

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.OP No.20680 of 2011

& M.P.No.1 of 2011 in Crl.O.P.No.20680 of 2011

and

Crl.R.C.No.917 of 2011

& M.P.Nos.1 and 2 of 2011 in Crl.R.C.No.917 of 2011

Crl.O.P.No.20680 of 2011

The Superintendent of Police
Central Bureau of Investigation
Anti Corruption Branch
Sastri Bhavan, III floor
Haddows Road
Chennai

Vs

1. M.Selvaraj
2. A.R.Ansari

.. Petitioner

.. Respondents

Crl.R.C.No.917 of 2011:

A.R.Ansari

Vs

.. Petitioner

1. M.Selvaraj

2. The Superintendent of Police
CBI/ACB, Central Bureau of Investigation
Sastri Bhavan, Chennai-6

.. Respondents

Prayer in Crl.O.P.No.20680 of 2011:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in unnumbered complaint in S.R.No.4607 of 2011 and set aside teh orders of the Principal Special Judge for CBI Cases, Chennai passed on 4.7.2011.

Prayer in Crl.R.C.No.917 of 2011: Revision under Sections 397 and 401 of Criminal Procedure Code to call for the records and set aside the order passed in unnumbered complaint (private complaint) of

2011 in S.R.No.4607 of 2011 on the file of learned Principal Sessions Judge for CBI Cases, Chennai dated 4.7.2011.

For Petitioner in
Crl.O.P.No.20680/2011
& for 2nd respondent
in Crl.R.C.No.917 of 2011

:Mr.K.Srinivasan,
Spl.P.P for CBI Cases

For 1st Respondent in
both Crl.O.P.No.20680/2011
& Crl.R.C.No.917 of 2011

: No appearance

For 2nd Respondent in
Crl.O.P.No.20680/2011
& for petitioner in
Crl.R.C.No.917 of 2011

: Mr.N.R.Elango
Senior Counsel for
R.Vivekananthan

COMMON ORDER

These Criminal Original Petition as well as Criminal Revision Case have been directed against the order dated 4.7.2011 passed in an unnumbered complaint (private complaint) by the Principal Special Judge for CBI Cases, Chennai.

2. The first respondent in both the proceedings, viz., M.Selvaraj has filed an unnumbered complaint on the file of the court below, praying to give necessary direction to CBI to conduct investigation, wherein, the second respondent in Crl.O.P.No.20680 of 2011 and the revision petitioner in Crl.R.C.No.917 of 2011 has been arrayed as accused.

3. The Court below has simply directed the CBI to investigate the offences alleged to have been committed by the accused mentioned therein by way of passing the impugned order. Against the said order, both Criminal Original Petition as well as Criminal Revision Case have been filed on the file of this court. The learned counsel for the first respondent in both petitions has not made his appearance. Under the said circumstances, these proceedings are disposed of on the basis of merits.

4. The learned Special Public Prosecutor appearing for the petitioner in Crl.O.P.No.20680 of 2011 and the learned senior counsel appearing for the revision petitioner in Crl.R.C.No.917 of 2011 have uniformly contended that the power mentioned in Section 156 Clause (3) of Code of Criminal Procedure, 1973 cannot be exercised by the Court below and the same can be exercised by a Judicial Magistrate,

but the Court below without considering the lack of authority/power has erroneously passed such kind of direction and therefore, the impugned order passed by the Court below is liable to be set aside.

5. In support of their contention, the decision reported in (2001) 3 SCC 333 (Central Bureau of Investigation through S.P., Jaipur vs. State of Rajasthan and another) is relied upon, wherein, the Hon'ble Supreme Court has had an occasion to deal with the similar issue and ultimately found that power available under section 156 Clause (3) can be exercised only by a Magistrate.

6. Since the Hon'ble Supreme Court has given such kind of dictum with regard to exercise of power available under section 156 Clause (3) of the said Code, since the Court below has erroneously exercised the same, the impugned order passed by the Court below is liable to be set aside.

In fine, both Criminal Original Petition No.20680 of 2011 and Criminal Revision Case No.917 of 2011 are allowed and the impugned order dated 4.7.2011 passed in unnumbered complaint (private complaint) is set aside. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Principal Special Judge for CBI Cases, Chennai
2. The Superintendent of Police
CBI/ACB, Central Bureau of Investigation
Sastri Bhavan, Chennai-6
3. The Public Prosecutor,
High Court, Madras.

Cr1.OP No.20680 of 2011
& Cr1.R.C.No.917 of 2011

aa25/09/2015