

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2017

PRONOUNCED ON : 02.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.711 and 727 of 2009  
and Crl.MP.Nos.1 + 1 of 2009

P.J.Vincent ... Petitioner in Crl.RC.711 of 2009

Subash Chandra Vohra ... Petitioner in Crl.RC.727 of 2009

Vs.

1. State by, Inspector of Police,  
SPE/CBI, EOW, Chennai.

2.M/s.Supreme Chemplast Piping (P) Ltd.,  
5D, Montieth Road, Egmore, Chennai-8.

3.C.Simon Joseph

4.Simlee Sajid

5.Leela Simon

6.Sajid P.Jos

7.M.B.Singh

...Respondents in both the revisions.

PRAYER : Both the Criminal revisions are filed under Section 397 r/w.401 of the Criminal Procedure Code, to set aside the order dated 16.06.2009 made in Crl.MP.No.542 of 2008 in CC.No.5 of 2007 passed by the XI Additional Court for CBI Cases, Chennai.

For petitioner : Mr.B.Kumar, SC  
for Mr.S.Ramachandran in both the cases

For Respondents: Mr.K.Srinivasan,  
Spl.Public Prosecutor for CBI Cases for R1  
In both the cases.  
M/s.Revathi for R7 in both the cases.

RR2 to 6 : No Appearance

COMMON ORDER

Both the Criminal revision petitions are directed against the order passed by the learned XI Additional Judge for CBI Cases, City Civil Court, Chennai made in Crl.MP.No.542 of 2008 in CC.No.5 of 2007 dated 16.06.2009.

2. The brief facts of the case are as follows :-

M/s.Supreme Chemiplast Piping (P) Ltd., Chennai/A1 is a private limited company represented by its Managing Director/A2

and Director/A3. Leela Simon/A4 is the wife of A2 and Sajid P.Jos/A5 is the husband of A3. A1 to A5 conspired together with A6/Senior Manager, Punjab and Sind Bank, Mount Road Branch during 1999-2001 to cheat the bank by availing various credit facilities, cash credit, inland LC and Bank guarantee in favour of A1 Company by submitting false, fabricated and forged documents. A6 without verifying the collateral securities released the facilities.

3. After investigation the prosecution filed charge sheet for the offences under Sections 120B, 420, 465, 467, 471 IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. The allegations are that A1 and A2 submitted forged letters of Federal Bank Ltd., Catholic Syrian Bank Ltd and Centurion Bank to Punjab and Sind Bank, prepared forged title deeds after offering the genuine one to the other bank, printed forged lorry receipt book in order to show that the goods were transported, forged letters submitted to Union Bank of India, Hyderabad, forged the guarantors signature in the bank guarantee forms, A2 to A5 conspired to do so all these acts. As far as A6 is concerned knowing fully aware of the forgery of title committed by A1 and A2 with Federal Bank, even though Federal Bank handed over only five title deeds, whereas he forwarded letters to the panel advocates indicating eight documents were forwarded to them. The branch has not obtained any confidential opinion of the beneficiary of the Inland LC from their banks and handed over the original letter dated 03.01.2000 addressed to Centurion Bank.

4. In the meanwhile, the complainant has filed the memo under Section 173(8) Cr.PC for closure of further investigation on the petition dated 20.04.2007. Inturn, the CBI on the basis of the direction from CVC to look into the allegation made by M.B.Singh/protest petitioner/A6 and R.S.Chatwal against P.J.Vincent/A7 who was nominated as Director on Board of Punjab Sind Bank and S.C.Vohra, the then General Manager alleging that the A1 was introduced by A7, moreover A7 also made 35 calls and S.C.Vohra, the then General Manager (Sanctioning Authority) made many calls to the branch pressing to submit the proposal for sanction of credit facilities to the company. Section 173(8) Cr.PC petition was filed by way of memo dated 12.03.2008 and the prayer sought for in this memo is to pass necessary orders to close the further investigation under Section 173(8) Cr.PC and it may be treated as NIL report and also prayed that the petition dated 20.04.2007 may be treated as closed.

5. The 6<sup>th</sup> accused filed his objections by way of counter dated 13.06.2008, wherein it is stated that the complainant has conducted further investigation and gathered oral and documentary evidence, the complainant ought to have followed Section 173(8) Cr.Pc as an investigation agency. The act of the petitioner in filing a memo is hence contrary to the scheme and spirit of the code. The complainant has no right to do the

following acts :-

1. Withhold oral and documentary evidence collected in the course of further investigation?
2. Holding back such evidence from this Court, express opinion that the complaint by the defacto complainants are baseless?
3. Cannot decide by itself as to whether the evidence so collected is believable or not believable?
4. It cannot embark upon an argument as to whether the acts of the person against whom complaint was made is illegal or not?
5. Cannot ask for closure of investigation to avoid filing a final report and revealing the evidence gathered in the course of the further investigation?

6. After hearing the arguments of both sides, the trial Court dismissed the memo filed by the complainant, by directing to issue process to the above mentioned persons and the prosecution side is directed to place all the documentary materials collected during the further investigation and the prosecution side is also directed to place the complaints of A6 and that of R.S.Chatwal which was the basis for the CVC to direct the respondent to probe the issue against A7. Aggrieved over the said order, A7 and A9 filed both the criminal revisions before this Court.

7. The learned senior counsel appearing for the petitioners would submit that the Court has no power to receive the protest petition from the accused/A6 and directed to issue process to the petitioners and further directed the prosecution to place all the documents collected during the further investigation. In this case, charge sheet was filed and the cognizance was taken under Section 190(1)(b) Cr.PC and process was also issued under Section 204 Cr.PC. A6 also appeared in pursuance to the process, after that the Court cannot revert back to Section 190 Cr.PC. In the present case, both the petitioners were not shown in the FIR or in the charge sheet column 2 and no allegations were made against these petitioners in the charge sheet and no witnesses have spoken about the petitioners. Without considering all the above aspects, the trial Court has passed the impugned order based upon the statements of the accused cited in the charge sheet and another person against whom allegations were made but sanction was refused and he was cited in the column 2 of the charge sheet.

8. Further, the accused is not entitled to file the protest petition and there is no specific provision in the Code to file a protest petition by the informant who lodged the first information report, but this has been the practice. The main contention is that the protest petitioner being the 6<sup>th</sup> accused, he has no right to file the protest petition and the Magistrate

has no power to take cognizance of the protest petition filed by one of the accused in this case. Therefore, the procedure adopted by the Magistrate warrants interference and hence the learned counsel prays to set aside the order of the trial Court.

9. The learned Special Public Prosecutor for CBI cases adopted the arguments advanced by the learned senior counsel appearing for the petitioners and sails on the side of the revision petitioners.

10. The learned counsel for the seventh respondent/6<sup>th</sup> accused would submit that even though there is no provision in the Code to file a protest petition by the informant who lodged the First Information Report. But this has been the practice, that the Magistrate has to give the notice to the informant and provide an opportunity to be heard at the time of consideration of the report. In this case, after filing the final report, the complainant filed a memo under Section 173(8) Cr.PC for closure of further investigation. Based on the complaint given by the 6<sup>th</sup> accused, the CVC in turn directed the CBI to conduct further investigation and to file a report, without filing any report the complainant/CBI has filed the memo dated 12.03.2008 for closure of further investigation under Section 173(8) Cr.PC. The prosecution has not given any notice to the defacto complainant/6<sup>th</sup> accused and without submitting the statements recorded during the further investigation, filed the said memo. A6 participated in the case and made his objections by way of counter affidavit to the memo dated 12.03.2008 for closure of further investigation. The Special Court has rightly interfered for closure of further investigation and found that prima facie made out by the protest petitioner and directed to issue summons to the petitioners and dismissed the memo filed by the complainant. Therefore, the learned counsel submits that there is no illegality or infirmity to interfere with the order of the Special judge and the same does not requires any interference.

11. Heard the rival submissions made on both sides and perused the available records.

12. The main case of the petitioners is that A1 company represented by A2 and A3 approached Punjab and Sind Bank, Chennai with a request to sanction cash credit and bank guarantee. A1 and A2 submitted forged letters of Federal Bank Ltd., Catholic Syrian Bank Ltd and Centurion Bank to the Punjab and Sind Bank. A1 to A5 conspired together with A6/Senior Manager, Punjab and Sind Bank, Mount Road Branch during 1999-2001 to cheat the bank by availing various credit facilities, cash credit, inland LC and Bank guarantee in favour of A1 Company by submitting false, fabricated and forged documents. A6 without verifying the collateral securities released the facilities. The prosecution filed the charge sheet for the offences under Section 120B, 420, 465, 467, 471 IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

Further, the complainant was directed under Section 173(8) Cr.PC to conduct further investigation on the basis of the direction from CVC to look into the allegations made by A6 and R.S.Chatwal against A7/P.J.Vincent the then Joint Secretary, Ministry of Finance who was nominated as Director of Punjab and Sind Bank and S.C.Vohra the then General Manager alleging that pressure was mounted over the Zonal Manager to send the proposal for loan from A1. On 12.03.2009, the CBI filed a memo for closure of further investigation under Section 173(8) Cr.PC, in the said memo, A6 filed his counter by way of protest petition.

13. The trial Court after hearing both sides, dismissed the memo filed by the CBI and directed to issue process and further directed the prosecution to place all the documents and materials collected during the further investigation and the prosecution is also directed to place the complaints of A6 and that of R.S.Chatwal which was the basis for the CVC to direct the respondent to probe the issue against A7. In the present case, both the petitioners were not shown in the FIR or in the charge sheet column 2 and no allegations are made against these petitioners in the charge sheet and no witnesses have spoken about the petitioners. Without considering all the above aspects, the trial Court has passed the impugned order based upon the statements of the accused cited in the charge sheet and another person against whom allegations were made but sanction was refused and he was cited in the column 2 of the charge sheet.

14. The learned counsel for the seventh respondent/protest petitioner/A6 submits that on the basis of the directions from CVC to look into the allegations made by A6 and R.S.Chatwal as against A7. Based on the direction further investigation was conducted by CBI and examined the persons against whom the allegations were made and the investigation reveals that the allegations are baseless and which cannot be proved in any manner. The CBI filed memo under Section 173(8) Cr.PC for closure of further investigation. The complainant has no right to file the memo for closure of further investigation and without giving notice to the defacto complainant or protest petitioner's the Court cannot close it, before filing the closure report the complainant has not given notice to the informant. Further, before closing the memo and during the pendency of the memo, A6 filed the protest petition by way of counter.

15. Further the learned senior counsel for the petitioners submit that the protest petitioner is not the informant or complainant, he is arrived as one of the accused/A6. According to the learned counsel for the 7<sup>th</sup> respondent, the final report/memo is the subject matter of the closure report, based on his complaint only the CVC has given direction to the CBI, the CBI after investigation filed the final report and filed memo for closure of further investigation. The vigilant

accused/A6 filed the protest petition by way of counter and made his endeavour for non-closure of the further investigation by the prosecution.

16. On careful perusal of the records, FIR registered during 2005 and charge sheet filed on 28.09.2006. Subsequently, on 20.04.2007 petition filed to conduct further investigation and memo filed on 12.03.2008 for closure of the further investigation and for which 7<sup>th</sup> respondent/6<sup>th</sup> accused filed counter on 13.06.2008. The trial Court called for the records and after perusal of the statements of witnesses and the documents collected during the said further investigation found that prima facie case has been made out against these revision petitioners and issued process to all the persons and direct the prosecution to place all the documents and materials collected during the further investigation and to place the complaint of A6 and R.S.Chatwal which was the basis for the CVC to direct the CBI to probe the further investigation.

17. The learned senior counsel appearing for the petitioners in support of his contentions relied on the following judgments :-

1. AIR 1985 SCC 1285 - Bhagwant Singh V. Commissioner of Police and another.
2. (2014) 3 SCC 306 - Dharampal and others V. State of Haryana and another.

18. The learned counsel for the seventh respondent in support of her contention relied on the following judgments :-

1. 2001 SCC (cr1.) 1280 - Hemant Dhasmana v. CBI and another.
2. 2004 (8) Scale 329 - Gangadhar Janardhan Mhatre v. State of Maharashtra and Others.

19. In the judgment reported in 2004 (8) Scale 329 - Gangadhar Janardhan Mhatre v. State of Maharashtra and others wherein it is held as follows :-

"6. There is no provision in the Code to file a protest petition by the informant who lodged the first information report. But this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. This Court was Bhagwant Singh v. Commissioner of Police and Another - AIR (1985) SC 1285, stressed on the desirability of intimation being given to the information when a report under Section 173(2) is under consideration. The Court held as follows :

"....There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under Sub-Section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process,

the informant must be given an opportunity of being heard so that he can make his submission, to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under Sub-section (2)(i) of Section 173 decides not to take cognizance of the offences and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to be heard at the time of consideration of the report....."

7. Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report. This Court further hold that the position is different so far as an injured person or a relative of the deceased, who is not an informant, is concerned. They are not entitled to any notice. This Court felt that the question relating to issue of notice and grant of opportunity as afore-described was of general importance and directed that copies of the judgment be sent to the High Courts in all the States so that the High Courts in their turn may circulate the same among the Magistrates within their respective jurisdictions."

20. For better understanding, it is useful to extract Section 173 Cr.PC, the same is extracted hereunder :-

173. Report of police officer on completion of investigation -

- (1) Every investigation under this Chapter shall be completed without unnecessary delay
  - (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-
    - (a) the names of the parties;
    - (b) the nature of the information;
    - (c) the names of the persons who appear to be acquainted with the circumstances of the case;
    - (d) whether any offence appears to have been committed and, if so, by whom;
    - (e) whether the accused has been arrested;
    - (f) whether he has been released on his bond and, if so, whether with or without sureties;
    - (g) whether he has been forwarded in custody
- under section 170

- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given
- (3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation
- (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.
- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
- (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).
- (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as

far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

21. Even after filing of the charge sheet under this section there can be further investigation into the case the provisions of sub-sections (2) to (6) shall apply in relation to such report as far as possible.

22. Though, there is no specific provision in Cr.PC for filing protest petition, it is only a practice when investigating agency files a closure report, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. On the principles of natural justice, it is just and necessary that the informant/defacto complainant should be given a notice on closure report filed under Section 173 Cr.PC. The power of the investigating agency to investigate and submit further report is recognised by this provision.

23. Since, the CBI has conducted further investigation on the basis of the direction given by CVC based on the complaint given by the 7<sup>th</sup> respondent/6<sup>th</sup> accused and R.S.Chatwal as against the 7<sup>th</sup> accused. Even in both the criminal revision petitions, the petitioners have made the following averments, which reads as follows:-

"20.04.2007 - petition under Section 173(8) Cr.PC filed by the CBI to conduct further investigation on the basis of direction from CVC to look into the allegations made by M.B.Singh (A6) and R.S.Chatwal, (Zonal Manager not sent for trial) against P.J.Vincent, the then Joint Secretary, Ministry of Finance who was nominated as Director of Punjab & Sind Bank and S.C.Vohra the then General Manager alleging that pressure was mounted over the Zonal Manager to send the proposal for loan from A1. The petition was allowed by the Trial Court."

Mere reading of the above averments itself shows that on the allegation of the 7<sup>th</sup> respondent/6<sup>th</sup> accused further investigation was ordered and in which after the further investigation the memo was filed, therefore, he is entitle for notice, as such he has filed counter by way of protest petition for the memo filed by the CBI.

24. Thus, the procedure adopted by the Special Court is sustainable under law in the light of the above discussions, there is no illegality, infirmity or perversity in the order passed by the trial Court and the same does not warrants any interference of this Court.

25. In the result, both the criminal revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

- 1.The XI Additional Special Judge for CBI Cases,  
Chennai
- 2.The Inspector of Police,  
SPE/CBI,EOW,Chennai.
- 3.The Special Public Prosecutor, CBI Cases,  
High Court, Madras.

+4cc to Mr.S.Ramachandran,Advocate sr.55303,55302

+1cc to Ms.Revathi G.Mohan,Advocate sr.56059

Cr1.RC.Nos.711 and 727 of 2009

gj(co)  
ss(9/8/2017)



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