



Citation : CDJ 2011 MHC 439

Court : High Court of Judicature at Madras

Case No : CrI.O.P.No.19963 of 2010 & M.P.Nos.1, 2 & 3 of 2010

Judges : THE HONOURABLE MR. JUSTICE C.T. SELVAM

Parties : S. Mahaveer Versus State rep. by The Inspector of Police, CCB, Chennai

Appearing Advocates : For the Petitioner: N.R. Elango, Senior Counsel, A. Ramesh, Senior Counsel, P. Krishnan, K. Surendar, Advocate. For the Respondent: Paul Deva Kumar, Government Advocate (CrI.Side).

Date of Judgment : 02-09-2010

Head Note :

Criminal Procedure Code - Section 482 – Indian Penal Code - Sections 406, 417, 420 – TNPCEI Act, 2003 - Section 4 -- Preferring of the complaint not done immediately – the respondent has woken up after long slumber.

Teeth of Rule 76 of the Criminal Rules of Practice - Respondent caused arrest of the petitioner – when the court refused – Respondent sought custody – to achieve oblique purposes- criminal process is being resorted. Petition allowed.

Cases Referred:-

G.K. Moopanar and Others v. The State of Tamil Nadu, 1990 L.W.113  
2004 Supreme Court Cases (Cri)1722.

Comparative Citation:

2011 (3) MLJ(CrI) 466

Judgment :

(Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order of the Chief Metropolitan Magistrate, Egmore, Chennai, dated 25.08.2010 in CrI.M.P.No.2538 of 2010 and to reject the application for police custody preferred by the respondent in Crime No.519 of 2009.)

1. The petitioner seeks a direction to set aside the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai, dated 25.08.2010 in CrI.M.P.No.2538 of 2010 and to reject the application for police custody preferred by the respondent in Crime No.519 of 2009, registered under Section 406, 417, 420 IPC and Section 4 of the TNPCEI Act, 2003. The complaint in the case reads as follows:

"I P.Ramesh Babu am preferring the present complaint both on my behalf and on behalf of my wife. I am a Civil Contractor by profession and was awarded projects at Nagercoil and to execute the said

projects I needed money urgently as a result Mr.Mahaveer agreed to lend me a sum of Rs.35,00,000/- (Rupees Thirty five lakhs only) at 36% per annum interest and the said loan was secured by title deed of the property owned by me at Thiruvanmiyur and Thirukazhukundram valuing more than 3 Crores. I had also executed a power of attorney for the property in question and also for collecting the dues from the Government after the execution of the project aforementioned. In addition, I have given blank signed promissory notes, blank signed cheques, blank signed stamp papers and blank signed white and green papers and handed over the same to the said Mr.Mahaveer. The power of attorney for collection of moneys was executed as document No.256 of 2004, dated 27.04.2004, at S.R.O.Kanyakumari and the power of attorney for the property at Thiruvanmiyur and Thirukazhukundram was registered as document No.974 of 2004, dated 17.05.2004 at S.R.O.North Chennai.

Thereafter, I had come to know that the said Mahaveer had misused the blank signed stamp paper and blank signed green paper created a fresh power of attorney without my knowledge to the effect that he had power to carry out the work, operate bank account, etc with an intention of defrauding me when the Superintending Engineer sent a letter to me dated 24.11.2004. Further, the said Mr.Mahaveer had using the Power of Attorney Document No.974 of 2004 and executed an agreement for sale dated 31.05.2004 in favour of one Mr.Roopchand Kothari, for the Thiruvanmiyur property and executed another agreement for sale dated 31.05.2004 in favour of Mukesh Kothari for the Thirukazhukundram property. Having come to know of the evil designs and intentions of the said Mr.Mahaveer I had cancelled the Power of Attorney given in his favour in document No.256 of 2004 by cancellation deed vide document No.15 of 2004, dated 31.12.2004 at S.R.O.Nagercoil and I also cancelled the Power of Attorney in document No.974 of 2004 vide cancellation deed in document No.2411 of 2005, dated 27.12.2005 and intimated the said cancellation to the said Mahaveer vide a legal notice dated 28.12.2005.

Thereafter, I gave the matter no thought and on 25.03.2008 I settled the Thirukazhukundram property to my wife vide settlement deed and I further settled the property at Thiruvanmiyur to my wife on 23.06.2008.

But clearly knowing that the power of attorneys granted in his favour was revoked the said Mahaveer had executed a sale deed in favour of his daughter in law Priyadarshana on 26.03.2008 and on 30.07.2008 he had executed the sale deed for the Thiruvanmiyur property in favour of his wife Vijaya Kavar.

This clearly shows that the said Mahaveer, his wife Vijaya Kavar and his daughter in law Priyadarshana acted together with an intention to cheat me and cause me wrongful loss and in the process cause wrongful gain to themselves. Their intention should be interfered from the fact that the said Mahaveer had executed the sale deed in favour of his relatives despite knowing that the power given to him has been cancelled and thereby criminally breached the trust placed upon him by me and thereby with a dishonest intention cheated me."

2. Mr.N.R.Elango, learned senior counsel appearing for the petitioner submitted that the entire action of the defacto complainant was malafide and that the respondent was aiding him in such exercise. The defacto complainant had earlier preferred a police complaint before the Commissioner of Police in respect of the very same matter on 29.12.2008 in complaint No.2676/PG Vision 08, which was forwarded to the Central Crime Branch in Ref.No.2155/2009, was enquired into and closed, finding no wrong on the part of the petitioner. In such circumstance, the petitioner, who had moved a petition for anticipatory bail in CrI.O.P.SR.No.1694 of 2009 had not pursued the same. Thereafter, the defacto complainant had preferred the same complaint on 08.09.2009 after a period of about ten months, before the Central Crime Branch, Chennai. C.S.No.289 of 2009 on the file of this Court had been filed by the defacto complainant and his wife against the petitioner, his wife and daughter-in-law. Therein they had sought the following reliefs:

- a) For a Direction directing the defendants to Redeem the mortgage dated 17.05.2004 by receiving the balance sum of Rs.10,34,371/- (Rupees Ten lakhs thirty four thousand three hundred and seventy only only) from the Plaintiffs and thus render justice.
- b) For another Direction directing the defendants to return all the original title deeds, Cheques, signed stamp papers, blank stamp papers, blank cheques, blank green sheets etc., to the Plaintiffs pertaining to the suit properties and also schedule mentioned items lying with the defendants.
- c) For a Declaration declaring that the Cheques as mentioned in the suit schedule given by the First Plaintiff to the First defendant are not supported with the consideration and cannot be enforceable in law.
- d) For a Declaration to declare that the Sale deed dated 30.07.2008 executed by the first defendant in favour of the second defendant is null and void as it has been executed after cancellation of the power and it is void in law.
- e) For a declaration to declare that the sale deed dated 26.03.2008 executed by the first defendant in favour of third defendant is null and void as it has been executed after cancellation of the Power and it is void in law.
- f) For a Permanent Injunction restraining the defendants, their men, agents, servants or any one acting under them, in proceeding or doing any action for the suit schedule mentioned properties, movable or immovable properties in any manner and thus render.
- g) For damages @ Rs.1,00,000/- (Rupees One lakh only) per month commencing from December 2008, for mental agony and acts done by the defendants causing hardship and financial loss to the Plaintiff till the defendants handover all the schedule documents to the Plaintiff and thus render justice.
- h) For grant costs of the suit and
- i) For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

3. This Court, in Application No.1541 of 2009 in C.S.No.289 of 2009 was dealing with a prayer to grant interim direction to the respondents/defendants to return all the original title deeds, cheques, signed stamp papers, blank stamp papers, blank cheques, blank green sheets etc., to the applicants pertaining to the suit properties and also schedule mentioned items A and B lying with the defendants more fully described in the Judges Summons. In application under O.A.No.318 of 2009, this Court was dealing with a prayer to grant interim injunction restraining the respondents/defendants, their men, agents, servants or any one acting under them, in proceeding or doing any action regarding the suit schedule mentioned A and B immovable properties in any manner. By way of common order dated 21.01.2010, this Court had ordered as follows:

That (1) S.Mahaveer, (2) H.Vijaya Kavar, and (3) V.Priyadarshana, respondents/defendants 1 to 3 herein in O.A.No.318 of 2009 be and are hereby directed to the limited extent of injuncting the respondents not to create any further alienation on the suit property more fully set out in the schedule hereunder.

4. The emphasis of the learned senior counsel is that the Court had not ordered the return of original deeds, cheques etc., as sought for by the defacto complainant. While so, the petitioner has preferred the present complaint on 08.09.2009 suppressing the earlier complaint, which was enquired into and

closed as also the fact of the pendency of the suit on the original side of this Court and the orders passed therein. The case was registered in FIR No.519 of 2009, on 23.10.2009. Almost ten months thereafter the petitioner suddenly was arrested on 21.08.2010. There is no explanation why the respondent chose to keep quiet for a such long time and even in the remand report of the petitioner, there is no allegation of his having been absconding.

5. The petition seeking police custody of the petitioner had been moved before the Chief Metropolitan Magistrate, Egmore on 24.08.2010. The learned counsel for the petitioner had pointed out certain defects therein and finding that legal formalities were not complied with, the lower Court granted time upto 25.08.2010 to file appropriate petition. Thereafter, fresh petition was filed on 25.08.2010. The Chief Metropolitan Magistrate by orders in CrI.M.P.No.2538 of 2010, dated 25.08.2010 rejected the contention on behalf of the petitioner that this Court had rejected the prayer for return of documents and the Police were trying to use the investigative machinery to get over the order of this Court and do that which had not been favourably considered by this Court. The lower Court reasoned that the police wanted to seize the documents for purposes of investigation and not for returning it to the defacto-complainant. Further, police wanted custody of the petitioner not only for seizing the documents return of which was not directed by this Court but also other documents and to collect evidence since offence under Sec.5 of TNPCEI Act, 2003 also was attracted. Having decided so, the lower court had asked the Superintendent of the Central Prison, Puzhal to cause production of the accused on 26.08.2010 at 11.00 a.m.

6.Learned senior counsel would point out that while in the original application seeking custody before the Chief Metropolitan Magistrate, the reasons stated were as follows:

1. To seize the case related original property document.
2. To secure his wife, daughter-in-law and manager of his company.
3. To accompany the accused to his native place Tindivanam and at Chennai few places.
4. For the purpose of thorough investigation, in the subsequent affidavit, the reasons stated were as follows:
  1. To seize the case related original property document.
  2. To take the accused go to Tindivanam for his native place to collect case documents and other facts.
  3. To accompany the accused to his native place Tindivanam and at Chennai few places.
  4. For the purpose of thorough investigation.

Therefrom, it was clear that the primary object of the respondent was to secure documents relief in respect of which had been denied by this Hon'ble Court. The learned senior counsel would inform that besides the above facts and circumstances which would require this Court to consider the bonafides of the application seeking police custody, the very application did not inform sufficient grounds, necessitating police custody. Grant of police custody was a serious matter, since it involved infringement of the fundamental right guaranteed under Article 21 of the Constitution of India and personal liberty of the individual and that in the absence of just and reasonable causes putforth through valid material, police custody could not be granted.

7. The learned senior counsel relied upon the decision of the Division Bench of this Court in G.K. Moopnar and Others v. The State of Tamil Nadu, 1990 L.W.113, wherein it had been observed that

remand by a Magistrate was not automatic and sufficient grounds must exist for a Magistrate to exercise powers of remand. He also relied upon the observations of a Division Bench of this Court in Criminal Appeal No.740 of 2007, which are as follows:

"15. Before considering the second submission it would be appropriate to consider the last submission viz., whether the application for police custody has to be granted automatically or any order passed for such police custody should be supported by materials. The police custody is concerned about the infringement of right of an individual, more particularly fundamental right guaranteed under Article 21 of the Constitution of India. There are certain exceptions by way reasonable restrictions and one such restriction is the grant of police custody while investigation is pending. Therefore, any application for grant of police custody must be strictly considered on materials as it involves the fundamental right and personal liberty of an individual. The provisions are to be strictly understood and complied with. When an application for police custody is contemplated within a period of 15 days on the initial remand, such an application for police custody ought to have been made only during the period of initial remand and when the investigation was pending. As we have held on the facts of this case that the investigation was already over and final report also filed and the case was split up and in the absence of any application for further investigation for the purpose of the respondent, the investigation is completed, we are of the considered view that the application if entertained would amount to infringement of the fundamental right guaranteed under Article 21 of the Constitution of India. Even going by the averments made in the affidavit in support of the petition for police custody, we could only see para 14 of the affidavit in which, the reasons are stated to be (on) two fold. Firstly, it is the apprehension of the investigating agency that the respondent might have connection with the other three absconding accused. Secondly, that the respondent might have known the hiding places of three accused and places where arms, ammunitions and explosives were hidden.

16. Prima facie we are of the considered view that the above averments do not constitute sufficient materials to sustain a petition for police custody. In the teeth of Rule 76 of the Criminal Rules of Practice, as rightly contended by the learned counsel for the respondent, the order for police custody cannot be made just for the sake of asking but only when in the opinion of the Court that such an order for police custody is necessary for effective completion of the investigation. As we have factually found that the materials are totally insufficient and cannot be the basis for ordering the police custody, we find no infirmity in the findings in the order passed by the learned special Judge for Cases, Poonamallee at Chennai."

8. The contention of the learned Senior Counsel on Rule 76 of the Criminal Rules of Practice and Circular Orders, 1958 can be understood by reproducing Rule 76.

" 76. Remands : (1) Magistrates shall not grant remands to police custody unless they are satisfied that there is good ground for doing so, and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be liable to give further information. A request for remand to Police custody shall be accompanied by an affidavit setting out briefly the prior history of the investigation and the likelihood of further clues which the Police expect to derive by having the accused in custody, sworn to by the investigating or other Police Officer, not below the rank of a Sub-Inspector of Police. Magistrates may decide after perusal of the affidavit. Magistrates shall personally see and satisfy themselves about the accused being sound in mind and body before entrusting him to Police custody and also at the end of the period of custody by questioning him whether he had in any way been interfered with during the period of custody. When the object of a remand is verification of the statement of an accused, he shall, whenever possible, be remanded to the charge of a Magistrate; and the period of remand shall be as short as possible.

(2) When application for remand is made to a Magistrate of a class lower than the second class, the Magistrates shall direct the Police to go to a Magistrate of a higher class.

(3) It is the duty of Magistrates, who remand accused person to custody other than that of Police, and of Magistrates in exclusive charge of sub-jails to which the accused persons are remanded, to guard with the greatest care against the possibility of any undue influence.

(4) Where an accused, detained in hospital, is not in a position to be removed and produced before the Magistrate concerned the appropriate procedure would be for the Magistrate to proceed to the hospital, see the accused person and order an extension of the remand."

9. Learned senior counsel would submit that while in the earlier affidavit filed for remand, one of the purposes stated was of securing the petitioner's wife, daughter-in-law and Manager of the Company, purposes, which directly had been held to be impermissible under order of the Division Bench of this Court in Criminal Appeal No.740 of 2007, the requisite of the rule particularly that which called for the reproduction of the prior history of the investigation and likelihood of further clues being obtained through police custody had not been spoken about in the affidavit. He would take strong exception to the prosecution not having placed the entire materials before the lower Court for its consideration, particularly that of related suit pending before this Court and of the earlier complaint against the petitioner on the very same issue earlier having been closed by the respondent. He also would point out the averments made in the counter of the respondent, which informed the undue interest shown in the case by the respondent. Relevant portion of the same reads as follows:

8. It is respectfully submitted that in the meantime, on behalf of the accused/respondent herein today (26.08.2010) a Memo was filed before the Hon'ble Chief Metropolitan Magistrate, Egmore, Chennai-8, in which it is stated that they have filed an application under Section 482 Cr.P.C. before this Hon'ble Court vide Crl.O.P.SR.No.35703/2010, dated 26.08.2010 praying not to grant any police custody in Crime No.519/2009.

9. It is respectfully submitted that the petition filed by the accused respondent was subsequently numbered as Crl.O.P.No.19963 of 2010 and the counsel for accused/respondent herein was permitted to move the petition as Lunch Motion today 26.08.2010.

10. It is respectfully submitted that though Lunch Motion permission was granted by this Hon'ble Court, neither the counsel for the accused/respondent herein nor the Hon'ble High Court Registry has furnished any information relating to the filing of the application subsequent numbering of application in Crl.O.P.No.19963 of 2010 and listing the matter by 2.15 p.m. Today 26.08.2010 before this Hon'ble Court. I further submit that since the magnitude of the case is very huge the accused/respondent herein had suppressed material facts and obtain this stay order.

11. I further submit that my subordinate viz., Thiru R.Ranjith Kumar, Sub-Inspector of Police attached to my Team was also deputed to give proper instructions to the Office of the Public Prosecutor, High Court, Chennai and till 3.30 P.M. Today (26.08.2010), the papers from the Registry was not forwarded.

10. Learned senior counsel would impress the over zealousness of the respondent to watch over proceedings in this Court, when the interests of the state were being take care of by a duly appointed law officer. The learned senior counsel would impress upon this Court that we are now witnessing repeated instances, wherein persons are taken into police custody with the primary purpose of settling disputes between parties.

11. This Court has expressed its disconcert at averments implying that the respondent was kept in the dark. An affidavit in apology stands filed and accepted.

12. The learned Government Advocate would submit that it was not only for the return of documents,

that police custody was sought. The same also was required in respect of other important matters relating to investigation and this Court would restrict the period of remand, if considered appropriate.

13. Mr.G.Krishnamoorthy, learned counsel appearing for the defacto complainant would state that the order of interim stay passed by this Court was pre-emptive in nature. The aggrieved person had preferred a complaint and taking a person into police custody was a part of the investigation process which this Court would not interfere with. It was not for the accused to inform the manner investigation is to be conducted. Merely because police custody was ordered, it would not mean that the end of recovery of documents would be achieved. It was open to the accused to refuse to hand over the same. He would also touched upon Section 83 of the Trusts Act.

14. Considering the rival submission, this Court finds that the petition would have to be allowed for more reasons than one. In the first place, the fact of an earlier similar complaint having been enquired into and closed is not disputed. In circumstance, where the complaint has been preferred on 08.09.2009 registered on 23.10.2009 and nothing immediately has been done, after an order of this Court dated 21.01.2010, which had in effect rejected the prayer of the defacto complainant requiring the accused to produce documents, the respondent has woken up after long slumber on 21.08.2010 and caused arrest of the petitioner. That, towards serving the very same purpose, relief where regards had been refused by this Court viz., recovery of documents, the respondent had sought custody on 24.08.2010 is to be viewed with some consternation. As rightly informed by the learned senior counsel, many are the cases, wherein the criminal process is being resorted to, to achieve oblique purposes and the facts and circumstances of the present case lead us to believe that this is one such case. As regards the submissions made by the learned Government Advocate that the purpose of seeking police custody is not only to obtain the return of documents, it has to be stated that one would have to draw the gold from the dross. The present is a case of all dross and no gold.

15. Mr.G.Krishnamoorthy's submissions are more on general principles, which we agree with but which would have no bearing on the facts of the present case. His contention that as against the order of police custody, the proper course would be to move this Court by way of Criminal Revision, and not by way of criminal original petition, stands rightly met by Mr.N.R.Elango, Senior Counsel by placing reliance on decision reported in 2004 Supreme Court Cases (Cri)1722. Finding that the order of the lower court has been obtained on suppression of relevant facts, this Court would allow this petition and set aside the order of the Chief Metropolitan Magistrate, Egmore, Chennai, dated 25.08.2010 in CrI.M.P.No.2538 of 2010. Consequently, connected miscellaneous petitions are closed.

16. Copies of this Court shall be forwarded to all Metropolitan/Judicial Magistrates. A copy shall be forwarded to the Director General of Police, for appropriate action, particularly sensitizing the force and issuing guidelines as considered necessary.