

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.979 OF 2017

R.Palanisamy : Petitioner

versus

1.The Inspector of Police,
District Crime Branch,
Namakkal District,
(Cr.No.9 of 2011)

2.R.Marappan : respondents

Revision filed against the order of the Judicial Magistrate,
Tiruchengode, in C.M.P.No.4195 of 2015 in C.C.No.247 of 2015 dated 9.5.2017.

For petitioner : Mr.S.V.Karthikeyan

For respondents : Mr.R.Sekar, Government Advocate (Crl.Side)

ORDER

This revision has been filed against the order dated 9.5.2017, passed by
the learned Judicial Magistrate, Tiruchengode, in CMP No.4195 of 2015 in
C.C.No.247 of 2017.

2. The case of the petitioner is that pursuant to the complaint given by
the defacto complainant, the respondent police investigated the case and laid
a charge sheet before the Court below for the alleged offences punishable

<http://www.judis.nic.in> under Section 419, 467, 468, 471, 467 read with 34, 468 r/w 34, 471 r/w 109,

447, 506(i) IPC, on 29.6.2015.

3. Thereafter, the defacto complainant filed a petition before the Court below u/s 173(8) of the Code of Criminal Procedure (hereinafter referred to as “the Code”), for ordering further / reinvestigation of the matter, as according to the defacto complainant, some of the portion of the complaint/ allegations made against the petitioners herein, had not been properly investigated by the respondent police.

4. The said petition filed by the defacto complainant had been dismissed by the Court below by order dated 5.4.2016. As against the said order of rejection of the petition filed by the defacto complainant, he moved a revision before this Court in CrI.R.C.No.779 of 2016. The said revision case was finally decided by this Court by order dated 20.6.2016.

5. In the said order, the learned Judge of this Court after having considered the issue, had clarified the legal position that under Section 173(8) of the Code, the Magistrate concerned is empowered to order reinvestigation or further investigation to the investigating agency. Accordingly, the learned Judge after having set aside the order of the lower Court dated 5.4.2016, had remanded the matter back to the Court below to rehear the issue on merits and pass orders thereon. Pursuant to the said direction issued by this Court, the learned Magistrate has taken up the said petition filed by the defacto complainant and by the impugned order dated 9.5.2017, allowed the petition by giving a direction to the investigating authorities to further investigate the

matter and file additional report at the earliest. Aggrieved over the said order of the learned Magistrate, dated 9.5.2017, the present revision has been filed.

6. Mr.S.V.Karthikeyan, learned counsel for the petitioner would state that though the learned Judge of this Court by order dated 20.6.2016, in CrI.R.C.No.779 of 2016, has only clarified the legal position as to whether the Magistrate has got power to issue direction to the investigating agency within the meaning of Section 173(8) of the Code, since the earlier petition filed by the defacto complainant was dismissed on the main ground that the Magistrate did not have the power to give such a direction to the investigating agency, that position was necessarily to be clarified by this Court and that is what has been done by the learned Judge by order dated 20.6.2016. However, the learned Magistrate on an erroneous understanding of the said order of remand made by this Court, has straightaway allowed the petition made by the defacto complainant through the impugned order whereby, a direction for further investigation was ordered.

7. According to the learned counsel for the petitioner, no reasons have been independently given by the learned Magistrate before making such order for reinvestigation. Therefore, the order, which is impugned herein, is not in consonance either with Section 173(8) of the Code or as per the direction issued by this Court by order dated 20.6.2016 in CrI.R.C.No.779 of 2016.

Therefore, the learned counsel would submit that the order impugned is liable

to be interfered with.

8. On the other hand, Mr.R.Sekar, learned Government Advocate (Crl.Side) would submit that earlier, the legal position was that after final report is filed by the investigating agency, it is only for the investigating authority to take a decision to go for a further investigation if any new materials or evidence are obtained by the investigating officer, in this regard, investigating agency, would file appropriate petition before the Trial Court and seek permission of the Court below to go for further investigation and file additional report.

9. Based on such procedure if adopted, the earlier view was that u/s 173(8) of the Code, only the investigating agency would come forward to seek permission of the Court to go for a fresh investigation and file an additional report and the Court cannot at its own or suo motu direct investigation that too as requested by the defacto complainant.

10. The learned Government Advocate would further submit that such legal position has been clarified and law has been settled in this regard by the Hon'ble Supreme Court in the matter of **(i) (2013) 5 SCC 762 (Vinay Tyagi V. Irshad Ali @ Deepak and others)** and **(ii) (2015) 8 SCC 774 (Chandra Babu @ Moses V. State through Inspector of Police and others).**

11. In view of the law having been declared by the Hon'ble Apex Court in *Vinay Tyagi case cited supra*, the learned Judge by order dated 20.6.2016, after having set aside the order passed by the Magistrate concerned, had remanded the matter back for reconsideration and to pass orders on merits.

12. However, the said direction was thoroughly misunderstood by the learned Magistrate and he has simply passed an order directing the investigating agency to make a further investigation only on the basis of the order passed by this Court in Crl.R.C.No.779 of 2016 dated 20.6.2016. Therefore, the learned Government Advocate would submit that insofar as the reasoning adduced by the learned Magistrate at the operative portion of the impugned order is concerned, matter requires interference. However, that would not preclude the Magistrate to order reinvestigation if the situation warranted at his or her personal satisfaction and that power cannot be denuded in the context of the language used in Section 173(8) of the Act.

13. I have considered the rival submissions made on both sides.

14. The learned Magistrate in the earlier order dated 5.4.2016, has passed the following order for rejecting the request of the defacto complainant for ordering further investigation. The relevant portion of the said order is reproduced herein ::

Affidavit, petition, counter and relevant document perused. In this case, the petitioner seeks further investigation. In this case police completed the investigation and laid final report. The Court also took cognizance was taken under Section 419, 467, 468, 471 r/w 109, 447, 506(i) IPC on 29.6.2015 on 27.7.15 all accused appeared and the charges under Section 419, 467, 468, 471, 467 r/2 109, 447, 506(i) IPC was read over and explained, the accused denied as false, they have not pleaded guilty, hence the case was posted for examination of prosecution witnesses.

As per Hon'ble Apex Court judgment,

In *Reeta Nag vs. State of West Bengal and others*, (2009) 4 MLJ Criminal 1004 (SC). In the above case, Hon'ble Apex Court held that the Judicial Magistrate is not empowered to suo motu order further investigation under Section 173(8), the provision is not applicable to the defacto complainant also. The investigation Agency is only have right to file petition under Section 173(8) for seeking further investigation. Upon receiving petition from the investigation agency then only the Magistrate in order further investigation if needed to meet ends of justice.

The above same was reiterated by our Hon'ble High Court.

1. *Muthukrishnan vs. State of Tamil Nadu* (2012 (1) MLJ CrL. 50)

2. *M.Mani vs. Deputy Superintendent of Police, District Crime Branch, Villupuram District,*

Villupuram, 2013 (1) MLJ Crl. 172.

3.K.Jackuline Sathaya Priya vs. Inspector of Police, AWPS Srirangam, Trichy and others, 2013(2) MLJ Crl.486.

In view of the above legal position the present petitioner/ defacto complainant is not entitled to seek further investigation under Section 173(8) of Cr.P.C. Hence, in the result, this petition is dismissed.

15. Aggrieved over the said order, the defacto complainant had approached this Court by filing the revision case in Crl.R.C.No.779 of 2016, wherein, after considering the legal position, the learned Judge of this Court by order dated 20.6.2016, has passed the following order :-

5.The learned counsel for the petitioner draws the attention of this Court by relying upon the judgments of the Hon'ble Supreme Court reported in (i) (2013) 5 SCC 762 (Vinay Tyagi V. Irshad Ali @ Deepak and others) and (ii) (2015) 8 SCC 774 (Chandra Babu @ Moses V. State through Inspector of Police and others).

6.In the decision reported in (2013) 5 SCC 762 cited supra, wherein in paragraphs 40.2 and 40.3 it is held as follows :-

40.2. A Magistrate has the power to direct further investigation after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law

stated in Bhagwant Singh case by a three judge Bench and thus in conformity with the doctrine of precedent.

7.In view of the above stated legal position of law, the principles are settled by the Hon'ble Supreme Court and the order passed by the Magistrate in C.M.P.No.4195 of 2015 is liable to be set aside and the same is hereby set aside.

8.In the result, the criminal revision petition is allowed. C.M.P.No.4195 of 2015 is remanded back to the file of the learned Judicial Magistrate, Thiruchengode for fresh disposal, on the ground that the Magistrate has the power to direct further investigation after filing of a police report. Consequently, connected miscellaneous petition is closed.

16. Only pursuant to the said order of remand passed by this Court, as extracted above, the learned Magistrate passed the present impugned order dated 9.5.2016.

17. I have perused the said order of the learned Magistrate, where, the entire past history stated in the earlier order dated 5.4.2016, has once again been restated by the learned Magistrate. After restating all these things, the learned Magistrate in the last paragraph of the impugned order has made the following observations.

“As per the Hon'ble High Court Madras order in Crl.R.C.No.779 of 2016 of this Court direct the Police to further investigate the matter and file additional report at the earliest. In the result, the petition is allowed.”

18. However, the fact remains that in the said order in R.C.No.779 of 2016, this Court, while remanding the matter back to the learned Magistrate, has directed that, the Magistrate shall take a decision for fresh disposal on the ground that the Magistrate has power to direct further investigation. The said direction was given by this Court in the context that the earlier order which was impugned in the said revision case, was passed by the Magistrate concerned mainly on the ground that the Magistrate did not have the power to order further investigation under Section 173(8) of the Code. Therefore, the said legal position was clarified based on the law declared by the Hon'ble Supreme Court in **Vinay Tyagi case** stated supra. Therefore, once the matter is remanded, it is quite obvious that the Court below has to look into the matter on merits once again and on subjective satisfaction alone, further order be passed.

19. In the impugned order, the learned Magistrate has stated that the Hon'ble High Court order in Crl.R.C.No.779 of 2016, has directed the police to further investigate the matter and file additional report. The language used in the operative portion of the order, which is impugned herein, by the learned

Magistrate, would clearly disclose that the learned Magistrate has erroneously understood the remand order passed by this Court dated 20.6.2017 in the said revision.

20. Therefore, I am of the considered view that the present impugned order would not stand for the reasons adduced therein, especially the last paragraph of the order impugned.

21. In the result, the impugned order is set aside. The matter is once again remanded back to the Court below with a direction that the learned Magistrate shall look at the ingredients of the complaint as well as the petition made by the defacto complainant and after hearing the parties, take a decision independently as to whether further investigation is necessitated in this case and on the basis of such satisfaction, it is open to the learned Magistrate to pass appropriate orders. With this direction, the revision case is ordered. Consequently, Crl.M.P.No.9193 of 2017 is closed.

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To

1.The Inspector of Police,
District Crime Branch,
Namakkal District,
(Cr.No.9 of 2011)

2.The Judicial Magistrate, Tiruchengode

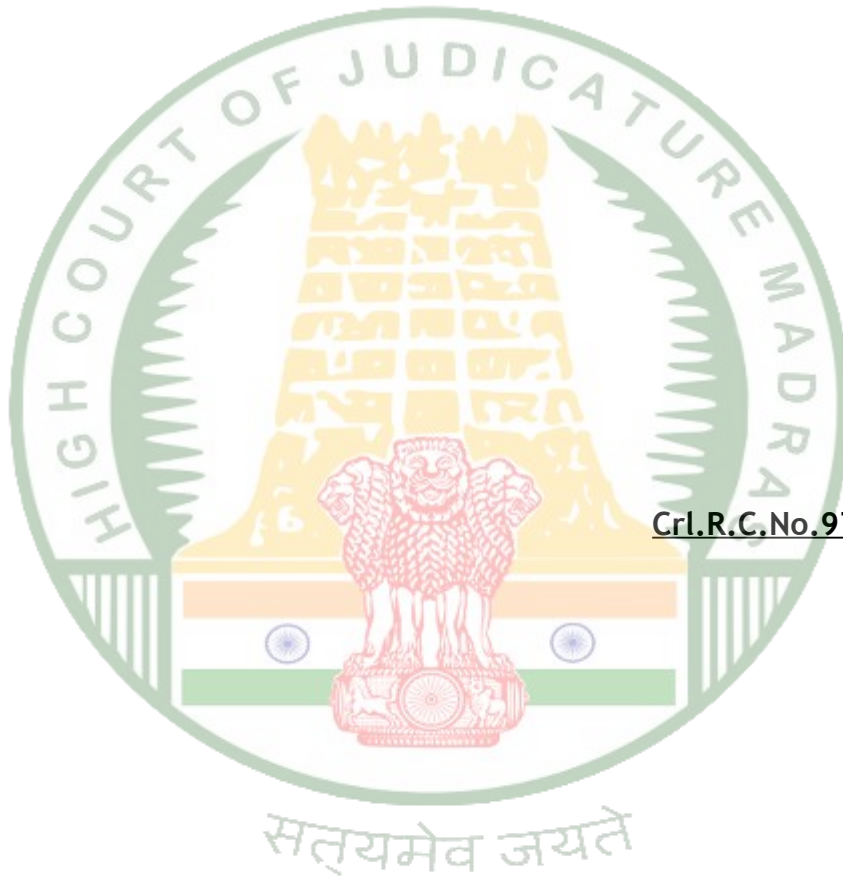
3.The Public Prosecutor, Madras High Court



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R.SURESH KUMAR, J.

(tar)



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