

CrI.OP. No. 8690 of 2017

R. Venkataraman v. Director General of Police

2017 SCC OnLine Mad 37586 : (2018) 2 LW 65

In the High Court of Madras
(BEFORE R. MAHADEVAN, J.)

CrI.OP. No. 8690 of 2017

R. Venkataraman Petitioner;

v.

Director General of Police and Others Respondents.

And

CrI.OP. No. 12060 of 2017

Elephant G. Rajendran Advocate Petitioner;

v.

Inspector General of Police and Others Respondents.

CrI.O.P. Nos. 8690 and 12060 of 2017

Decided on July 21, 2017, [Reserved On: 30.06.2017]

Advocates who appeared in this case :

CrI.O.P. No. 8690 of 2017

For Petitioner: Mr. R. Muniyapparaj

For Respondents: Mr. C. Emalias, APP

CrI.O.P. No. 12060 of 2017

For Petitioner: party in person

For Respondents: Mr. C. Emalias, APP

The Order of the Court was delivered by

R. MAHADEVAN, J.:— The petitioner in CrI.OP. No. 8690 of 2017 has filed this petition under Section 482 of the Criminal Procedure Code to transfer the investigation regarding theft of 6 idols, pending on the file of the 6th respondent to the 2nd respondent or any other competent authority and to pass such further or other orders.

2. The petitioner in CrI.O.P. No. 12060 of 2017 has filed this petition, invoking the power of this Court under Section 482 of the Criminal Procedure Code to transfer the investigation in Crime No. 1 of 2017 on the file of the Idol theft wing, CID, Chennai to Crime Branch, CID, Chennai for further investigation by an officer not below the rank of Superintendent of Police and to file a charge sheet within a time frame and pass such further or other orders.

3. The case of the petitioner in CrI.OP No. 8960 of 2017, a public voice is that Sri. Pasupatheeswarar Temple, in Pandanallur, Thanjavur District was built during the Chola Reign about 1500 to 2000 years ago, houses, several ancient idols of temples in the surrounding villages worth several crores of rupees amongst 60 panchaloka idols of the temple, jewels, silver articles, etc. That apart, it is alleged that the ancient idols were moved, stocked unofficially against the HR & CE norms and the trustees along with the Executive Officers of the HR & CE Department created records as if the idols are intact, when factually 6 idols of which, five belonging to Sri. Viswanathasamy Temple at Keelmanakudi and one vinayagar idol belonging to the Arulmigu Sri. Idumbeswarar Temple were missing. It is case of the petitioner that instead of keeping the Idols in the ICON centre, they were kept in an unauthorised tunnel and

also in a scrap room belonging to the Public Works Department-WRO Department and despite the numerous complaints by the petitioner, no action was taken by the 6th Respondent. Subsequently, after the directions of the Hon'ble Division Bench of this Court in a Public Interest Litigation filed by the petitioner to remove the encroachments in the water bodies and in the lands belonging to the HR & CE Department, the 6th respondent has commenced the enquiry. However, despite several complaints by the petitioner to various police officers and the officials of the HR & CE department, no FIR has been lodged and no action was taken to punish the erring officials of the HR & CE department. It is also the case of the petitioner that the 6th respondent is not the appropriate authority to investigate the offence of theft. Hence, seeking appropriate directions, this petition has been filed.

4. The case of *Mr. Elephant G. Rajendran*, who is the petitioner in CrI.O.P. No. 12060/2017, another public interest crusader is that one I. Khader Basha, now a Deputy Superintendent of Police, Subraj who is now an Inspector of Police and another police personnel who were earlier part of the Idol wing, came into possession of six Idols during the course of their investigation from one Arokiaraj and sold two of the Idols namely Sivagami Amman Panchaloka Idol and one Siva and Parvathy Panchaloka Idol in a pedestal to Dinadayalan, a noted smuggler at Chennai for Rs. 15 Lakhs, which in turn, were sold allegedly for Rs. 6 Crores. Alleging that despite the fact that FIR has been lodged against the accused, they have been promoted and no further action either by way of arrest or by departmental proceedings were initiated. Further Alleging that the investigation by a subordinate officer of the same wing cannot be handled effectively, the transfer is sought for.

5. Both the Criminal Original Petitions were moved separately and heard separately on various dates. Subsequently, both the cases were posted on 30.06.2017 and taken up for final hearing by consent and heard.

6. Mr. Muniapparaj, learned Counsel appearing for the petitioner submitted that Idols worth several crores of rupees under the custody of Sri. Pasupatheeswarar Temple have been swindled by the Trustees in collusion with the HR & CE authorities namely, the Executive Officers K. Kamaraj and A. Ramachandran and Head Clerk K. Raja. They had also created false records as if every idol was intact. It was also contended by the learned counsel that the officers of the HR & CE department kept 10 Idols worth several crores in a Scrap room in a PWD guest house under the control of the 7th respondent flouting the procedures for safe custody and also created a secret tunnel to commit further theft. It was further contended by the learned counsel that though the 6th respondent confirmed the status of the missing idols as early as on 10.01.2017, no steps were taken to recover the idols by lodging a complaint with the Idol wing, CID and no action was taken immediately. It is only after repeated complaints to all the respondents regarding the illegal actions of the officials and also to the Chief Minister's Cell that enquiry was fixed by letter dated 13.03.2017. The Learned Counsel also referring to the letter of the Deputy Superintendent of police, Idol Wing, Chennai, vociferously contended that the complaint lodged by the petitioner ought not to have returned on a flimsy grounds that the complaint could be taken only if the stolen idols are smuggled out of the country. It was also pointed out by the learned counsel that on 08.04.2017 only, the 6th respondent has instructed the Current Executive Officer, to lodge a complaint. Despite the same, no complaint has been lodged till date and hence, the learned counsel sought for appropriate directions to transfer the investigation from the 6th respondent to the concerned authority.

7. Mr. Elephant G. Rajendran, narrating the circumstances for seeking the relief of transfer the Investigation, pointed out that certain Higher officials in the department were shielding the police officers. It was pointed out by the petitioner that misusing their status as officers of Idol Wing, the accused police officers recovered the idols

from one Arokiaraj and kept the same under their custody and wantonly failed to report and record the recovery and subsequently sold the same. It was also contended by the petitioner that since the accused Khader Basha was now promoted as a Deputy Superintendent of Police, the investigation by the Inspector of Police would not be effective. It was further contended by the petitioner that the officers ought to have been arrested and suspended. It was further pointed out that the case is now on the file of the learned Chief Judicial Magistrate, Srivilliputhur with four witnesses recording their statement under Section 164(5)Cr.P.C. The petitioner also urged that in many temples, daily poojas are not performed, many precious idols are kept without proper strong rooms and hence, prayed for appropriate directions for the protection of the same. Contending that the investigation is yet to be completed, transfer was sought for by the petitioner.

8. In reply, Mr. C. Emalias, learned Additional Public Prosecutor appearing for the respondents submitted that only recently, the enquiry has been completed by the 6th respondent and that appropriate action would be initiated by the Executive Officer. The learned Additional Public Prosecutor fairly submitted that the Deputy Superintendent of Police was not right in returning the complaint on the ground that only in cases, where the stolen idols are smuggled out of India, the Idol Wing could be approached. The learned Additional Public Prosecutor also submitted that the Idol Wing is headed by the Inspector General of Police and placed reliance upon the strength of the Idol wing to contend that the wing is insufficiently staffed and it is practically difficult for the existing officers under the supervision of Mr. A.G. Ponn Manickavel, I.P.S. to move around from Chennai, investigate and also appear in three different Courts in Tamil Nadu handling the cases. Further, denying that the Inspector cannot effectively handle the case, the Learned Additional Public Prosecutor pointed out to the investigations and recovery made by the Idol wing where the foreign kingpin was extradited. Under the circumstances, since action was being taken, the learned Additional Public Prosecutor sought the closure of both the petitions.

9. Heard all the parties.

10. The State of Tamil Nadu is blessed to have the most ancient temples in the country. The culture and the history of the State goes back to several centuries, when many countries that exist in the world and to which the smuggled Idols are sent, were not even born. When other countries were looking for precious metals, the people of this land were wearing them as ornaments.

11. History would reveal that this land was invaded by many to exploit the natural resources and to break the culture, which made them dominate the world in all the fields. Many temples and deities were destroyed and the precious wealth's were robbed. Whenever and wherever possible, the main deities were shifted. One such example is the present Kabaleeshwarar Temple, Mylapore, which was shifted from the seashore premises.

12. In contemporary India, it is the fundamental right of every citizen of this Country to profess and practice any religion as guaranteed under Article 25 of the Constitution of India. Idols depict their own history and the civilization of the land. Idol worship has been a part of the culture of this land from time immemorial. It is a matter of belief. The form of Gods as experienced by the blessed, saints and the rulers were sculpted. The historical Tamil Nadu with most ancient temples in the country has also been subjected to cultural attacks like other parts of the country. For the past several years, a new form of attack is carried out by smuggling the ancient Idols. Foreigners and dis-believers see the Idols as antiques worth only in value, in terms of money, but the people of this country see them in the semblance of god, culture and identity.

13. The HR & CE department is the custodian of most of the temples and the

properties including the idols belonging to them. It is their primary duty to protect the temples and safeguard the valuable idols/antiques, which, this Court with great anguish, expresses that the department has failed to do. It is startling to find that the HR & CE department with all its income from major temples, has not been able to maintain historical temples and safeguard the Idols, which in market, have antique value based on their age. Some temples in the State have also been recognised by the UNESCO as heritage sites. Many temples constructed at least 1500 years ago or much before the temples recognised by UNESCO, are in ruins. Even the daily rituals are not performed. Some temples remain closed throughout the day with no one to even lighten the lamps. Neither the Archaeology Department nor the HR & CE Department has shown interest to identify and protect them. This has also come to the advantage of the miscreants, who have laid their hands on the Idols.

14. One more important point to be noted is that the department has not computerised the stock, provide adequate ICON Centres with surveillance to keep safe custody of the valuable idols in the Centre and in the temples. This has led to the advantage of the culprits, who have aided in smuggling the Idols out of the country. As the theft of Panchaloka idols worth crores kept on increasing, the Idol Wing, CID was created vide G.O.Ms. No. 2098, Home (Police IV) Department, dated 07.10.1983. It is saddening to note that the Idols stolen from the State are smuggled out of the country. A wing, with a first of its kind, was created to investigate and recover the Idols, but, the steps taken by the HR & CE department to arrest the theft, are unsatisfactory. It is the duty of the State to protect the monuments including Idols and antiques of historical value.

15. Article 49 of the Constitution of India reads as under:

"Protection of monuments and places and objects of national importance-It shall be the obligation of the State to protect every monument or place or object of artistic or historic interests, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be".

16. The Directive Principles of State Policy must be to protect the ancient Idols and thwart all attempts to damage and/or smuggle them. The smuggling of the Idols out of the country cannot take place if proper system is put into place to screen the objects. It also appears that the Idol wing is interacting with the respective departments of the Central Government only to recover the stolen Idols and antiques, but there seems to be no co-ordination between them to curb the crime. The Idols cannot be smuggled, unless there is a mis-declaration, which will warrant action by the DRI and Customs authorities against the Exporter, CHA, etc. This Court has not come across even a single case, where the persons involved in smuggling the Idols out of the country have been independently prosecuted under the Customs Act, 1962 and the Finance Act, 1994 as the act would be *per se* constitute an independent offence under these Acts. Therefore, this Court is suo-motto impleading the Secretary to the Revenue Department, North Block, New Delhi-110001 as 4th respondent in CrI.O.P. No. 12060/2017.

17. In the cases on hand, the erring officials have had a free hand in handling the idols as if it was their private property. It is clear from the documents produced by the petitioner that the various complaints of the petitioner in CrI.O.P. No. 8690/2017 have not been addressed. Curiously, there is no denial about the existence of the tunnel and stocking the PWD guest house. Despite the fact that the 6th respondent found that the idols were missing, no complaint has been lodged till date. It appears that the ball is passed on from one office to another, to protect the officials. The learned counsel for the petitioner has sought for a transfer of the investigation from the 6th respondent to the Idol Wing, CID, Chennai. However, considering the nature of the offence that 6

Idols under the custody of the department has gone missing, not only does the matter require investigation by the idol wing, CID, but also departmental action must be initiated against the relevant officials. This Court is also not in consonance with the reply given by the Deputy Superintendent of Police of Idol wing that a complaint should only be lodged with the local police station as per Section 154 Cr.P.C.

18. One of the primary functions of the Idol wing is to investigate cases of theft of idols and antiques exceeding value of Rs. 5 Lakhs. Therefore, whenever it is brought to the knowledge that there is a case of theft of idol or antique, preliminary investigation must be taken up to ascertain the allegation and then FIR must be immediately registered and action must be taken against the culprits and to recover the Idol/antique.

19. Upon instructions from this Court, Mr. A.G. Ponn Manickavel, Inspector General of Idol Wing appeared before this Court and presented the difficulties faced by the wing and the modus operandi of the culprits in smuggling the Idols out of India. It is disheartening to note that the Idols are broken into parts before smuggling. It was brought to the knowledge of this Court that at present, there are only 29 personnel sanctioned to the Idol Wing, out of which, 9 posts remain vacant. It was also pointed out that at present, cases are on the file of the Courts at Virudhachallam, Kumbakonam, Srivilliputtur and Chennai. It was further pointed out that adequate staff must be deputed from the HR & CE department or any other department with knowledge in computer operation to assist the team. It was pointed out by the upright officer that all efforts were being taken to nab the accused delinquent officer Khader Basha.

20. After much dejection from this Court as to why no action has been taken, an order of suspension dated 29.06.2017 was passed and a copy of the same was produced to the Court on 30.06.2017, while at the same time, it was brought to the knowledge of this Court that Mr. A.G. Ponn Manickavel, Inspector General of Police, Idol Wing was transferred. Though it could be claimed as a routine transfer, this Court feels, it is otherwise. Also, the officer has been supervising the cases and has efficiently traced and recovered several Idols worth several crores. It is not that the succeeding officer is less efficient, but considering that Mr. A.G. Ponn Manickavel and his team have extensively travelled throughout the country and are aware of the modus operandii of the culprits. For the sake of continuity, speedy completion of the investigation and completion of the pending cases, this Court is of the view that Mr. A.G. Ponn Manickavel, Inspector General of Police and his team must continue despite the work assigned presently.

21. Under these circumstances, this Court disposes of these Criminal Original Petitions with the following directions:

- (i) The Chief Secretary of the State of Tamil Nadu must issue appropriate orders within a week for the creation of a special camp at Tiruchirappalli headed by Mr. A.G. Ponn Manickavel, IPS, Inspector General of Police with other members of Idol wing, who associated him earlier for the completion of trial in the pending cases in the State and needless to say that necessary infrastructure, staff and transportation, vehicle, fuel etc. from time to time are to be provided. The said officer can place his representation immediately intimating required assistance and the team members required by him to the Chief Secretary and on such representation, the same shall be provided forthwith.
- (ii) The cases pending on the file of various courts in the State of Tamil Nadu prosecuted by the Idol wing are hereby transferred to the file of the learned Additional Chief Judicial Magistrate, Kumbakonam for effective and speedy disposal of the cases, on day today basis.
- (iii) The Inspector General of Police Mr. A.G. Ponn Manickavel, IPS and all the

- officers of the cases connected with Idol wing, CID are directed to continue to investigate and follow up all the cases under investigation, pending trial, till the disposal by the learned Additional Chief Judicial Magistrate, Kumbakonam.
- (iv) The team as now ordered by this Court headed by the Inspector General of Police Mr. A.G. Ponn Manickavel, IPS, shall continue to follow up those cases in addition to their present and future assignments, wherever they are posted.
 - (v) The District Collector of Thanjavur must ensure that proper facilities for stay and transportation are provided to the Assistant Public Prosecutors during the trial at Kumbakonam.
 - (vi) The details of the cases, wherein, the Idols have been smuggled out of the country, must be sent to the impleaded respondent, so as to enable him to issue appropriate directions for initiation of cases under the Customs Act, 1962.
 - (vii) The impleaded 4th respondent in CrI.O.P. No. 12060/2017 is hereby directed to submit a report, as to whether the packages/parcels sent out of the country, can be screened to prevent smuggling of Idols/antiques and any other preventive measures that can be taken.
 - (viii) The Commissioner of HR & CE department must submit a report of number of temples under the HR & CE department and the list of archakars employed under them and assigned to each temple to the Inspector General of Police. If an archakar/Executive Officer is assigned to more than one temple to maintain the Idols, the report must specifically state so.
 - (ix) An FIR must be immediately registered by any competent officer of the Idol Wing based on the complaint of the petitioner in CrI.O.P. No. 8690/2017 regarding the theft of 6 Idols from the custody of Sri. Pasupatheeswarar Temple, Pandanallur and a copy must be submitted to this Court.
 - (x) If the role of the delinquent officials and others, are *prima facie* made out, necessary sanction must be obtained forthwith from the appropriate authority and they must be prosecuted.
 - (xi) Departmental proceedings must be initiated by the competent respondent against the officials namely K. Kamaraj, A. Ramachandran, Head Clerk K. Raja and any other official, who have acted with hand in glove with them.
 - (xii) Similarly, departmental proceedings must be initiated against the other officials involved in Crime No. 1/2017 on the file of the Idol Wing, Chennai.
 - (xiii) The Idols kept in the tunnel at Annakarai and in the PWD Guest House must be moved to the nearest ICON Centre within two weeks, if not already moved.
 - (xiv) The competent respondent must submit a report to this Court with list of Idols per ICON Centre and about the requirement of the additional ICON Centres.
 - (xv) The stock of Idols maintained in the manual books in the State, must be computerised within a period of four weeks, if not already computerised.
 - (xvi) Similarly, a list of stock of Idols in the temples must be computerized and the same must be reported to this court.
 - (xvii) All temples in the State must have a strong room, where the Idols are kept and appropriate security arrangement including 24 × 7 video surveillance with alarm, must be made in consultation with the team appointed by this court.
 - (xviii) The existing ICON Centres must be put under 24 × 7 video surveillance with alarm, to avoid theft and to keep track of the Idols taken for daily poojas and festivals.
 - (xix) The Commissioner of Archaeological department, Chennai must periodically depute a team of officials to verify the Idols at the ICON Centres and in temples to identify any replacement and theft.
 - (xx) The directions issued to all the respondents above must be complied in time

and a compliance report must be filed before this Court.
22. Post the matter for reporting compliance on 04.09.2017.

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