

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 04.09.2017**

**CORAM**

**THE HONOURABLE MR. JUSTICE R. SURESH KUMAR**

**Crl.R.C.No.915 of 2017**

**and Crl.MP.Nos.8633 and 8634 of 2017**

1.Krishnasamy  
2.Radhakrishnan  
3.Mohan Raj  
4.Aruldas  
5.Kathires

... Petitioners

Vs.

The State rep by its  
Inspector of Police,  
District Crime Branch,  
Tiruppur District,

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. to set aside the order dated 26.05.2017 passed in Crl.MP.No.2304 of 2017 in C.C.No.59 of 2014 on the file of the learned Judicial Magistrate, Palladam.

For Petitioners : Mr.K.Myilsamy

For Respondent : Mr.R.Sekar,  
Government Advocate,  
(Criminal Side)

**ORDER**

This revision has been filed against the order passed by the learned Judicial Magistrate, Palladam, in CrI.MP.No.2304 of 2017 in C.C.No.59 of 2014.

The very short facts which are required to be noticed for disposal of revision is as follows:

2.As against these petitioners, who are the accused 2,3,7, 8 and 9, respectively, in C.C.No.59 of 2014, charge sheet/final report of the respondent/prosecution had been filed and the same had been taken on record.

3.However, the respondent/prosecution has subsequently been in a position to get further evidence and in order to produce those evidence and further report/additional charge sheet, the respondent/prosecution had filed petition seeking permission under Section 173(8) of the Code of Criminal Procedure.

4.The said petition was opposed by the present petitioner/accused on the ground that already these petitioners had filed petition to discharge them from the charges framed against them under Section 239 of the Code.

5.Since the said petition was pending before the trial Court, the present petition had been filed by the prosecution and the same had been allowed. Therefore, challenging the present impugned order dated 26.05.2017, allowing the petition filed by the prosecution under Section 173(8) of the Code, the present revision has been filed.

6.I have heard Mr.K.Myilsamy, learned counsel appearing for the petitioners as well as Mr.R.Sekar, learned Government Advocate (Criminal Side) appearing for the respondent.

7.The learned counsel appearing for the petitioner submits that even though the discharge petition filed by all the petitioners herein, are pending before the trial Court, without disposing the same, the present order allowing the respondent/prosecution to proceed for further investigation

and to file additional charge sheet under Section 173(8) of the code, ought not to have been allowed. He would further submit that only in order to plug the loop holes, which are found in the petitioners case *prima facie*, the present petition seeking permission from the Court to go for further investigation and to file additional charge sheet had been filed. Therefore, he would submit that in a way prejudicial to the petitioner/accused, this petition should not have been allowed and therefore, he seeks to allow the revision case.

8.Per contra, Mr.R.Sekar, learned Government Advocate (Criminal Side) would submit that the power of the prosecution as provided under Section 173(8) of the Code, cannot be denied by making such a plea on behalf of the petitioner that without disposing their petition to discharge, the present petition filed by the prosecution under Section 173(8) of the Code, should not have been allowed.

9.In this regard, the learned Government Advocate (Criminal Side) invites the attention of the said provision under Section 173(8) of the Code and submits that if the officer in

charge of the investigation obtained further evidence orally or documentary, he shall forward to the Magistrate for recording such evidence in the form prescribed. Therefore, the learned Government Advocate would submit that once the investigation agency would get further evidence, it is mandatory on their part, to forward further evidence to the Magistrate, in addition to the charge which have already been filed.

10. In fact, the trial Court in the order impugned has considered the said rival claim made by both sides. The learned Judge in the impugned order has also given a detailed reason that in view of the stand taken by the petitioner/accused that they did not have any business relationship with the complainant i.e., the defacto complainant and in order to establish that these petitioners/accused have business connection with the defacto complainant, certain materials which are the documents filed before the Court as well as the Sales Tax Authority had to be taken as further evidence.



11.The learned Judge has also discussed this aspect that these documents certainly are fresh evidence, which were unearthed only after filing the charge sheet after investigation.

12.I have considered the said submissions made by both the counsel and also have gone through the order/impugned Judgment. In order to meet such situations/eventuality, whether the prosecution gets further evidence even after filing the report/additional report before the concerned Magistrate Court, it is the duty of the prosecution to collect the said evidence and to forward the same to the Magistrate concerned, as an additional report. Once such report/additional report is filed along with fresh evidence collected by the prosecution, Sections 2 to 6 of Section 173 of the Code, have to be necessarily followed. This scheme of investigation and the power to investigate further, since has been provided under the Code, especially, under Section 173(8) of the Code and it is also mandated by giving the word "shall forwarded to the prosecution", to forward such fresh evidence, they collected, the permission sought for by the prosecution through the Court cannot be normally refused by the trial Court/Magistrate

concerned.

13. In this case, since it is the definite case of the petitioner/accused that they did not have any business transaction with the complainant and in order to meet that challenge, the prosecution since had obtained fresh evidence, definitely, it shall be forwarded to the Magistrate by way of an additional report and in order to fulfill such legal duty cast upon them to proceed in this regard, the said petition has been filed, which has been rightly allowed by the learned Judge.

14. In view of the said facts and circumstances and the discussions above, this Court is of the considered view that there is no illegality or infirmity in the order impugned and accordingly, the Criminal Revision Case fails. Hence, the same is dismissed.

15. However, this dismissal would not preclude the right of the petitioner/accused to file a fresh petition under Section 239 of the Code, of course, after withdrawing the present petitions, which are pending before the trial Court, for the said

purpose, after the new evidence/additional report is forwarded and taken on file by the Magistrate/trial Court.

With these observations, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petitions are closed.

**04.09.2017**

Index :yes/no  
Internet :yes/no

mps

To

1.The Judicial Magistrate,  
Palladam.

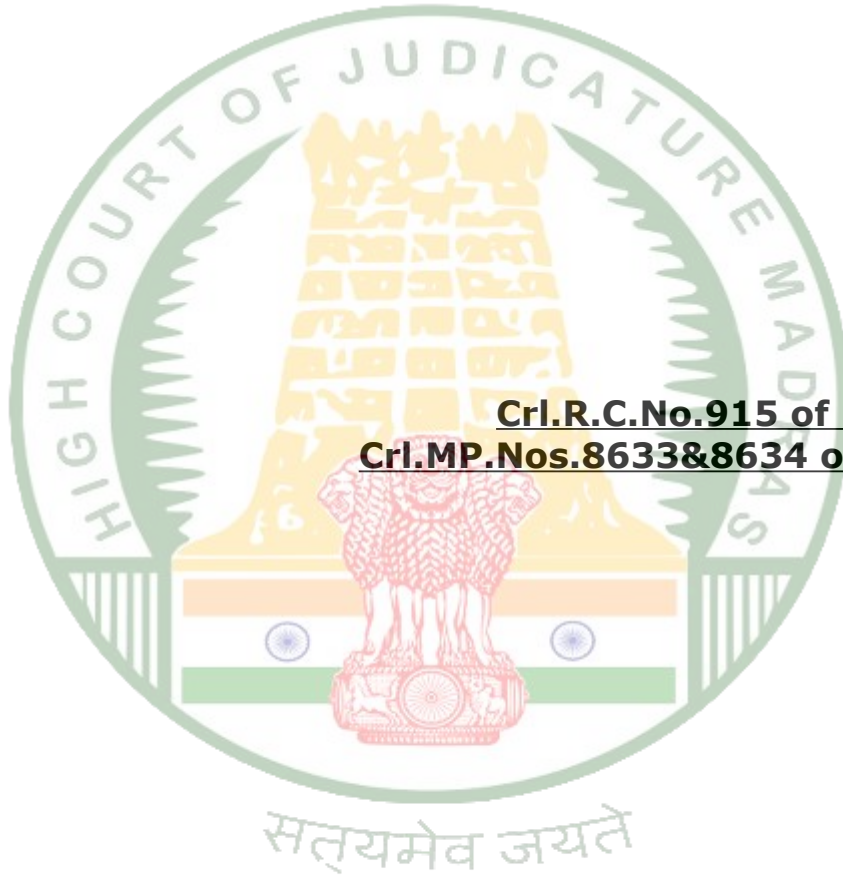
2.The Inspector of Police,  
District Crime Branch,  
Tiruppur District.

WEB COPY



**R. SURESH KUMAR, J,**

mps



**Crl.R.C.No.915 of 2017&**  
**Crl.MP.Nos.8633&8634 of 2017**

WEB COPY

04.09.2017