

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: **16.07.2015**

Coram

The Honourable Mr. Justice **P.DEVADASS**

Cont.P. No.1838 of 2014 & CrI.O.P.No.3110 of 2015

G.Srinivasa Babu ... Petitioner in
both petitions

..vs..

- 1.Gopinath
Inspector of Police,
(formerly H-8, Thiruvottiyur P.S.),
F-3 Nungambakkam Police Station,
Nungambakkam, Chennai.
- 2.Mohanraj
The Assistant Commissioner of Police,
Thiruvottiyur Sub Division,
Washermenpet Police station,
Tondiarpet, Chennai.
- 3.Najmul Hoda, I.P.S.,
The Deputy Commissioner of Police,
Washermenpet Police District,
Tondiarpet, Chennai.

... Respondents in
both petitions

Cont.P.No.3110/2015: सत्यमेव जयते

This petition has been filed under section 11 of the Contempt of Court Act, 1971 to punish the respondents for disobeying this Court order, dated 8.10.2013 passed in CrI.O.P.No.25659 of 2013.

CrI.O.P.No.3110/2015:

This petition has been filed under section 482 of Cr.P.C. seeking transfer of the case in Cr.No.881 of 2009 of the first respondent to any other competent police.

For Petitioner in
both cases : Mr.T.Jaishankar

For Respondent in
both cases : Mr.P.Govindarajan
Addl. Public Prosecutor

COMMON ORDER

This contempt petition has been taken out by G.Srinivasa Babu on behalf of his wife Thilagam, to punish certain Police Officers/respondents since they have not obeyed the orders of this Court passed in Cr1.O.P.No.25659 of 2013 on 8.10.2013.

2. Based on the direction of this Court passed in Cr1.O.P. No.13792 of 2009, the Inspector of Police, H-8 Tiruvottiyur Police Station registered a case in Crime No.881 of 2009 under Sections 420, 419, 468, 471 IPC. He took up his investigation. Ultimately, he referred the case as Mistake of Fact (M.F.) and accordingly submitted his Negative Final Report to the learned Judicial Magistrate, Thiruvottiyur.

3. The learned Magistrate gave opportunity to the complainant. She filed her protest petition in <https://hcservices.ecourts.gov.in/hcservices/> Cr1.M.P.No.3505 of 2011. The learned Magistrate perusing

the said Report, protest petition and the materials on record, directed further investigation under Section 173(8) of Cr.P.C. by the Assistant Commissioner of Police, Washermenpet Range prescribing a date.

4. As the petitioner felt that the Assistant Commissioner of Police remain a lame duck and did not take action, complainant's husband Srinivasa Babu approached this Court under Section 482 Cr.P.C. by filing Cr1.O.P.No.25659 of 2013 and sought for issuance of direction.

5. In the said Cr1.OP., on 8.10.2013, at para 10, this Court passed the following order:

"10 In the circumstances, the third respondent, namely, the Deputy Commissioner of Police, Washermenpet Police District, Washermenpet, Chennai is directed to issue appropriate direction to the second respondent, namely, the Assistant Commissioner of Police, Washermenpet, Chennai within two months of his such nomination to take further action in pursuance of the orders of the learned Judicial Magistrate, Thiruvottiyur issue in C.M.P.No.3505 of 2011 dated 16.11.2012 nominating appropriate/competent officer to comply the directions and submit his report to the said Court."

6. It is relevant to note that the order of the learned Magistrate has been almost superseded by this Court's order, dated 8.10.2013.

7. In view of the orders of this Court, the Deputy Commissioner of Police, Washermenpet District directed the Assistant Commissioner of Police, Washermenpet Range, Chennai to take further action. He nominated Gopinath, the then Inspector of Police (Crime), Thiruvottiyur (now Inspector of Police, Adhambakkam) to investigate further the case in Crime No.881 of 2009. Gopinath probed the case further. As it disclosed that it is a 'Mistake of Fact', accordingly he has to file a Negative Final Report and filed such a report before the learned Judicial Magistrate, Tiruvottiyur.

8. Now, the learned Magistrate is in a predicament because of the contempt petition.

9. According to the learned counsel for the petitioner, the Assistant Commissioner of Police flouted the orders of this Court, dated 8.10.2013. Further, the Deputy Commissioner of Police did not care to file a counter. The 'Mistake of Fact' report filed by Gopinath, Inspector of Police is nothing but mere repetition of the

earlier conclusion of the Inspector of Police, H-8 Washermenpet Police Station. His investigation is also not fair. It is one-sided.

10. On the otherhand, the learned Additional Public Prosecutor submitted that what is available in the pot alone will come out. Gopinath, Inspector of Police has taken up the investigation independently, recorded the statement from the witnesses and obtained scientific report. Thus, he cannot be blamed.

11. I have anxiously considered the rival submissions, perused the orders of this Court, dated 8.10.2013 in CrI.O.P.No.25659 of 2013 and the materials on record.

12. Now, in this case, the learned Judicial Magistrate, Thiruvottiyur directed the Assistant Commissioner of Police, Washermenpet Range to undertake further investigation under section 173(8) Cr.P.C. However, this court in its order, dated 8.10.2013 directed the Dy. Commissioner of Police, Washermenpet District to issue appropriate direction to the Assistant Commissioner of Police to take appropriate action and also prescribed time limit. It would be otherwise if the very same H-8 Inspector of Police, Washermenpet police station was asked

to redo investigation. But he did not. To ensure independent investigation, Gopinath, Inspector of Police, (Crime), Washermenpet, Thiruvottiyur Range, has been asked to make further investigation. Gopinath did the work and submitted his report. He cannot give any coloured version or his own version. He has to give a version as reflected in the evidence collected by him.

13. When the police final report is to the effect that certain offence appears to have been committed. It is 'Positive Final Report', 'Challan', loosely called 'Charge Sheet'. When the report of the Investigation Officer is to the effect that it is a 'Mistake of Fact', 'Mistake of Law', 'Accidental Fire', 'Civil Case', 'Action Dropped', 'Undetected', 'Untraced', etc., is also called 'Final Report', but it is Negative Final Report. Both positive and Negative Final Reports are being filed under section 173 Cr.P.C. On the Final Report, the learned Magistrate has to take further action.

14. If such a final report is positive in nature, the learned Magistrate shall exercise his jurisdiction under section 190 Cr.P.C., namely, 'taking cognizance'. The problem arises when the Negative Final Report is filed.

When a Negative Final Report is filed, different courses are open to the learned Magistrate. After perusing the

report and the documents attached thereto if he concur with the conclusion of the Investigation officer, the learned Magistrate can treat the case as Mistake of Fact etc., and accordingly record it. But before that he should give notice to the de facto complainant. If the complainant makes his protest or objection in writing, it is called 'Protest Petition'. He shall proceed with the petition like a complaint case. If he finds a prima facie case, he can proceed further in accordance with law and issue summons to the accused under section 204 Cr.P.C. If such a final report is clumsy, incomplete, need clarity he can retain the final report and issue direction to the investigation officer to clear the grey area, may be by recording further statement of witnesses also. Thereafter, the learned Magistrate shall hear the parties and peruse the materials on record. If he find no prima facie case, then he shall close the matter once for all.

15. Once a Negative Final Report with the tag 'Mistake of Fact' is filed, it cannot be said that in the further investigation there cannot be a report with Mistake of Fact. What is inside the pot alone will come out. But what is important is that such a Negative Final Report of a Police Officer is not a Biblical verse or equivalent to a Criminal Court judgment. It is always subject to judicial

16. Sitting under Section 482 Cr.P.C. or in contempt jurisdiction, this Court cannot boss over the learned Magistrate nor interfere with his judicial discretion. It can interfere only when there is manifest error, non-exercise of jurisdiction, exercise of excessive jurisdiction or non-observance of principles of law.

17. After the filing of Negative Final Report viz., Mistake of Fact, the learned Magistrate has to follow the due procedure/process established by law and take further action in accordance with law.

18. It is not that once Negative Final Report is filed, the complainant has lost all his opportunity. Law provides him several opportunities.

19. Now question of transfer of investigation, non-filing of counter by the Deputy Commissioner of Police have become irrelevant and unnecessary.

20. In view of the foregoings, the learned Judicial Magistrate, Thiruvottiyur will take further action in accordance with law on the Final Report filed by the then Inspector of Police (Crime), Tiruvottiyur in Cr.No.881

21. With the above direction, both contempt petition and criminal original petitions are disposed of.

Vaan

SD/
DEPUTY REGISTRAR (CLAA)

//Certified to be true copy//

Dated at Madras this the day of 2015.

COURT OFFICER (O.S.)

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SS/CO/24/07/2015

Two CC's to Mr.T.Jaishankar, Advocate, SR.9245

To

- 1.The Chief Judicial Magistrate, Thiruvellore.
- 2.The Judicial Magistrate, Tiruvottiyur.
- 3.The Assistant Commissioner of Police, Washermenpet Range, Chennai.
- 4.The Deputy Commissioner of Police, Washermenpet District, Washermenpet.
- 5.The Inspector of Police, H-8 Thiruvottiyur Police Station, Thiruvottiyur, Chennai.
- 6.The Public Prosecutor, High Court, Madras.