

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Crl.O.P.No.33365 of 2014
and
M.P.No.1 of 2014

Mr.K. Kumar, DSP(under suspension)

Petitioner

Vs.

The State rep by
The Inspector of Police
CBI SCB Chennai
No.RC 09(S)/2011/CBI/SCB/Chennai

Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the final report dated 30-12-2013 filed by the CBI in RC.09(S) 2011/CBI/SCB Chennai, which has now culminated as P.R.C.No.1/2014 on the file of the Chief Judicial Magistrate, Chengalpattu and the same as regards this petitioner only.

For petitioner :: Mr. A. Thiyagarajan
For respondent :: Mr. K. Srinivasan, Spl.P.P.

ORDER

This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973('Cr.P.C.' in short) praying to quash the proceedings initiated by the respondent which has been culminated as P.R.C.No.1 of 2014 pending on the file of Chief Judicial Magistrate, Chengalpattu.

2. It is averred in the petition that the petitioner has been arrayed as third accused in P.R.C.No.1 of 2014. The Chief Judicial Magistrate, Chengalpattu without invoking the mandatory provisions of Section 195 of the Cr.P.C. has erroneously taken the concerned proceedings and consequently, directed the respondent to conduct investigation and file a final report and accordingly, the respondent after conducting investigation filed a final report on the file of the Chief Judicial Magistrate, Chengalpattu and the same has been taken on file in P.R.C.No.1 of 2014 and therefore, the proceeding initiated by the respondent which culminated as P.R.C.No.1 of 2014 is liable to be quashed.

3. On the side of the respondent, a detailed counter has been filed wherein it has been clearly stated that the petitioner and others are facing charges punishable under Sections 120-B, 193, 194, 195, 196, 201, 466 and 471 of the Indian Penal Code ('IPC' in short) and therefore, the relief sought for in the petition cannot be granted and altogether, the present petition deserves to be dismissed.

4. The learned counsel appearing for the petitioner has contended that as per Sections 195 (1)(b) of Cr.P.C. no Court shall take cognizance of offences mentioned under Section 193 to 196, 199, 200, 205 to 211 and 228, Cr.P.C., unless there is a specific complaint and further as per Section 340, Cr.P.C., the said complaint must be sent to the concerned Magistrate Court for taking further action and in the instant case, the Chief Judicial Magistrate, Chengalpattu has himself conducted enquiry and found that a prima facie case is made out against the concerned accused and subsequently, referred the same to the respondent for conducting investigation and accordingly, an investigation has been done and a final report has been filed, which has been taken on file in P.R.C.No.1 of 2014. Since the Chief Judicial Magistrate, Chengalpattu has not followed nor observed the mandatory provisions of Section 195(1), Cr.P.C., the entire proceedings have become null and void. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

5. The learned Special Public Prosecutor appearing for the respondents has fairly conceded that the mandatory provisions of Section 195 and the enabling provisions of Section 340 Cr.P.C., have not been followed by the Chief Judicial Magistrate, Chengalpattu.

6. From a close reading of Sections 195 and 340 Cr.P.C., the Court can easily come to a conclusion that as per Section 195, for taking cognizance, there must be a separate complaint and as per Section 340, the Court can also take suo-motu action and subsequently, for taking further action, the proceedings must be sent to the concerned Judicial Magistrate.

7. In the instant case, such mandatory procedures have not been followed and the Chief Judicial Magistrate, Chengalpattu has erroneously directed the respondent to conduct investigation and accordingly, investigation has been done and a final report has been filed and the same has been taken on file in P.R.C.No.1 of 2014. Therefore, it is very clear that the proceedings taken by the Chief Judicial Magistrate, Chengalpattu which culminated in filing of P.R.C. No. 1 of 2014 are totally erroneous and the same are liable to be quashed. However, the Chief Judicial Magistrate is entitled to take proper action as per Section 195 coupled with Section 340, Cr.P.C., with regard to the alleged offences said to have been committed by the present petitioner and other accused.

8. In fine, this criminal original petition is allowed and the final report filed by the respondent in RC.No.09(S)/2011/CBI/SCB/Chennai dated 30-12-2013, which has been taken in P.R.C.No.1 of 2014 is quashed. However, the Chief Judicial Magistrate, Chengalpattu is at liberty to invoke Sections 195 coupled with Section 340, Cr.P.C. The connected M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar

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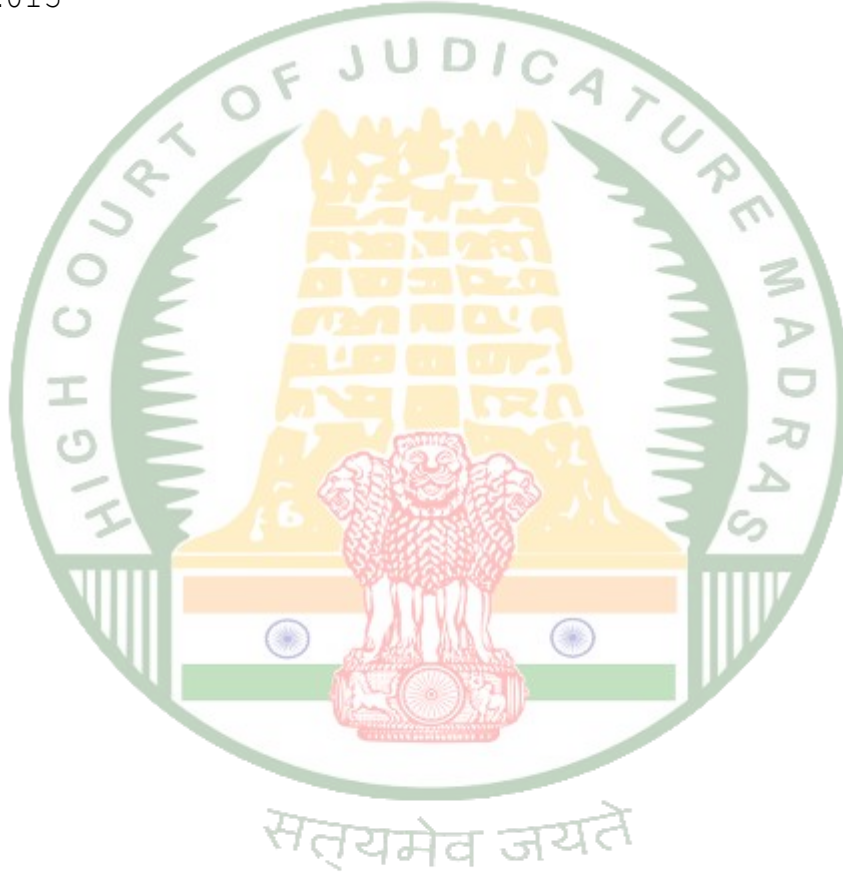
To
1.The Inspector of Police
CBI SCB Chennai.

2.The Chief Judicial Magistrate, Chengalpattu.

1 cc to Mr.K. Srinivasan, , Advocate Sr.No.43693

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