

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.772 of 2010

1. V.Seshadri
2. G.Jayapadian ... Petitioners

Vs

1. State represented by its
Inspector of Police
CCIW CID, Chennai,
Cr.No.4 of 2008.
2. B.Sukumar
3. R.Nakkeran
4. S.Manojkumar
5. R.Balachandar
6. R.Nagarajan
(Respondents 2 to 6 are impleaded as per
order of this Court in M.P.No.2 of 2010
dated 04.08.2010) ... Respondent

Prayer:-

This Criminal revision is filed under Section 397 read with 401 of Cr.P.C., to call for the records pertaining to the order dated 07.06.2010 in CrI.R.C.No.10 of 2009 on the file of the learned Principal District and Sessions Judge, Tiruvellore and set aside the same.

For petitioner : Mr. Vivekananthan
For respondents : Mrs. M.F.Shabana,
Gov. Advocate (CrI. Side)
for- R1

: M/s.A.D.Jagadish Chandira,
for -R2 & R3
: M/s. S.Shrenik Raj,
for R4, R5 & R6.

O R D E R

This revision has been filed as against the order passed by the learned Principal District and Sessions Judge, Tiruvellore.

2. The petitioners are defacto complainants in Crime No.4/2008 on the file of the first respondent police. They are Deputy Registrar(Housing) and Enquiry Officer of Tamilnadu Engineering and Commercial Employees Co-operative House Building Society Limited. Earlier a complaint has been filed against the respondents 2 to 6 herein for the offences under Sections 420, 408 and 120(B) IPC. The above complaint has been filed on the ground that the respondents 2 and 3, who are the special officers in the Tamil Nadu Engineering and Commercial Employees Co-operative House Building Society Limited, and the respondents 4 to 6, who are members of the above society, have purchased an extent of 28.33 acres of land for providing house sites to the members of the above society, but they sold the lands much below the guideline value to the outsiders and non members of the society, thereby caused huge loss to the society and also misappropriated the sum. In this regard, the society received many complaints about misappropriation of funds by A1 and A2 at the instigation of A3 to A5. Then a detailed enquiry under section 81 of the Tamilnadu Co-operative Societies Act was conducted, and the enquiry revealed that A1 and A2 had violated the by-laws of the society and also misappropriated a sum of Rs.46,15,375/-. Based on that the complaint was filed against them, and a case was registered in Crime No.4 of 2008 on the file of the first respondent police. After investigation, the first respondent filed a final report referring the complaint as mistake of fact. Thereafter, the defacto complainant, namely, Co-operative Housing Society filed a protest petition before the judicial magistrate against the final report filed by the first respondent. The Judicial Magistrate after elaborately considering the case, refused to accept the final report filed by the first respondent and ordered reinvestigation and directed the Deputy Superintendent of Police, C.B.C.I.D., Chennai to conduct further investigation and file a final report.

3. Aggrieved against the said order, the complainant filed a revision before the Principal District and Sessions Judge, Tiruvallur. The lower appellate court in a cryptic, and non-speaking order, set aside the order passed by the learned Judicial Magistrate. Challenging the above order, the present revision has been filed by the defacto-complainants.

4. The learned counsel appearing for the revision petitioner would submit that the learned Judicial Magistrate has elaborately considered the materials and the final report filed by the first respondent, came to a conclusion that no proper enquiry was conducted by the first respondent police, hence ordered further investigation, but the lower appellate court, without considering the order in proper perspective, mechanically set aside the order and sought for allowing the revision.

5. The learned counsel appearing for the respondents would submit that the learned Judicial magistrate has no power to order reinvestigation and recently the Hon'ble Supreme Court in 2015 (8) Supreme Court Cases 774 (Chandra Babu Alias Moses / vs/ The Inspector of Police) has held that the Judicial Magistrate has no power to order reinvestigation by a separate investigating agency, and cannot direct for further investigation by an another investigating agency. Hence, the order of the learned judicial magistrate is not maintainable by a law, the lower court correctly allowed the revision petition and sought for dismissal of the revision.

6. I have has considered the rival submission and perused the materials.

7. In the instant case, after elaborately considering the final report filed by the first respondent police, the learned judicial Magistrate was not inclined to accept the final report, but, instead, ordered further investigation, that too by a special investigating agency, namely, CBCID, but that order has been reversed by the lower appellate Court without assigning any reason whatsoever, by simply stating that the judicial Magistrate has exceeded his limit and he has no power to order investigation by a single investigating officer and allowed the application.

8. First of all, the order passed by the first appellate Court is a non-speaking order, on that ground alone, the order itself is liable to be set aside. Apart from that the respondents 2 to 6 being accused in this case, have no right to question the mannner in which investigation has to be conducted. As per the judgment of the Hon'ble Supreme Court reported in 2015 (8) Supreme Court Cases 774, the Judicial Magistrate has no power to order further investigation by a separate agency, which amounts to a reinvestigation, and the Judicial Magistrate has no power to order such reinvestigation.

9. In the above circumstances, the order passed by the Principal District and Sessions Judge, Tiruvallur is set aside,

and the order passed by the Judicial Magistrate in C.M.P.No.2220/2009 dated 25.09.2009 is modified to the effect that the first respondent, Inspector of Police, CCIW, CID, is directed to conduct further investigation, preferably by an investigating officer, other than the officer who had already investigated the case and complete the investigation within a period of two months from the date of receipt of a copy of this order and file a report.

10. With the above direction, the Criminal Revision Case is allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Tiruvallur.
2. The Judicial Magistrate No.II,
Ponneri.
3. -Do- Thro The Chief Judicial Magistrate,
Tiruvallur.
4. The Inspector of Police,
CCIW, CID, Chennai.
5. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras-104.

Cr1.R.C.No.772 of 2010

rj[co]
srg 10/2/2017