

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.O.P No.21916 of 2015
& M.P.No.1 of 2015

1. J.Arul Raj
2. G.Irudhaya Selvanathan
3. C.Munusamy ... Petitioners/ Accused 1 to 3

Vs.

State by
Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai - 28 ... Respondent/ Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records pending in C.C.No.183 of 2013 on the file of Judicial Magistrate - II, Ponneri and quash the same as against the petitioners/accused A.1 to A.3.

For Petitioners : Mr.S.Xavier Felix

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to call for records relating to Calendar Case No.183 of 2013 pending on the file of Judicial Magistrate Court No.2, Ponneri and quash the same and thereby set the petitioners at liberty.

2. It is averred in the petition that a case has been registered in Crime No.2/AC/2010/CCV under sections 120(B), 167, 147, 148, 342, 506(ii) of Indian Penal Code and also under sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Further it is averred in the petition that the Investigating Agency, after making thorough investigation, has laid a referred final report on the file of Principal Sessions cum Special Judge, Chennai and the same has been recorded. Further it is averred in the petition that after filing a referred charge sheet and the same has been recorded, the prosecuting agency has no locus standi to conduct re-investigation in respect of any one of the offences mentioned in Crime No.2/AC/2010/CCV. Under the said circumstances, this petition has been filed for getting the relief sought therein.

3. The learned counsel appearing for the petitioners has sparingly contended that a referred charge sheet filed in respect of Crime No.2/AC/2010/CCV on the file of Principal Sessions cum Special Judge, Chennai has been accepted by the said Court and without setting aside the order passed by the Court below, a de novo or fresh investigation cannot be done, but in the instant case, the prosecuting agency has done reinvestigation and subsequently filed a final report and the same is not permissible under law and therefore, the entire proceedings initiated in C.C.No.183 of 2013 are liable to be quashed.

4. The learned Additional Public Prosecutor has contended that with regard to Indian Penal Code offences and also offences under the Prevention of Corruption Act, an oral direction has been given by the High Court. Under the said circumstances, a fresh investigation has been done and accordingly a final report has been filed and the same has been taken on file in C.C.No.183 of 2013 and therefore, the relief sought for in the petitions cannot be granted.

5. The learned counsel appearing for the petitioners has befittingly drawn the attention of the Court to the decision reported in 2015 (2) MLJ (Cr1) 257 (K.K.S.S.Ramachandran vs. State), wherein the Division Bench of this Court (Madurai Bench) has dealt with the similar issue and ultimately found that after a referred charge sheet has been filed and the same has been accepted by a competent court, without setting aside the same by the competent forum, a de novo or reinvestigation cannot be done.

6. In the instant case, it is an admitted fact that the case registered in Crime No.2/AC/2010/CCV has been thoroughly investigated and a final report has been filed on 12.9.2011 and the same has been accepted by the competent court on 15.9.2011.

7. The only issue which has to be decided in the petition is as to whether without setting aside the referred charge sheet, a de novo investigation can be done?

8. It has already been pointed out that the Division Bench of this Court (Madurai Bench) has decided to the effect that without setting aside the referred charge sheet, no reinvestigation or denovo investigation can be done. In the instant case, as rightly pointed out on the side of the petitioners, a referred charge sheet filed in Crime No.2/AC/2010/CCV and accepted by the competent court has not at all been set aside. Under the said circumstances, the subsequent action alleged to have been done by the Investigating Agency is not permissible under law and therefore, the Court below has done a stupendous mistake in taking final report as C.C.No.183 of 2013. In the light of the discussions made earlier, this Court is of the view that the relief sought by the petitioners can easily be granted.

In fine, this Criminal Original Petition is allowed. The proceedings relating to Calendar Case No.183 of 2013 on the file of Judicial Magistrate Court No.2, Ponneri, are quashed. Consequently, the Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

ajr

To

1. The Judicial Magistrate - II, Ponneri.

2. Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai- 28

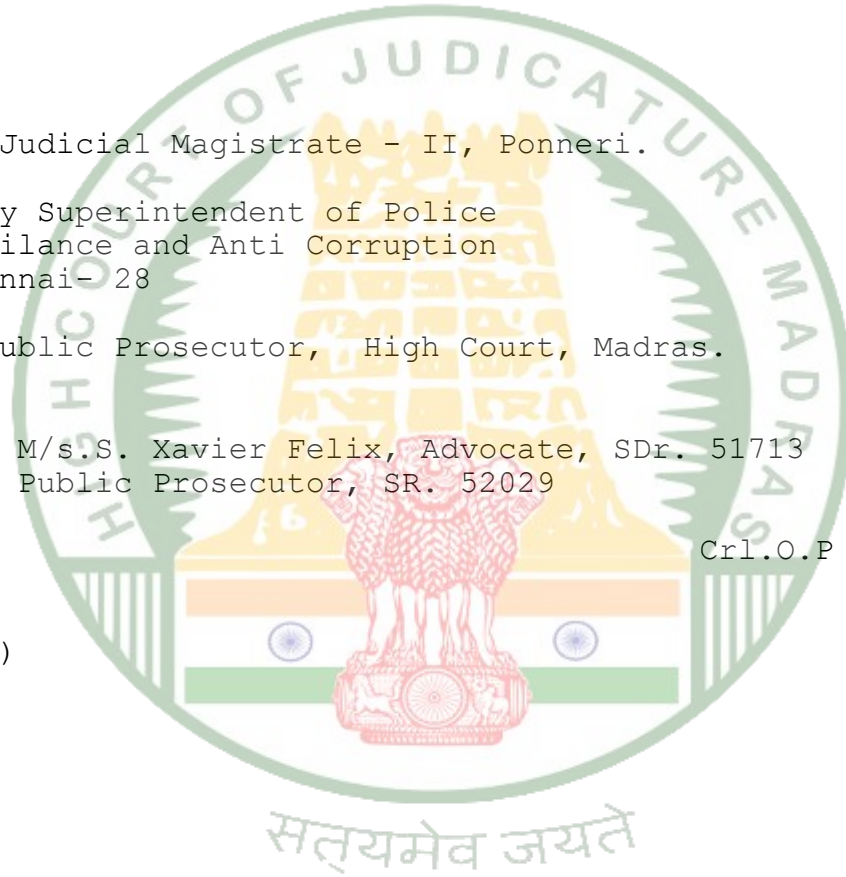
3. The Public Prosecutor, High Court, Madras.

1 cc to M/s.S. Xavier Felix, Advocate, SDr. 51713

1 cc to Public Prosecutor, SR. 52029

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SAI (CO)
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