State Vs. Thalapathi and ors.

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Court : Chennai

Decided On : Jul-29-2011

Judge : R.Mala, J.

Acts : Indian Penal Code (IPC) - Sections 120(B), 143, 109, 406, 420, 387, 506(ii); Code of Criminal Procedure (CrPC) - Sections 167(3), 482, 438

Appeal No. : Crl.O.P.(MD).No.9334 of 2011

Appellant : State

Respondent : Thalapathi and ors.

Advocate for Def. : Mr.K.Jegannathan; Mr.Mohankumar; Mr.R.Shanmugasundaran; Mr.M.Lingadurai, Advs.

Advocate for Pet/Ap. : Mr.I.Subramanian, Adv.

Judgement :

1. This criminal original petition has been filed by the State/investigating officer to set aside the order dated 22.07.201, passed in Cr.M.P.No.6567 of 2011 by the Judicial Magistrate No.I, Madurai, dismissing the petitioner filed by the State for police custodial interrogation of the respondents, who are arrayed as A1, A3, A4 and A8 respectively in crime No.42 of 2011 on the file of the District Crime Branch, Madurai District.

2.Mr.I.Subramanian, the learned State Public Prosecutor appearing for the petitioner would submit that on the basis of the complaint given by one Pappa, a case has been registered against 12 persons, in crime No.42 of 2011, for the offence under Sections 120(B) 143, 109, 406, 420, 387 and 506(ii) I.P.C. and the respondents herein are arrayed as A1, A3, A4 and A8 and they were arrested on 19.07.2011 and remanded to judicial custody on the same day.

3.He would further submit that even though the investigating officer has filed the petition to take the respondents/accused for police custody under Section 167(3) Cr.P.C within 15 days as contemplated under the law before the learned Judicial Magistrate No.1, Madurai, who dismissed the application without applying the mind that the police interrogation is necessary for obtaining or securing the documents from the respondents/accused and also to trace the whereabouts of the other accused and to arrest them.

4.He would further submit that the learned Judicial Magistrate No.1, Madurai has considered the decision reported in 2007(2) MWN (Cr.) 414 (DB) (State by Deputy Superintendent of Police, 'A' Branch CID, Dharmapuri V. Sundaramoorthy), which is not applicable to the facts of the present case. He would further submit that since the case has been registered for the offence under Section 120(b) I.P.C. to interrogate in respect of the conspiracy, the police custody is necessary and some of the accused are yet to be arrested and some of the accused were already filed applications for anticipatory bail, which are pending before this Court.

5.He would fairly concede that A12 alone neither filed any application for anticipatory bail nor surrender and hence, he come forward with the present application and prayed for setting aside the order of the learned Judicial Magistrate No.I, Madurai and ordering for police custody. To substantiate his argument, he relied upon the decisions of the Apex Court and this Court.

6.Repudiating the same, Mr.R.Shanmugasundaram, learned senior counsel appearing for R3, Mr.K.Jegannathan, learned counsel appearing for R1, Mr.Mohankumar, learned counsel appearing for R2 and Mr.M.Lingadurai, learned counsel appearing for R4 would submit that the decisions relied upon by the learned State Public Prosecutor are not applicable to the facts of the present case,

because, all the respondents/A1,3,4 and 8 were arrested and they were interrogated and hence, there is no necessity for further interrogation. They would further submit that the learned Judicial Magistrate has considered all the aspects in a proper manner.

7.They would further submit that the decision relied upon by the learned Judicial Magistrate No.I, Madurai in 2007(2) MWN (Cr.) 414 (DB) (State by Deputy Superintendent of Police, 'A' Branch CID, Dharmapuri V. Sundaramoorthy) is squarely applicable to the facts of the present case.

8.The second limb of the argument advanced by the learned senior counsel appearing for R3 is that the criminal original petition is not maintainable, because the order passed by the learned Judicial Magistrate No.1 is only a final order and since the application for police custody has been dismissed, the State ought to have filed only a revision under Section 397 Cr.P.C., not criminal original petition under Section 482 Cr.P.C. and hence, this criminal application is not maintainable and hence, he prayed for the dismissal of the application. To substantiate his argument, he relied upon the decisions of this Court as well as the Apex Court.

9.Mr.K.Jegannathan, learned counsel appearing for R1 would submit that granting of police custody is a judicial discretion of the learned Judicial Magistrate and it is not the case that the discretion has been not properly exercised and perverse and hence, the order passed by the learned Judicial Magistrate is not warranted interference. He would further submit that the case has been registered for the offences under Sections 406, 420 and 387 I.P.C., which are of civil nature and the allegation in the F.I.R. has clearly proved that even though the occurrence has been taken place in the year 2010, the defacto complainant has not taken any steps till 14.07.2011 and in the averments of the complaint, no cognizable offences are made out for the offences under Sections 406, 420. 387 and 506(2) I.P.C., however, the averments of the complaint have clearly mentioned the inadequate consideration and thus it is of civil nature and since all the documents are registered documents, they can be secured the same from the Registration department and the said factum has also been considered by the lower Court also and hence, he prayed for the dismissal of the application stating that the police

custody is not necessary. He also relied upon the decisions of this Court as well as the Apex Court.

10.I have considered the submissions made on either side and perused the materials available on records and considered the decisions of the Apex Court as well as this Court relied upon by all the counsel.

11.Now this Court has to consider whether the criminal original petition is maintainable.

12.The learned counsel appearing for the respondent would rely upon the decision in V.C.Shukla v. C.B.I., reported in 1980 Supp SCC 92 SCC 695, and submit that since the police custody application has been dismissed and it is a final order, the criminal original petition is not maintainable. At this juncture, it is appropriate to consider the above said decisions, wherein, the Apex Court has held as follows:

> (1) An order framing the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term interlocutory order as used in Section 11(1) of the Special Courts Act.
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> If an order is not a final order, it would be an interlocutory order. An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but is not a final decision or judgment on the matter on issue. So that in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not, however, conclude the trial at all. One of the tests is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. A final order finally disposes of the rights of the parties.

13.Considering the above said decision, the order passed in the police custody application is not a final order and it has not been ended into a finality and it is only an interlocutory order and hence, there is no need to file a revision and the criminal original petition itself is maintainable. Hence, argument advanced by the

learned counsel appearing for the respondents that the criminal original petition is not maintainable does not merit acceptance.

14.The facts of the present case are that the F.I.R. has been registered in crime NO.42 of 2011 against 12 persons on 19.07.2011 for the offences under Sections 143, 120(b), 109, 406, 420, 387 and 506(ii) I.P.C. At this juncture, it is appropriate to consider the averments in the complaint, wherein, the defacto complainant has stated that to discharge the loan obtained by her from TIIC, she executed a power of attorney to A11 Nareshkumar and subsequently, since there was a misunderstanding between both the parties, she cancelled the power of attorney in favour of A11 on 26.06.2009 and she executed another power of attorney on 05.04.2010 in favour of Krishnasamy/A6, pursuant to which A6/Krishnasamy executed the sale deed in favour of one Rengaraj/A9 on 24.09.2010. But, there is no document to show that in between the date of execution of power of attorney in favour of Krishnasamy/A6 till she gave a complaint before the District Crime Branch, Madurai, she has taken steps to cancel the power of attorney or to file a suit for cancellation of the sale deed. The averment of the F.I.R. would clearly prove that all the transactions have been borne out by registered documents.

15.At this juncture, the decision relied upon by the learned senior counsel appearing for R3 in Latif Estate Line India Ltd., V. Hadeeja Ammal reported in 2011 (2) CTC 1 and he took me to the Section 54 of the Transfer of Property Act and submit that once sale deed has been executed and if there is inadequate consideration or unpaid purchased money, the only remedy available to the vendor is to file civil suit for recovery of unpaid purchased money/the balance sale consideration. Since this is an application for police custody and hence, I do not want to discuss the above said decision here.

16.Now, this Court has to decide whether there is any sufficient cause or any necessity for interrogation by the police and whether the police custody is necessary.

17.The learned State Public Prosecutor would submit that since the case is for the offence under Section 120(b) I.P.C., there is a conspiracy among the accused and hence, to find out the conspiracy between the accused persons, the police

interrogation is necessary. At this juncture, it is appropriate to consider the decision in State v. Anil Sharma reported in (1997) 7 Supreme Court Cases 187, wherein the Apex Court has held as follows in para 6 of the said decision:

> 6.We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

In Muraleedharan v. State of Kerala reported in (2001) 4 Supreme Court Cases 638, the Apex Court has held as follows:

> Custodial interrogation of such an accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy.

In Nattarasu V. State reported in 1998 CRI.L.J.1762, this Court has held as follows:

> 183.If such an apprehension is expressed by the prosecution opposing the anticipatory bail, then the Courts have to gave due consideration for the said submission, because the custodial interrogation is qualitatively more elicitation oriented than questioning the accused who is well ensconced with a favourable

order under Section 438 Cr.P.C.

184.As pointed out by the Apex Court in (1997) 7 JT (SC) 651: 1997 Cri.L.J.2989) (Supra), in a case of very serious nature, especially when the accused wield the wide influence, the custodial and effective interrogation of the accused is of tremendous advantage in disinterring many useful informations and materials which would have been concealed.

18.Considering the above said decisions along with the facts of the present case, those petitions have been filed for anticipatory bail. In that, their Lordships have held that they are needed for interrogation during the investigation and in such circumstances, the Apex Court as well as this Court have come to the conclusion that they are needed for interrogation and dismissed the anticipatory applications.

19.But, here, considering the facts of the present case along with the decisions, as per the version of the learned senior counsel, the complaint has been given on 14.07.2011 as per the newspaper report, but the case has been registered only on 19.07.2011. The respondents were appeared on summons before the police station on 19.07.2011 and they were interrogated and at 8.30 P.M only, they were arrested and remanded to judicial custody. As per the sworn statement of the investigating officer, even though, the respondents were interrogated, no confession has been recorded. As already stated, they were appeared for interrogation on 19.07.2011 and they were arrested at 8.30 P.M. but, there is no explanation at the time of interrogation as to what materials they have collected. Furthermore, as already stated, the main cognizable offences in this case are under Sections 406 and 420 I.P.C., which are borne out by records and all the documents are registered documents, which are very much available in the Registration department. In such circumstances, I am of the opinion that the argument of the learned State Public Prosecutor that to secure the documents, the police custody is necessary does not merit acceptance.

20.Now, this Court has to consider whether the police custody is necessary for finding out the conspiracy, since the case has been registered for the offence under Section 120(b) I.P.C.

21.Considering the arguments of the learned State Public Prosecutor along with the arguments advanced by the learned counsel appearing for the 1st respondent, he took me to the complaint given by the defacto complainant, wherein, she has not mentioned any dates. But, he forcibly submitted that the power of attorney has been came into existence on 29.06.2009 and that has been cancelled and on 05.04.2010, she executed another power of attorney in favour of A6/Krishnasamy. Therefore, it is clear that till the execution of sale deed in favour of Rengaraj/A9 on 24.09.2010, the defacto complainant has not taken any steps. Hence, I am of the view that the defacto complainant was silent for more than one year from the date of execution of power of attorney in favour of A6/Krishnasamy. In such circumstances, the argument advanced by the learned State Public Prosecutor that to find out the conspiracy between the accused, the police custody is mandate, is an unacceptable one.

22.At this juncture, it is appropriate to consider the decision relied upon by the learned State Public Prosecutor appearing for the petitioner, in Kosanapu Ramreddy V. State f Andhra Pradesh reported in AIR 1994 Supreme Court 1447, wherein, the Apex Court has held as follows:

> Para 4.We have considered the submissions of learned counsel on both sides. That a person held in judicial custody could, if circumstances justify, be transferred to police custody or viceversa within a period of 15 days referred to in S.167(2) of the Criminal Procedure Code, 1973 - which by virtue of S.20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987, is to be read as 60 days in this case - cannot be disputed. There must, of course, be sufficient grounds for such a change of custody. In the present case, having regard to the nature of offence and the stage of the investigations it cannot be said that grounds for such custody do not exist.
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> Para 5.As to the safety of the person of the accused during police custody is concerned, Shri.D.Ram Reddy, the Investigating Officer who is present in Court, says that he undertakes before and assures the Court that during the period of police custody no physical harm would ever be caused to the accused and that he would ensure that no illegal methods of interrogation

would be restored to either at his instance or at the instance of anybody else. As a further precaution, we also provide that Shri Barala kishna Rao counsel of the accused be entitled to visit the place of detention once in the morning and once again in the night every day during the period of the police custody and if the counsel discovers evidence of any mal-treatment, he shall be entitled to require the District Medical Officer to examine Ashok Reddy forthwith and make a report. The District Medical Officer of the District shall be required to act forthwith on any request made to him by the said Shri Barala Kishna Rao.

23.Considering the above said decision along with the facts of the present case, the said case is related to Terrorist and Disruptive Activities (Prevention) Act 1987. But, here, it has been admitted in the complaint that there is insufficient sale consideration and therefore, the said decision is not applicable to the facts of the present case.

24.In Assistant Director, Direct of Enforcement v. Hasan Ali Khan reported in 2011(4)SCALES 53, the Apex Court has held as follows: Having regard to the extra ordinary circumstances and complexity of the issues involved and the magnitude of the case, we consider it appropriate to authorise the detention of the respondent/accused herein for his custodial interrogation.

25.At the time of filing the application for police custody, it has been stated that police interrogation is necessary to find out the whereabouts of the other accused. It is an admitted case that except A6, who is none other than the sister's son of the defacto complainant, some of the accused were arrested, some of the accused filed petitions for anticipatory bail and one of the accused was surrendered before the learned Judicial Magistrate and hence, since except A6/Krishnasamy, the whereabouts of the other accused was known to the investigating officer, the argument of the learned State Public Prosecutor that to obtain the particulars in respect of the other co-accused, the police custody is necessary does not merit acceptance.

26.For the above stated reasons, I am of the view that the criminal original petition is maintainable, since the order has been passed as interlocutory order, and the matter is of civil nature and all the documents are public documents, which are

very much available in the Registration department, the trial Court has considered all the aspects in a proper manner and come to the correct conclusion. Hence, I do not find any perversity in the order passed by the learned Judicial Magistrate No.I, Madurai and I find no reason for granting police custody and the petitioner deserves to be dismissed. Accordingly, this criminal original petition is dismissed.