

Kannan Alias Muthukumar Vs. the State,

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Court : Chennai

Decided On : Jan-30-2014

Judge : N.Kirubakaran

Appellant : Kannan Alias Muthukumar

Respondent : The State,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

30. 01.2014 CORAM THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
CRL.O.P(MD)No.3 of 2011 Kannan alias Muthukumar ... Petitioner Vs The State,
represented by the Inspector of Police, Cantonment Police Station, Trichy.
(Cr.No.444 of 2004) ... Respondent Prayer Criminal Original Petition filed under
Section 482 of Cr.P.C. praying this Court to change the Investigation Agency to
CBCID from the respondent/Police in S.C.No.192 of 2007, on the file of the
Principal Assistant Sessions Court, Trichy. !For Petitioner ... M/s.C.Vakeeswaran
^For Respondent ... Mrs.S.Prabha Govt.Advocate(Crl.side) :

ORDER

It is the case of fence eating crops.

2. The Police Officials, who are supposed to safeguard the citizens have themselves involved in robbery of 2600 gms of gold(2.6 kgs of gold). The petitioner along with his friend Anand, who are all dealers in gold jewellery

purchased gold from Chennai and they travelled by Howrah Express from Chennai to Trichy and when they tried to catch the bus to Madurai, they are intervened by the accused, who are coming in Tata Qualis vehicle. They were taken in the car at the knife point and robbed the gold and pushed them out. In this regard, the petitioner gave a complaint which was registered in Cr.No.444 of 2004 for the offences punishable under Sections 120(b), 363, 395 r/w 397 IPC.

3. The investigation revealed that A1,A2 and A3 are the police officials. However, the police could recover only a sum of Rs.1,84,000/- and no reason was given with regard to the remaining amount and also regarding the recovery of stolen goods. Therefore, the petitioner filed CrI.O.P(MD)No.4206 of 2009 to reinvestigate the case. This Court directed the petitioner to file a petition under Section 173(8) for further investigation. Pursuant to that,the petitioner took out C.M.P.No.360 of 2009, on the file of the learned Principal Assistant Sessions Judge, Tiruchirappalli which ordered fresh investigation on 16.12.2009 and to submit a report on or before 02.02.2010. Thereafter also, investigation was not done properly and compelling the petitioner to give a representation on 12.04.2010. Finally, the petitioner moved this Court by way of CrI.O.P.No.6609 of 2010, which was disposed of with a direction to file a final report, on 15.09.2010 as per C.M.P.No.360 of 2009. However, the report was made only on 15.11.2010. Aggrieved by that only the petitioner is before this Court seeking change of investigation agency on the ground that no proper investigation has been done and the stolen properties were not recovered from the receivers.

4. A counter affidavit has been filed by the respondent/Police stating that initially A1 to A3 were arrested and later released on bail. The then Investigating Officer Mr.K.Veerassamy, Cantonment Police Station, Trichy recovered a sum of Rs.1,84,000/- from the accused. Thereafter four more accused were arrested. Identification parade was also conducted. Many persons i.e., 13 witnesses were examined in the year 2010 and statements were obtained from them and thereafter the final report was filed. In view of that, the investigation has been done properly.

5. Heard the parties and perused the records.

6. The property robbed is 2600 gms of gold. After knowing that the petitioner and his friend are going for purchase of gold in higher quantity, like regular robbers, these police officials also followed them and after the petitioner purchased the gold, they were stated to be threatened at the knife point and kidnapped and the goods were stolen. As on date, the value of the stolen goods is 6,24,00,000/- (Rupees six crores and 24 lakhs only). The offence occurred in the year 2004. Even as per the counter affidavit, as many as 13 witnesses were examined. In what capacity they were examined has not been disclosed in the counter affidavit. Curiously, only a sum of Rs.1,84,000/- was recovered from the accused and it is not known what had happened to the rest of the money, if the goods are already sold, if not, what happened to the remaining gold. There should have been a confession statement from the accused. Based on that recovery should have been made. 2600 gms of gold may vanish either it should have been stashed by the accused or should have been sold by them. Without getting any information about the same, the final report has been filed.

7. Right from the beginning, the conduct of the police is not appreciable one. First of all, all the accused were not arrested. Even the receivers of the jewellery were not made as accused. It is clearly revealed by the Assistant Commissioner of Police, Cantonment Range Crime, Trichy City addressed to the Public Prosecutor, Madurai Bench of Madras High Court, Madurai that accused No.2- Meenakshisundaram in his confession statement has categorically stated that he had given the stolen goods to one Settu(Marwari)(Pawn Broker), who is personally known to A2. However, the Investigation Officer Mr.Veerasingam did not interrogate that particular person to whom the stolen goods were given. The receiver of the stolen goods was not made as an accused nor recovered the stolen goods to whom the stolen goods were handed-over nor registered any case under Section 411 of IPC which speaks about the stolen goods. So, the original investigation done by the Investigation Officer is not in accordance with law and it is not proper.

8. Subsequently, as per the Trial Court's order, re-investigation was done instead of re-investigation. The Investigation Officer only justified the action of the earlier Investigation Officer and he merely stated that he is satisfied with the investigation done by him. It is also an attempt to shield irregular investigation. Therefore, not

only the accused, but also the persons who have done improper investigation should also be brought to book. In this case, there is an attempt by the Investigation Officers to shield the culprits and given enough loop-holes by which the accused can escape from the offence, since they happened to be the police officials.

9. As this Court comes to the conclusion and has found that the investigation has not been done properly, there is an attempt to shield the culprits and not even appropriate persons were made as parties and the stolen properties were not recovered, it is not safe to rely upon the final report filed by the respondents. Therefore, the interest of justice requires re- investigation by proper agency.

10. The allegations are made against the police officials themselves. Already investigation was conducted and subsequently reinvestigation was also done. However, as already observed that reinvestigation is not proper. The Honourable Supreme Court in Rubabbuddin Sheikh Vs. State of Gujarat and others reported in (2010) 2 SCC (Cri) 1006 held that due to inaction of the State police, even if the investigation is completed and charge sheet has been complied, the matter could be transferred to CBI even at that stage.

11. The facts of the case warrants adoption of the aforesaid Judgment as the police officials, who investigated the case have not done properly.

12. In view of that, the investigation is transferred to CBCID. It should be conducted by the officials not less than the rank of Deputy Superintendent of Police and complete the investigation and file final report within six months from the date of receipt of a copy of this order.

13. This Criminal Original Petition is ordered accordingly. vsn/ps

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