

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.OP.No.22392 of 2017 &
CrI.MP.Nos.13112 and 13113 of 2017

K.Dhanaraju @ Dhanraj

.. Petitioner

Vs.

The state rep by
The Inspector of Police
CBI SCB Chennai

No.RC 09 (S)/2011/CBI/SCB/Chennai .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. 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 S.C.No.116 of 2015 on the file of the 1st Additional District Judge, Tindivanam and the same as regards this petitioner only.

For Petitioner :Mr.A.Thiyagarajan

For Respondent :Mr.K.Srinivasan

Special Public Prosecutor (CBI Cases)

ORDER

The Criminal Original Petition has been filed 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 S.C.No.116 of 2015 on the file of the 1st Additional District Judge, Tindivanam as against the petitioner.

2. The case of the petitioner is that on complaint by one C.V.Shanmugam, a criminal case in Crime No.164/2006 in Roshanai Police Station, Villupuram District, was registered under Sections 147, 148, 302, 307, 506 (ii), 324, 323, 120 - (B) and 427 IPC against 22 persons. After completion of investigation, final report laid on 29.12.2007 against 15 accused under Sections 147,148, 302, 307, 324, 323, 506 (ii) and 34 IPC read with Section 3 of Tamil Nadu Public Property (Prevention of Damages & Loss) Act. It appears that de-facto complainant has

moved the Honourable High Court by way of writ petition for transfer of investigation agency and the investigation of the case was transferred to CBI. On completion of investigation, CBI has filed final report and the same was taken on file by the Chief Judicial Magistrate, Chengalpattu, in PRC No.1 of 2012 and the same is pending before the 1st Additional District Judge, Tindivanam. As an off shoot of the said investigation, the Inspector of Police, CBI SCB, Chennai has filed a special report before the learned Chief Judicial Magistrate, Chengalpattu alleging that the petitioner and 7 others have fabricated documents likely to be used as evidence in the judicial proceedings and thereby committed offence punishable under Section 120 - (B) read with 193, 194, 195, 196, 201, 466 and 471 of IPC. Initially the complaint under Section 195 (1) (b) Cr.P.C was against 8 persons, later the final report was laid against 4 persons including the petitioner herein. This report was taken on file by the Chief Judicial Magistrate, Chengalpattu as PRC.No.1 of 2014 and transferred it to the 1st Additional District and Sessions Judge, Tindivanam and numbered as SC.No.116 of 2015. One of the co-accused in this case K.Kumar, approached this Court by way of quash petition under Section 482 of Cr.P.C alleging that cognizance in PRC No.1 of 2014 was not taken in accordance with law as contemplated under Section 340 of the Cr.P.C., and also alleged that the learned Chief Judicial Magistrate, Chengalpattu has erroneously directed the respondent to conduct investigation and based on his direction, investigation has been conducted and final report had been filed. Which, the learned Judge found erroneous and quashed.

3. The learned Judge besides quashing the proceedings in PRC No.1 of 2014, has given liberty to the Chief Judicial Magistrate, Chengalpattu to take appropriate action as per Section 195 Cr.P.C coupled with Section 340 Cr.P.C., with regard to the alleged offence said to have been committed by the petitioner in Criminal OP.No.33365 of 2014 (K.Kumar) and other co-accused. This order of the learned Judge has not been challenged and has reached finality. As a result, the petitioner herein contends, since PRC No. 1 of 2014 being quashed by this Court in the petition filed by the co-accused nothing survives to proceed against him. However the trial Court has not understood the order properly and proceeding with framing of charges against the remaining accused.

4. To find out the status, this Court called for the reports from the 1st Additional District and Sessions Judge, Tindivanam, on whose file the S.C.No.116 of 2015 (PRC No.1 of 2014) is pending. From his report dated 07.11.2017, it appears that the trial Court has taken note of the order passed by this Court and had directed the other accused A1, A2 and A4 to appear before the 1st Additional District Judge, Tindivanam on

21.11.2017 for framing of charges.

5. The learned counsel for the petitioner contended that the Honourable High Court has quashed the entire proceedings culminated in S.C.No.116 of 2015. Hence, the trial Court cannot proceed with the case. But the trial Court has wrongly understood that only as against A3, proceedings has been quashed and not against the other accused.

6. The learned Special Public Prosecutor brought to the notice of this Court that pursuant to the order in Crl.OP.No.33365 of 2014 dated 18.08.2015, CBI has filed a petition before the Chief Judicial Magistrate, Chengalpattu placing the entire facts before it and sought for initiation of fresh action against the accused persons under Section 195 Cr.P.C coupled with Section 340 Cr.P.C., for offences committed under Section 120(B) read with 193, 194, 195, 196, 201, 466, 471 IPC. The learned Special Public Prosecutor further submits that in spite of the order in Crl.OP.No.33365 of 2014, the Chief Judicial Magistrate, Chengalpattu has not so far proceeded on the petition and acted upon the direction given by the Honourable High Court in the earlier Criminal Original Petition.

7. Now it is the duty of this Court, to make it clear that pursuant to the orders passed by this Court in Crl.OP.No.33365 of 2014, it is explicit that the proceedings initiated in PRC.No.1 of 2014 culminated in to S.C.No.116 of 2015 is already quashed and nothing survives. At the same time, the second part of the order, i.e., direction to the Chief Judicial Magistrate has not so far acted upon as submitted by the learned Special Public Prosecutor. If it is so, it is imperative on the part of the Chief Judicial Magistrate, Chengalpattu to apply his mind and act appropriately upon the petition filed by the CBI in this matter, taking note of the fact, that this Court in its order passed in Crl.OP.No.33365 of 2014 has given liberty to him to act in accordance with Section 195 Cr.P.C coupled with Section 340 Cr.P.C.

8. As a result, the present Criminal Original Petition is allowed with the direction as stated above. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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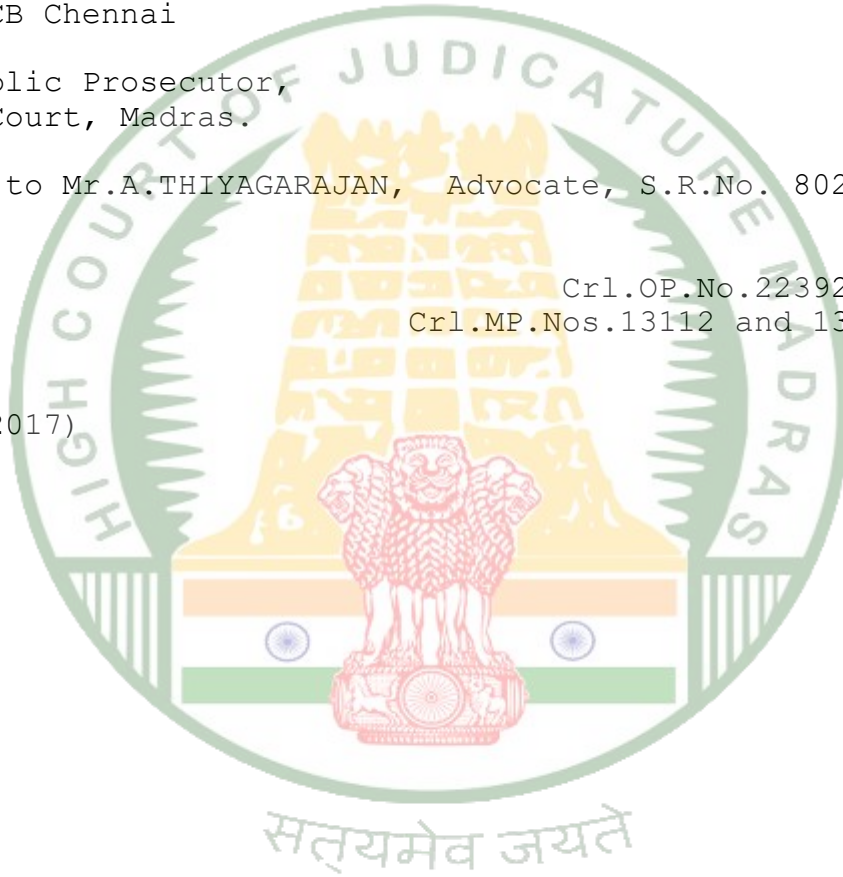
To

1. The First Addl. District Judge,
Tindivanam
2. The Chief Judicial Magistrate,
Chengalpattu.
3. The Inspector of Police
CBI SCB Chennai
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.THIYAGARAJAN, Advocate, S.R.No. 80217

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TR(06/12/2017)



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