

MEMORANDUM OF CRIMINAL ORIGINAL PETITION

(U/S. 482 of Cr.P.C.)

IN THE COURT OF THE JUDICIAL MAGISTRATE NO. I,

KANCHIPURAM

Cri. M.P. No. 5857 of 2004

In

Crime No. 914 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Original Jurisdiction)

Cri. O.P. No. of 2004

In Cri. M.P. **In Cri. O.P.**

His Holiness Sri Jayendra

Saraswathi Swamigal

Accused /

Kanchi Mutt, Kancheepuram

Petitioner

Petitioner

Vs.

State by S.I. of Police,

Vishnu Kanchi Police Station

Complainant /

Kancheepuram

Respondent

Respondent

PETITION FILED U/S. 482 OF Cr. P.C.

The address of service of all processes and notices on the Petitioner is that of his counsel Mr. K. RAVI ANANTHA PADMANABAN at No. 57, Law Chambers, High Court Buildings, Chennai-104.

The address for service of all processes and notices on the Respondent is as stated above.

BRIEF FACTS OF THE CASE:

On the complaint given by Mr. N.S. Ganesh of “Arulmigu Devaraja Swamy Thiru Koil” on 03.09.2004 at about 6.30 p.m., the Respondent registered the

above Crime No. 914 of 2004 for offences u/s. 302 R/W. 34 of I.P.C. The allegation is that while the deceased Mr. Sankara Raman was working at the office in his chair, two persons entered the office with "Aruval" and hacked the deceased. Thereafter, they ran away with 3 other persons standing downstairs and all of them fled in two "Yamaha" motorcycles parked outside the temple. In this connection, 13 persons were remanded. The Petitioner was arrested on 11.11.2004 and he was remanded to the judicial custody on the same day. He has also filed Cri.O.P. No. 35490 of 2004 seeking bail in the above case and it is reserved for orders. While so, the Learned Magistrate has granted Police Custody of the Petitioner for 3 days on the application filed by the Investigating Agency by his order dated 19.11.2004. As the above order dated 19.11.2004 granting Police interlocutory order, Criminal Revision may not lie and hence the Petitioner has been legally advised to involve the inherent jurisdiction of this Hon'ble Court U/s. 482 of Cr. P.C., so as to avoid such terminal objections and also on account of urgency involved in this matter.

In the circumstances, the Petitioner begs to prefer the following Memorandum of Criminal Original Petition to this Hon'ble Court challenging the above order of the Learned Judicial Magistrate-I, Kancheepuram granting Police Custody of the Petitioner to the Respondent on the following among other.

GROUNDS :

A. On the evidence available on record, the Learned Magistrate ought not to have granted Police Custody of the Petitioner. The entire order is without application of mind.

- B. Despite submitting Court Judgment concerning Art.20(3) of the constitution before the learned Magistrate and a specific prayer for the presence of a lawyer at and during the time of interrogation was sought, the Learned Magistrate passed an order permitting the visit of an advocate during 6 to 7 pm. This shows the non-application of mind of the Learned Magistrate. Further, the impugned order is in clear violation of the constitutional protection of the accused propounded by our Apex Court.
- C. The Learned Magistrate has failed to appreciate the contention that once judicial custody is given, he has no power of review to grant police custody subsequently. It is settled law that while in judicial custody, the Accused is forwarded to the Court only by Jail Authorities and not by the Investigating Officer. Therefore, the impugned order granting police custody is liable to be set aside.
- D. The Trial Court has failed to consider that the request for police custody is totally unwarranted and it is nothing but an attempt to humiliate the Petitioner in every possible way.
- E. Neither the Petitioner nor his counsel was shown or allowed to peruse the Affidavit alleged to have been filed by the prosecution by way of Remand Report. Since it forms part of Court Records in this case, the Petitioner is entitled at least to peruse it in the open Court. Therefore, the refusal of the Learned Magistrate to peruse such document by his counsel broods over Article 19 & 21 of the Constitution of India.

- F. The impugned order of the Learned Magistrate does not speak about the legal necessity to grant police custody of the Petitioner at this stage;
- G. The Learned Magistrate has erred in not considering the age of the Petitioner, his statute as “Sanyasi” and his health condition while granting police custody to the Respondent;
- H. The Learned Magistrate has also erred in not considering the submission that as per the law laid down by the Supreme Court, the Petitioner can as well be enquired of while in judicial custody. There is absolutely no legal necessity to grant police custody of the Petitioner;
- I. It is an admitted fact that the Petitioner is not involved in day-to-day maintenance of accounts or financial transactions of the Mutt. To carry out such transactions, designated Officers of the Mutt are there. Therefore, no useful purpose will be served in granting police custody;
- J. The Learned Magistrate has not followed the law laid down by this Hon’ble Court reported in 1983 Law Weekly (Criminal)-Page 73, 1981-Criminal Law Journal Page 100, 1981-Criminal Law Journal Page 1773 and other decided Case Laws;
- K. The application to seek police custody is only for vindictive purpose. All the details have already been collected by the prosecution and hence it is no longer necessary for the Respondent to obtain police custody of the Petitioner;

- L. The Petitioner craves leave of this Hon'ble Court to file Addition Grounds at a later stage as well as an Affidavit, if required, narrating the circumstances and the proceedings of the Lower Court;
- M. It is respectfully submitted that if police custody is granted, the Petitioner will be terribly humiliated at the hands of the investigating agency;
- N. It is submitted that the prosecution had already obtained police custody of 5 Accused in this case as per the order dated 05.11.2004 of the Judicial Magistrate-I, Kancheepuram. Therefore, the question of obtaining police custody of the Petitioner does not arise at all;
- O. It is the case of the Petitioner that even his arrest is prima facie illegal. In the circumstances, the application seeking police custody is nothing but perpetuation of further illegality over an illegal arrest. Such practice of the prosecution has to be deprecated in toto;
- P. The impugned order is liable to be set aside on the sole ground that during the pendency of the Bail Petition in the High Court, the Learned Magistrate ought not to have granted police custody of the Petitioner;
- Q. The Petitioner submits that the impugned order does not say how prosecution will be impaired or jeopardized if the Petitioner is interrogated while in judicial custody. The impugned order of the Learned Magistrate has not made out the grounds warranting the legal necessity and the grant of the police custody of the Petitioner;

- R. The Respondent has also not come out with the compelling reasons for obtaining police custody of the Petitioner. The fact that such application was filed by the prosecution in the Lower Court subsequent to the Petitioner's bail application proves clearly that there is absolutely no legal necessity to seek the police custody;
- S. The prosecution has implicated this Petitioner on no legal evidence and it wants to proceed on "WAIT" and "WATCH" basis by alleging contradictory stand against the Petitioner. Such attitude of the prosecution is despicable and the impugned order has to be struck down by this Hon'ble Court;
- T. The Learned Magistrate has passed the impugned order without application of mind and the entire episode is politically motivated against an innocent pontiff.

It is, therefore, prayed that this Hon'ble Court may be pleased to call for records and grant the order dated 19.11.2004 passed in Cri. M.P. No. 5857 of 2004 in Crime No. 914 of 2004 by the Learned Judicial Magistrate No. I, Kancheepuram pass such other orders as may be deemed fit and proper in the circumstances of the case and render justice.

Dated at Chennai this the 19th day of November, 2004.

COUNSEL FOR PETITIONER