

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Cri. O.P. No. 35490 of 2004

In

Crime No. 914 of 2004

(Vishnu Kanchi police Station)

Sri Jayendra Saraswati Swamigal

... Petitioner/1st accused

Vs

State by

Inspector of Police
Vishnu Kanchi Police Station,
KANCHIPURAM

(Investigation Officer – Special Duty)

... Respondent/Complainant

COUNTER AFFIDAVIT FILED TO THE AFFIDAVIT FILED BY

Y.THYAGARAJAN

I, S.P. Sakthivelu, son of V.Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, do hereby solemnly affirm sincerely state as follows :-

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case.
2. With reference to the averments contained in paragraphs 1 to 5 of the Affidavit of Thiru. Thiyagarajan, it is respectfully submitted as follows:-
3. The allegation that the J.M.M., Kanchipuram was waiting in his chamber from 3.30 A.M. is false. Since huge crowd collected and the smooth

functioning of the Court was likely to be disturbed, it became necessary for the Learned Magistrate to sit in his chamber and examine the Petitioner and issue the order of remand after perusing all the materials and after subjectively satisfying himself.

4. It is respectfully submitted that the averments that the deponent was not permitted to discuss the matter with the Petitioner at the time of remand is false. He had access to the Petitioner and in fact he had discussions with the Petitioner. The further allegation that by the time the deponent entered the chamber, the Learned Magistrate was filling the application in green ink is false.
5. It is respectfully submitted that the averments contained in paragraph 7 are incorrect. The allegation that the Inspector of Guduvancheri was standing behind the Learned Magistrate with a revolver, in his waist is false and denied. It is unfair on the part of the Advocate to make such an allegation belatedly after much water has flown under the bridge. It is sad that the lawyer has stooped to the level of attributing allegation of intimidation of the learned Magistrate.
6. It is respectfully submitted that the averments contained in paragraph 8 of the Affidavit are false and incorrect and denied. The allegation that the learned Magistrate refused to receive the petition and urged, the deponent to make oral submission is false. The uncharitable remarks made by the deponent who is a practicing lawyer against the learned Magistrate who is a Member of the Judiciary of contrary to the principles laid down by the Supreme Court in 1993. Supreme Court Cases (Criminal) page 1171

(Union of India and another Vs. W.N.Chadha) In paragraphs 80 and 81 of the said judgement, the Apex Court has clearly laid down that the principal of audi alteram partum has no place at the stage of investigation and remand. In fact the Apex Court has laid down that to insist upon the application of the rule of audi alteram partum at this stage will defeat the ends of justice.

7. It is respectfully submitted that the allegation that the remand report was snatched by the Police Officer and returned afterwards is false and hereby denied. The allegation that the remand report or any other documents was not read over or furnished is false.
8. It is respectfully submitted that in spite of the fact that the deponent is a practicing Advocate, he has chosen to make such frivolous, untenable and reckless allegation against the Presiding Officer only with the object of helping the Petitioner and getting him out on bail somehow or other. It reflects neither the professional decorum nor minimum decency expected of a lawyer. If necessary, Honourable Court may be pleased to call for a report from the learned Magistrate to find out veracity of the allegation made by the said Advocate.
9. It is respectfully submitted that the averments contained in paragraph 9 of the affidavit are false. The allegation that the Petitioner could not exercise the right of consultation with the lawyer after his remand and before boarding the van is false and denied.

10. It is respectfully submitted that if a report is called for from the learned Magistrate, the fact that the deponent has come forward with utter falsehood will be exposed. The tenor of the Affidavit strikes at the very root of the majesty of law warranting suo motu action by this Honourable Court to punish the deponent for contempt of Court.

11. It is respectfully submitted that the very fact that the deponent did not raise his little finger from 12.11.2004 till 16.11.2004 and only now he has come forward to make such violent allegations would clearly established that the deponent is bent upon supporting the Petitioner with ulterior motive without any regard for the truth.

BEFORE ME

Solemnly affirmed at Chennai

On this the 17th day of November, 2004

And signed his name in my presence.

ADVOCATE, CHENNAI

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