi police station on 23.11.2008 along with two lorries bearing Regn. Nos. TN-72 R-5972 and TN-28 AC-5024, Mr. Kumarabalan, Inspector of Police demanded and accepted a sum of Rs. 40,000/- as bribe for releasing the Petitioner; that the Sub-Inspector of police and the Deputy Superintendent of Police, who had been arrayed as accused Nos. 5 and 7 in the case concerned in this petition, demanded a sum of Rs. 1,00,000/- as bribe for releasing the lorries informing the wife of the Petitioner that the said lorries could not be released for a sum of Rs. 40,000/- alone; that they received the said sum of Rs. 1,00,000/-, the next day as bribe for releasing the said lorries; that similarly all the above said officials, namely Sub-Inspector of police, Inspector of police and the Deputy Superintendent of police, who have been arrayed as accused Nos. 5 to 7 in Cr. No. 2 of 2009 on the file of District Crime Branch, Cuddalore released those lorries only after receiving a sum of Rs. 1,00,000/- from the wife of the Petitioner; that the said police officers obtained signatures in blank stamp papers from the Petitioner, his brother Muralidharan

and the above said Selvaraj, the former owner of lorries bearing Regn. Nos. TN-46 C-1002 and TN-28 AD-4685 with the help of which they fabricated an agreement as if the said Selvaraj agreed to sell those lorries to the second accused Gopinathan and the third accused Senthil, both sons of the Subramanian and parked the said lorries in front of the house of the first accused Subramanian; that thereafter valuable parts of the said lorries like tyres, batteries, propeller shafts, etc. were removed and that the police officers, who had been arrayed as accused Nos. 5 to 7 were acting hand in glove with the accused persons 1 to 4 therein. It had also been alleged that the Petitioner was asked to make ready a skeletal lorry to show recovery in the complaint given by the first accused Subramanian and received bribe for releasing two out of the four lorries seized.

5. As the said episode was informed to the Deputy Inspector General of Police, Villupuram by way of a complaint dated 16.12.2008, the said Deputy Inspector General of Police directed the inspector of Police, District Crime Branch, Cuddalore to register a case based on the said complaint and investigate the same. As the Petitioner is not satisfied with the way in which the investigation was conducted by the Inspector of Police, District Crime Branch, Cuddalore, who has been arrayed as the first Respondent in the petition, he has invoked the inherent powers of this Court u/s 482 Code of Criminal Procedure to direct the Superintendent of Police, Cuddalore (second Respondent) to withdraw the case diary file from the first Respondent and entrust the same to the Deputy Superintendent of Police, CBCID, Cuddalore.

6. It is the contention of the Petitioner that the first Respondent, who is presently investigating the case has not properly investigated the same, which will be seen from the fact that the first Respondent has not arrested any one of the accused persons and that he did not recover the properties concerned in this case so far. It is the further contention of the Petitioner that since the accused persons 5 to 7 are the officers of the police department and since the accused No. 6 is equal in rank with the first Respondent and the accused No. 7 is higher in rank than the first Respondent, the first Respondent, in addition to his failure to properly investigate the case, is passing on information regarding the steps taken by the higher officials to the above said accused persons and that hence the Petitioner cannot expect any impartial investigation if the same is left in the hands of the first Respondent.

7. In the counter affidavit filed by the first Respondent, excepting the contention of the Petitioner that the first Respondent is not properly conducting the investigation and is not taking steps to arrest the accused persons and recover the properties which are denied by the first Respondent, almost all other allegations are not denied, rather admitted by the first Respondent. On the other hand, the first Respondent in the counter affidavit has submitted that he is taking all steps to arrest the accused persons and recover the properties.

8. In the light of the above said pleadings, the point that arises for consideration

is as follows:

whether a direction for withdrawing the entire case diary in Cr. No. 2 of 2009 from the first Respondent and transfer the same to the Deputy Superintendent of Police or any other officer of the CBCID, Cuddalore, has to be issued?

9. The submissions made by Mr. Ilanthirayan for M/s. Sai, Bharath and Ilan, learned Counsel for the Petitioner and by Mr. I. Paul Nobel Devakumar, learned Government Advocate (Crl. Side), representing the Respondent were heard. The materials available in the form of typed set of papers and produced in the form of CD file were also perused.

10. The de-facto complainant in Cr. No. 2 of 2009 registered on the file of District Crime Branch, Cuddalore is the Petitioner herein. Complaining inaction and even collusion with the accused persons in the said case on the part of the investigating officer, namely the first Respondent herein, the Petitioner has come forward with the present petition u/s 482 Code of Criminal Procedure for a direction to the second Respondent, namely the Superintendent of Police, Cuddalore District to withdraw and hand over the case diary file filed in the above said case to the Deputy Superintendent of Police, CBCID for further and proper investigation. In support of his prayer, the Petitioner has contended that the present investigating officer cannot effectively do the investigation, as one of the accused persons is a police officer equal in rank and another accused is a superior in rank to the investigating officer.

11. It is the further contention of the Petitioner that though the three police officers, who have been arraigned as accused Nos. 5 to 7 in the case are very much available in the jurisdiction, the first Respondent has not chosen to arrest any one of them and that in fact he is passing on the information regarding the decisions taken by and the moves made by the higher officials against those accused persons. Admittedly, among the said accused persons, namely accused Nos. 5 to 7, one has retired and the other two have been placed under suspension. The person, who retired from service would have given his address for the purpose of claiming and receiving pensionary benefits. It seems no attempt was made by the first Respondent to trace the said accused, who has retired from service, at least in the address he has furnished for pensionary benefits or at the place wherein he has to present himself for claiming and receiving such pensionary benefits. The other two accused persons are admittedly under suspension and by the conduct rules, they should have informed their address and they cannot change their address without informing the disciplinary authority. That being so, it is quite surprising to hear from the first Respondent that all the three police officials, who figure as accused Nos. 5 to 7 are absconding and hence he is not able to arrest any one of them. The other four accused persons, namely Subramanian and his sons are also not arrested. The only explanation offered by the first Respondent is that they are absconding and hence he could not arrest them. However, the first Respondent, in his counter affidavit has stated that the second and third accused, namely

Gopinathan and Senthil had filed a petition before the High Court in CrI.O.P. No. 3215/2009 seeking a direction against the first Respondent not to harass them. The said fact itself will show that the accused persons are freely moving here and there and they were also able to move petitions before the High Court. It is not the case of the Respondents that any of the accused persons has been granted anticipatory bail. Under such circumstances, this Court has to accept the arguments advanced by the learned Counsel for the Petitioner that the first Respondent is not inclined to arrest any one of the accused persons and that he himself would have passed on the information to the accused persons and advised those accused persons to seek necessary orders of protection from the High Court, as having substance in it.

12. It is also admitted by the first Respondent in his counter affidavit that the lorries bearing TN-28 AD-4685 and TN-46 C-1002 are found without tyres, batteries and propeller shafts showing theft of those material parts from the said vehicles. So far the first Respondent has not taken effective steps either to recover those parts or to apprehend any one of the accused persons who are seven in number. Therefore, this Court has to arrive at a conclusion that there is substance in the apprehension expressed by the Petitioner to the effect that the first Respondent is not effectively conducting investigation; that he cannot conduct an effective investigation as three of the accused are police officials and that in fact the first accused seems to have acted in such a way to make it appear that he has not only failed to properly investigate the case but also helped the accused persons by passing on the information regarding the steps taken by the higher officials. The said grounds are enough for directing the transfer of the investigation of the said case to any other officer in a specialised agency like CBCID.

13. It is pertinent to note that three of the accused persons as on the date of registration of case were officers of the police department in the ranks of Sub-Inspector of police, Inspector of police and Deputy Superintendent of Police. When such is the case, one cannot expect a bold, fair and impartial investigation if the same is to be entrusted to an officer of the police department below the rank of the 7th accused (Deputy Superintendent of Police). Therefore, the investigation at the inception itself ought to have been entrusted to an officer of equal or higher rank. Curiously, in this case, the investigation was entrusted to the Inspector of police, who is an officer lower in rank than the 7th accused and equal in rank with the 5th accused.

14. Police Standing Order 141 Sub-clause (2) reads as follows:

in cases of alleged extortion or bribery by a police officer, the Superintendent of Police must use his discretion whether to hold a personal enquiry or not, but all really serious cases of this nature should be enquired into either by the Superintendent or his Assistant or Deputy.

The said clause will make it clear that cases of extortion and bribery by the police

officials should be investigated by higher police officials. It also means that such offences allegedly committed by the police officials should be investigated by a police officer who shall be equal or higher in rank to the accused police officers and in all such cases, it shall be desirable to have the investigation conducted by an officer of higher rank than the accused.

15. In fact, Mr. I. Paul Nobel Devakumar, learned Government Advocate (Crl. Side) representing the Respondents has also conceded that investigation of the case ought not to have been entrusted to the first Respondent and that the case should have been investigated by a Deputy Superintendent of Police or a Superintendent of Police. The learned Government Advocate (Crl. Side) also submitted that it shall be desirable to have the criminal case concerned in this petition investigated by a police officer of the CBCID in the rank of Superintendent of Police. This Court appreciates the fairness on the part of the learned Government Advocate (Crl. Side) representing the Respondents in making such a valuable suggestion and comes to the conclusion that it is a fit case in which this Court has to exercise its inherent power u/s 482 Code of Criminal Procedure to direct the withdrawal of the case diary file from the first Respondent herein and entrustment of the same to the Superintendent of Police, CBCID for further investigation in a proper and fair manner.

16. In the result, this petition is allowed and the case diary file in Crime No. 2 of 2009 now pending on the file of the first Respondent is directed to be withdrawn and entrusted to the Superintendent of Police, CBCID, North Zone, Chennai-32, having jurisdiction over Cuddalore District for further investigation in a proper and fair manner. The Superintendent of Police, CBCID, Cuddalore District is also directed to complete the investigation as expeditiously as possible.