

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.03.2017

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

Crl.O.P.Nos.28084, 28086 and 28111 of 2009
&
M.P.No.1 +1+1 of 2009 & M.P.Nos.2+2+2 of 2009

M.R.J.Premnath ... Petitioner
in Crl.O.P.No.28084 of 2009/Accused
No.10

T.Meenakshi Sundaram ... Petitioner
in Crl.O.P.No.28086 of 2009/Accused
No.9

V.R.Nagarajan ... Petitioner
in Crl.O.P.No.28111 of 2009/Accused
No.11

Vs.

State rep. By
Inspector of Police
Central Crime Branch
Egmore, Chennai - 600 008 ... Respondent
in all the petitions

Criminal Original Petition filed under Section 482 of the
Code of Criminal Procedure to call for the records in
C.C.No.6876 of 2001 on the file of the Chief Metropolitan
Magistrate, Egmore, Chennai-8 and quash the amended charge sheet
dated 23.01.2009.

For Petitioners : Mr.N.R.Elango
Senior Counsel
for Mr.K.Sampath Kumar

For Respondent : Mr.Madhan
Govt. Advocate (Crl.side)

ORDER

Invoking the provisions of Section 482 of the Code of Criminal Procedure, the petitions in Crl.O.P.Nos.28084, 28086 and 28111 of 2009 have been filed by the petitioners to quash the criminal proceedings pending against them in the criminal case in C.C.No.6876 of 2001 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner in Crl.O.P.No.28084 of 2009 is the 10th accused and the petitioner in Crl.O.P.No.28086 of 2009 is the 9th accused in the above said case in C.C.No.6876 of 2001, whereas the petitioner in Crl.O.P.No.28111 of 2009 is the 11th accused.

3. With all the three petitions have been filed to quash the criminal proceedings pending against all the three petitioners in C.C.No.6876 of 2001 on the file of the Additional Chief Metropolitan Magistrate, Egmore, it has become necessary for this Court to consolidate these petitions, hear jointly and to dispose in this common order.

4. Based on a complaint dated 19.05.1997 lodged by one Quidsia Gandhi, who was the then Managing Director of State Industries Promotion Corporation of Tamil Nadu Limited (herein after in short it may be referred to as "SIPCOT" wherever the context so require), the respondent police had registered a case in Crime No.X.CC.No.718 of 1997 under Sections 466, 468, 471 and 420 r/w. Section 120(B) IPC. Originally the above said complaint was lodged as against three persons viz., 1) Dr.P.K.Joy, 2) Aby Joy and 3) Sheby Joy, who are the promoters of the company under the name and style of M/s.AICAM Engineering Ltd., having its registered office at Y 211, 2nd Avenue, Anna Nagar, Chennai - 40. The above case seems to have been taken up for investigation by one T.P.Lakshminathan, Inspector of Police attached to Central Crime Branch, Egmore.

5. After the completion of investigation, the Investigating Officer had laid a final report under Section 173(2)(i) of the Code of Criminal Procedure on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai on 27.03.2001 as against 9 accused including the above said three persons, who have been arraigned as A1 to A3 therein. The petitioner in Crl.O.P.No.28084 of 2009 was cited as Witness No.6 in the said final report. The petitioner in Crl.O.P.No.28111 of 2009 was cited as Witness No.8, and the petitioner in Crl.O.P.No.28086 of

2009 was arraigned as Accused No.7. The final report was taken on file by the learned Additional Chief Metropolitan Magistrate as C.C.No.6876 of 2001 and on appearance of all the three accused, copies were furnished and it also appears that some of the accused had filed discharge petition under Section 239 Cr.P.C and the Court, after hearing both parties, had held that prima facie material was available as against all the accused persons and ultimately those petitions were dismissed.

6. Even after the dismissal of the discharge petitions, the case is admittedly remained static as there is no progress in the trial from the date of filing of charge sheet in the year 2001. The records further revealed that while the case is pending, the Inspector of Police, attached to Central Crime Branch, had chosen to file an amended charge sheet on 12.01.2009 under Section 216 r/w. 173(8) and r/w.319 Cr.P.C as against 13 persons.

7. It is pertinent to note here that in the original charge sheet one Balasubramaniam, who was the Deputy General Manager, Operations (SIPCOT) was added as the 8th accused, but in the amended charge sheet, the said 8th accused Balasubramaniam was deleted after inclusion of his name in the witness list.

8. Similarly, in the earlier charge sheet, the names of the petitioners viz., Premnath (petitioner in CrI.O.P.No.28084 of 2009) and Mr.V.R.Nagarajan (petition in CrI.O.P.No.28111 of 2009) were found place in the list of witnesses. But in the amended charge sheet, their names have been included as Accused Nos.10 and 11 respectively. The name of the petitioner in CrI.O.P.No.28086 of 2009 viz., Mr.T.Meenakshi Sundaram was cited as 9th accused.

9. Obviously no reference is available on record to show that the Inspector of Police attached to Central Crime Branch, Egmore had obtained an order from the learned Additional Chief Metropolitan Magistrate to conduct further investigation. The respondent police has not made it clear as to under what authority, the Inspector of Police, Central Crime Branch, Egmore had proceeded to file the amended charge sheet under Section 216 Cr.P.C r/w. 173(8) Cr.P.C and r/w.319 Cr.P.C.

10. The excerpts of the prosecution case is this:

(i) The State Industries Promotion Corporation of Tamil Nadu

Limited (SIPCOT) is a Corporation wholly owned by the Government of Tamil Nadu and all the shares of the State Corporation are held by the Government of Tamil Nadu. SIPCOT grants financial assistance to medium and large scale industries for putting up their units in the State of Tamil Nadu. M/s.AICAM Engineering Limited had applied for a term loan of Rs.250/- lakhs under the "Equipment Refinance Scheme" to expand the capacity of their existing project at Vandalur near Madras.

(ii) SIPCOT had sanctioned a loan of Rs.250/- to the above said company on 06.03.1997 under the "Equipment Refinance Scheme". For the above said loan, the assets which were created under the scheme had been hypothecated to SIPCOT by way of security for the said loan. Besides this the company had also offered collateral security viz., a land measuring 3.21 acres situated at Neikarapatti village, comprised in S.No.28/2. At the request of the company, the SIPCOT had disbursed the first installment of Rs.150 lakhs towards the reimbursement of the cost of the machinery already purchased by the said company for their project.

(iii) At the later stage, it was found that the promoters of the above company had intentionally cheated SIPCOT by producing forged documents in order to avail the loan. Under this circumstance, it is alleged that A1 to A9, as per the earlier charge sheet, had entered into a criminal conspiracy, having agreed among themselves to cheat the authorities of SIPCOT to produce the fake documents to wit good reports as if issued by Banking institutions and to produce the same as genuine and to induce the SIPCOT authorities to sanction a loan of Rs.250 lakhs in favour of A1 without obtaining collateral security and made it appear that the loan application was rightly processed. Therefore, Accused 1 to 9 had made themselves liable for an offence punishable under Section 120 (B).

(iv). It is alleged that Accused A1 to A5, to cheat the authorities of SIPCOT for their illegal gain, falsely claimed that the firm M/s.AICAM Engineering Ltd., run by the first accused was having good credit with the bankers and induced the Managing Director to sanction a sum of Rs.250 lakhs by producing the application of the first accused and in consequence of the inducement, believing the documents submitted by the accused would be true and genuine the Managing Director of SIPCOT had sanctioned Rs.250/- lakhs as loan and disbursed an advance amount of Rs.150/- lakhs to the A-1's company and thereafter A1 to A5 had committed the offence punishable under Section 467, 468, 471 and 420 IPC.

(v) It is also alleged that A6 to A9 had voluntarily and knowingly abetted the above said act of A1 to A3 by certifying that the collateral security offered by A-1's company was valued at Rs.279 lakhs even though the actual value of the collateral security was inflated from 12.81 lakhs to 279 lakhs and therefore, it is alleged that A6 to A9 appears to have committed an offence punishable under Sections 467, 468, 471, 420 r/w.109 IPC.

11. After filing the final report on 27.03.2001 by the Investigating Officer, the learned Additional Chief Metropolitan Magistrate had taken the final report on his file in C.C.No.6876 of 2011 after taking cognizance of the offences. On receipt of summons, all the 9 accused (as per the earlier charge sheet dated 27.03.2001) had made their appearance and they were also furnished with the copies of the final report as required under Section 207 of Cr.P.C. It may also be relevant to note here that some of the accused persons had filed applications under Section 239 Cr.P.C for discharging them from the clutches of the charges. However, those petitions were dismissed after holding that prima facie material was available against all the accused named in the charge sheet. Only under this circumstance, the Investigating Officer had voluntarily, without the order of the Magistrate concerned, had filed an amended charge sheet on 12.01.2009, under Section 216 r/w.173(8) and r/w 319 of Cr.P.C.

12. Section 173 of the Code deals with the report of Police Officer on completion of investigation. Sub-section (1) of Section 173 contemplates that every investigation under this Chapter shall be completed without unnecessary delay. Sub-Section (2)(i) envisages that 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.

13. Sub-Section (8) of Section 173 reads as under:

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).

14. The phraseology "Charge Sheet" is not at all found mentioned in any of the provisions of the Code. The report under this Section is called "Completion Report". It is also known as Charge sheet. Such a report is absolutely necessary. The report should contain the particulars referred to in Sub-clauses (a) to (g) of clause (i). A Magistrate, who had disposed of a police report, is competent to revise his order and call for a charge sheet.

Investigation involves not only conclusion of evidence, but formation of opinion also. Police report cannot be forwarded against only one or some of them, even though investigation is not completed against all the accused.

15. In Sakkarai Ramaswamy Vs. Alangara Muni and Murugan reported in 1990 L.W (crl.) 151, a Division Bench of this Court has held that from a bare perusal of the S.173(2)(i), Cr.P.c., it is crystal clear that as soon as the investigation is completed, the officer in charge of true police station shall forward a report to the magistrate empowered to take cognizance of the offence on a police report and a report in the form prescribed by the State Government stating the particulars mentioned therein. What is normally done by the officer in charge of the police station is to file a 'charge-sheet' before the court having jurisdiction, The phraseology "Charge-sheet" is not at all found mentioned in any of the provisions of the code of Criminal Procedure. It appears that the police had been in the practice of filing the charge-sheet before Court, obviously as a result of instructions contained in the Madras Police Standing Orders in FORM No.87, which presumably could have come into existence much earlier to the code of Criminal Procedure and such practice of filing charge-sheet by the police continued to exist notwithstanding the fact that the Code of Criminal Procedure adumbrates the provision in Section 173(2) (i) enabling them to express their opinion in the form of a report from the materials collected during the course of investigation.

16. The duty enjoined upon the station house officer engaged in investigation is to collect all relevant and necessary materials for unfolding the real state of affairs and express the opinion therefor in the shape of a report filed before Court having jurisdiction. The report so filed may either be a positive or a negative report. No one, much less the police officer in charge of the investigation, excepting the court, can charge a person for an offence and no one else can over possess such a power. The Court on a consideration of the report, either positive or negative, can come to its own conclusion and charge the person for offences appeared to have been committed by him. It is not incumbent upon the Court to accept the positive report filed by the police and charge the person arrayed as accused. The court, on consideration of the materials available on record, can very well discharge the person arrayed as accused on a positive report and can as well frame a Charge as against the person in respect of whom the police filed a negative report by referring the case against them as mistake of fact, law etc.,

17. It is high time that the police abandon the practice of filing charge sheets before Court and file a report as contemplated under section 173(2)(i) of the Code of Criminal Procedure. It is to be mentioned here that though the aforesaid sub-sections enjoin to prescribe a form for the filing of such a report, so far the State Government have not taken any steps for the prescription of a form for a report to be filed by the Station House Officer under Section 173(2)(i) of the Code of Criminal Procedure."

18. As observed by the Apex Court in Abhinandan Jha Roopchand Lal Vs. Dinesh Mishra reported in AIR 1968 SC 117: (1967) 3 SCR 668: (1968) CrL. L.W. 97 (SC), the final report submitted by the Investigating Officer is not final, where the Investigating Officer has not conducted the case properly and has acted negligently and there is further scope for investigation, the Magistrate may order for further investigation under Section 156(3) Cr.P.C. It is also to be noted that a Magistrate, in exercise of his power under Section 173 (8) Cr.P.C, is competent to disagree with the final report and direct further investigation in a matter.

19. In Smt.Pusparani Samal Vs. Suretha Kumar Biswal and Others, reported in 1998 CrL. L.J.3764, the petitioner, who is the informant in C.R.Case No. 385 of 1994, on the file of the learned S.D.J.M.Bhadrak, has assailed the order dated 07.06.1996, whereby the order taking cognizance of the offences under Section 458, 323 and 307 r/w. Section 34 IPC against the opposite parties has been recalled. The grievance of the

petitioner is that the Inspector-in-charge of Bhadrak Town Police Station usurped the power of both investigator and the magistrate and determined about culpability of the opposite parties leaving the learned S.D.J.M to put his seal of approval to the said action, which is impermissible in law.

20. The learned counsel for opposite parties, on the other hand, had submitted that the Investigating Officer had acted within the parameter of law as envisaged in Section 173(8), Cr. P.C. and reopened investigation on being directed by his superior officer. Upon such investigation and on the basis of fresh materials he was of the opinion that only opposite party No. 5 was involved in the incident and committed certain minor offences and consequently submitted fresh charge-sheet against him. On going through the said charge-sheet the learned S.D.J.M. was prima facie satisfied that no offence was made out against opposite parties 1 and 2 and accordingly recalled/reviewed his earlier order whereby he had taken cognizance of the offences under Sections 452, 323 and 307 read with Section 34, IPC and took fresh cognizance of the offences under Sections 323 and 294, IPC against opposite party No. 3 and dropped the proceeding insofar as opposite parties 1 and 2 are concerned.

21. The Orissa High Court in Paragraph No.5 of the Judgment has held as under:

"The rights and duties of both investigating agency and the Court are well defined and well demarcated in the Criminal Procedure Code. When a report is received relating to the commission of a cognizable offence, the police has a statutory right and duty to investigate the facts of the case and submit a report under Section 173(1), Cr. P.C. to the Magistrate having jurisdiction to take cognizance of the offence on such report. This duty cannot be interfered with or encroached upon by the Court. Upon receipt of such report, the Magistrate may take cognizance of the offence and thereafter if he is of the opinion that there is sufficient ground for proceeding, he may issue process to secure the attendance of the accused. These are in essence the powers and functions of the two machineries, namely, the investigating agency and the Court. In the Criminal Procedure Code of 1898 there was no provision empowering the police to further investigate into the case after submission of the report under Section 173 (1) or after the Magistrate had taken cognizance of the offence. Judicial opinion on this aspect was not unanimous. Some High Courts were of the view that police had such power and others doubted. This Court

(Orissa High Court) in the case of Prosecuting Inspector, Keenjhar v. Minaketan Mahato AIR 1952 Ori 350 : 1952 Cri LJ 1635, held that the police have the right to reopen investigation even after submission of charge-sheet under Section 173, if fresh facts came to light. The Law Commission agreeing with the positive view opined that a provision should be made in the statute empowering the police to make further investigation and accordingly recommended in its' list .

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On the basis of the recommendation, a new provision, Section 173(8) was introduced in the Cr. P.C."

22. In Paragraph No.6, it is held that in view of the aforesaid statutory provision, the police have acquired a right to further investigate into the case after submission of report under Sub-section (2) of Section 173 and submit a supplementary report/charge-sheet to the Magistrate. According to their Lordship's, whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final wording with the Magistrate is sufficient to safeguard against any excessive use or abuse of the power of the police to make further investigation.

23. In Paragraph No.8 it is held that the above being the settled position of law, the question that arise in the present case is whether the reopening of investigation by the Inspector in-charge of Bhadrak Town P.S. at the behest of the Superintendent of Police, Bhadrak was in exercise of power under Section 173(8), Cr. P.C. to collect further materials to ascertain involvement of the opposite parties in the offence or it was with an oblique motive to help the opposite parties to get rid of the case. The facts and circumstances clearly indicate that the Inspector in-charge of Bhadrak Town P.S. acted in a partisan spirit forgetting the duties and responsibilities enjoined upon him by the statute in the matter of investigation into the cognizable offences. It is also answered that equally the Superintendent of Police, Bhadrak should be blamed for giving a direction to his subordinate officer to reopen investigation without there being any basis or material for doing so. Ultimately it is held that once cognizance has been taken by the Court on the basis of the case diary and prima facie case, subsequent re-opening of investigation without any basis, or material on record is illegal and not sustainable.

24. In Prithwis Kumar Nag Vs. State of West Bengal and Others reported in 1998 Cri.L.J.3502, it is held that the

magistrate, after taking cognizance of an offence, cannot pass an order for further investigation under Section 173(8) Cr.P.C by CBI unless the police makes an application praying for formal sanction of the Court for further investigation.

25. It is explicit that the power of the police to conduct further investigation after laying final report is recognized under Section 173 (8) of the Code. However, sub-section (8) is inserted as a new provision and the circumstances mentioned are only enumerative and not executive in character. It is to be noted that in the interest of independence of the magistracy and the judiciary and in the interest of purity of the administration of criminal justice and in the interest of the various agencies and institutions entrusted with different stage to stage administration, where a proceeding is pending before a Court it is desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. This principle is laid down in *Raghunath Singh & Ors. vs The State Of Bihar* reported in 1990 (1) Crimes 310 (Pat).

26. On coming to the provisions of Section 216 of the Code, it is completely within the domain as well as within the amplitude of the power of the Court. The Investigating Officer has nothing to do with the provisions of Section 216 of the Code. Section 216 (1) Cr.P.C envisages that the Court may alter or add to any charge at any time before judgment is pronounced. The provisions of Sub-Sections (2) to (5) are extracted as under:

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same

facts as those on which the altered or added charge is founded.

27. As per sub-section (2) every alteration or addition shall be read and explained to the accused persons. This provision applies to all the Court concerned. It may be relevant to mention here that the criminal procedure code gives ample power to the courts to alter or amend a charge, whether by the trial court or by the appellate Court, provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him. This principle is laid down by the Supreme Court in Kantilal Chandulal Mehta vs State Of Maharashtra And Anr reported in AIR 1970 Sc 359.

28. In Thakur Shah vs Emperor reported in AIR 1943 PC 1992, Lord Porter has pointed that the alteration and addition is "always" of course, subject to the limitation that no course should be taken by reason of which the accused may be prejudiced either because he is not fully aware of the charge made or is not given a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred. Therefore, the alteration or additional in the charges levelled against an accused is exclusively within the domain of the Courts concerned. Therefore, the investigating officer cannot take its power which is exclusively vested with the courts into his hands.

29. On coming to the provisions of Section 319 Cr.P.C, it is apparent that it deals with the power to proceed against other persons appearing to be guilty of offence and the power conferred on the Court under this provision cannot also be exercised by an Investigating Officer. Sub-section (1) of Section 319 says that where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person, not being the accused has committed any offence for which Such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed. Sub-section (2) says that where such person is not attending the court he may be arrested or Summioned, as the circumstances of the case may require, for the purpose aforesaid.

30. The power exercisable under Section 319 is an extraordinary power conferred on the Court to do real justice. It should be used with caution and only if compelling reasons exist for proceeding against a person against whom action has not been taken. Where the evidence shows the involvement of a

person in the commission of the crime, the Court should exercise its power under Section 319 Cr.P.C and summon him as an additional accused. This principle is laid down in Sambhaji V. State of Maharashtra reported in 2008 Cr.L.J.1123 (1127).

31. In the so called amended charge sheet under Section 216 Cr.P.C r/w.173(8) and r/w.319 Cr.P.C, it is stated by the Inspector of Police attached to Central Crime Branch, Egmore that a positive report was filed (earlier report) before this Hon'ble Court in C.C.No.6876 of 2001 basing the investigation carried out by the then Investigation Officer and while the case was thus pending, it came to light from fresh materials that certain persons were also to be arrayed as accused. Further, one of the persons by name Balasubramaniam charged for the offence in the earlier charge sheet does not appear to be connected to the transactions and his name has been inadvertently included.

32. In the second paragraph of the so called amended charge sheet, the Inspector of Police has stated that in an earlier counter filed by the Police in anticipatory petition, the then Investigation Officer, while opposing the application, stated that Balasubramaniam was actively involved in processing the loan. But, now the enquiry revealed that the accused Meenakshisundaram, the General Manager, insisted for his initials and took the file directing preparation of disbursement file. Hence, his name has to be deleted from the charge sheet filed earlier in the previous investigation stage. In the third paragraph, he has stated that the involvement of the officials of SIPCOT, namely Harinathan, Premnath and Nagarajan besides the sons of A1, namely Aby Joy and Shebi Joy are also culled out from the other materials such as return of processing fee, cheque given by A2 for nearly an amount of Rs.62,500/-. Hence, five have to be added as necessary parties in the list of accused in this charge sheet.

33. Paragraph No.1 and 2 of the amended charge sheet would go to show that the entire report filed earlier seems to be defect. The learned Additional Chief Metropolitan Magistrate has committed a grave blunder in taking a defective charge sheet on his file and he has also committed a serious error in taking cognizance of the offence based on the defective charge sheet. It is also to be noted that for filing the amended charge sheet or even for conducting further investigation, no previous permission was obtained from the learned Additional Chief Metropolitan Magistrate as contemplated under Section 173(8) of the Code of Criminal Procedure. The Investigating Officer had not chosen to file any application before the learned Additional

Chief Metropolitan Magistrate seeking permission for further investigation. Though he can conduct further investigation during the pendency of the earlier charge sheet as observed in Ramaja (Madras) Vs. State reported in 2004 (4) Crimes 217, the Investigating Officer must formally apply to Magistrate concerned and obtain his permission. This ratio has been reiterated in Prithwis Kumar Nag Vs. State of West Bengal and others reported in 1998 Crl.L.J.3502.

34. In the earlier final report, the petitioner in Crl.O.P.No.28086 of 2009 was shown as Accused No.7. In the so called amended charge sheet, he has been shown as A9. At the material point of time, he was the General Manager, Project and Finance in SIPCOT. The petitioner in Crl.O.P.no.28084 of 2009 and the petitioner in Crl.O.P.No.28111 of 2009 have been shown in the amended charge sheet as A10 and A11 respectively. Their names are not found place in the earlier charge sheet. Instead, they were shown as witnesses as LW6 and LW8 respectively. As per the memo of evidence appended to earlier final report dated 27.03.2001, it is stated that the petitioner M.R.J.Premnath would speak about the nature of processing the loan application of AICAM at SIPCOT etc and relevant facts. Against the name of V.R.Nagarajan, it is stated as to corroborate the evidence of PW6 i.e., M.R.J.Premnath. In the amended charge sheet, as aforesaid, the petitioner in Crl.O.P.No.28086 of 2009 has been shown as A9, whereas the petitioners in Crl.O.P. No.28084 of 2009 and Crl.O.P.No.28111 of 2009 have been shown as Accused Nos.10 and 11 respectively. As per the previous final report, the specific overt act attributed against the petitioner Meenakshisundaram is that he had entered into a criminal conspiracy with other accused and agreed among themselves to cheat the authorities of SIPCOT by producing fake documents to wit good reports as if issued by banking institutions IFCI, UCO Bank and SBI and to produce the same as genuine and induce the SIPCOT authorities to sanction a loan of Rs.250 lakhs without obtaining collateral security and made it appear that the loan application was rightly processed and also to antedate the documents after obtaining the security of the property owned by witness Tr.Ravindran of Neikkarapatty, Salem District for whom the accused J.M. Pandey and Mathew Sebastian had offered to provide a loan of Rs.15 lakhs on the documents of the above said property.

35. It is also alleged that they conspired to inflate the Market value of the property to Rs.279 lakhs by A6, while the real market value as per the Sub-Registrar, Veerapandi, was only 3.88 lakhs per acre and the value of asset on machinery was only Rs.22.41 lakhs. Therefore, the petitioner Meenakshisundaram

along with other accused appear to have made themselves liable for the offences under Section 120 (B) IPC. It is also alleged that A6 to A8 have voluntarily and knowingly abetted the said criminal conspiracy of A1 to A5 by certifying that the collateral security offered by A1's firm is valued at Rs.279 lakhs, even though the actual value of the collateral value said to be situated in S.No.28/2 at Neikkarapatty, Salem, is inflated from 12.81 lakhs to 279 lakhs. Therefore, it alleged that the petitioner Meenakshisundaram along with A6, A8 and A9 appeared to have committed an offence punishable under Sections 467, 468, 471, 420 r/w.108 IPC.

36. As per the amended charge sheet, as aforesaid, the petitioner Meenakshisundaram has been shown as A9 and the other petitioners viz., M.R.J Premnath and V.R.Nagarajan have been shown as A10 and A11 respectively. The specific overt act attributed against the newly added accused viz., Premnath and Nagarajan are that they were attending to the loan section-II on being marked by A9 in the application LAS-II without ascertaining the genuineness of the credit report of M/s.UCO Bank, State Bank of Travancore and IFCI, which were submitted along with the application by A1 to A3 routed through A4 to A7 and being fully aware of the process fee of a measly amount of Rs.62,500/- paid by cheque by A2 drawn on South India Bank got dishonoured with all credit worthiness shown by accused, informed AICAM Engineering Co., of the return of cheque and wanted to remit the amount.

37. It is also specifically alleged that A9 to A13 which includes the petitioners Meenakshisundaram, M.R.J Premnath and V.R.Nagarajan knowingly and dishonestly acted on the forged documents and suppressing the character of documents of its forged nature when brought to their notice by witness Thiru.Krishnamurthy of UCO Bank and hurriedly disbursing the amount within a span of short duration by 31.03.1997 itself during disbursement though 100% security was not obtained. Therefore, A1 to A13 have committed the offences punishable under Sections 465, 467, 468 and 471 r/w. 468 IPC and r/w.120(B) IPC.

38. It is apparent from the records that the complaint dated 19.05.1997 was lodged by Quidisia Gandhi, Managing Director of SIPCOT. In her statement, under Section 161(3) Cr.P.C, Quidisia Gandhi has simply stated as under:

"Hence in this case, Industrial Finance Corporation of India, United Commercial Bank and State Bank of Travancore who assisted the company earlier

financially, we had addressed the two banks IFCI calling for credit reports on 07.02.1997. Accordingly, the company had produced credit reports from all the three banks/institution which were said to have been issued by them. After that SIPCOT had sanctioned a term loan of Rs.250 lakhs to the company on 06.03.1997 under the said scheme."

39. She has also stated that "at the request of the company, SIPCOT disbursed the first instalment of Rs.150 lakhs towards the reimbursement of the cost of the machinery already purchased by the company for this project." It is to be noted that Mrs. Qudsia Gandhi, I.A.S was working as the Managing Director of SIPCOT, during the crucial period.

40. One Tmt. Shanthi, who was the Deputy Manager, Disbursement, SIPCOT, Chennai in her 161(3) Cr.P.C given before the Investigating Officer has stated as under:

"M/s.AICAM Engineering Company Ltd., had approached the SIPCOT with a request to extend financial assistance to the extent of Rs.250 lakhs under the "Equipment Refinance Scheme". That application was considered by the Appraisal Department and on the recommendation of Screening Committee, the complainant Tmt. Qudsia Gandhi, I.A.S.who was the Managing Director of SIPCOT had given concurrence to extend the loan of Rs.250 lakhs to the AICAM Engineering Ltd.,."

41. Tmt. Shanthi has also further stated that on her inspection report dated 31.03.1997, the General Manager Mr.T.Meenakshisundaram, the petitioner in CrI.O.P.No.28086 of 2009 and one Mr.Balasubramaniam (He was shown as Accused No.8 as per the earlier charge sheet and subsequently his name was deleted in the amended charge sheet and added as a witness in the witness list), had examined the report and apart from this, the Internal Audit Accounts Department and Legal Department had also examined the report and only thereafter, it was approved by the complainant Mrs.Qudsia Gandhi, on her satisfaction, had passed an order to disburse the loan amount. On the same date, i.e, on 31.03.1997, a sum of Rs.150 lakhs was disbursed to the AICAM Engineering Ltd., as a first installment.

42. But, in fact, the complainant has not been included as an accused in this case. The complainant being the Managing Director of SIPCOT is having much more responsibility to safeguard the interest of SIPCOT rather than the responsibility of other officials. In this case, the statement of Tmt. Shanthi

(Deputy General Manager) given before the Investigating Officer on 20.03.2001 seems to be completely conflicted and contrary with her second statement given before the Investigating Officer on 28.02.2008.

43. It is significant to note here that the first statement under Section 161(3) was given by Tmt. Shanthi, Deputy Manager before the Investigating Officer on 20.03.2001. After passing 7 years, second statement was given by her. But on careful perusal of her two statements, this Court is able to understand that the second statement runs contrary to the prior statement given by her and besides this, Mr. Balasubramaniam was previously shown as Accused No.8 in the final report dated 27.02.2001. In the amended charge sheet, his name was deleted and shown as a witness in the list of witnesses. It is pertinent to note here that for the deletion of the accused Balasubramaniam from the earlier charge sheet, the Investigating Officer had not obtained any order from the Additional Chief Metropolitan Magistrate. After filing of the final report, it was taken on file and the offences were also taken cognizance, by the concerned Magistrate. On making their presence, all the accused persons were furnished with the copies of the earlier charge under Section 207 Cr.P.C. Thereafter, the concerned Police Officer is having no power to take away or to delete any one of the accused from the charge sheet without the order of the Magistrate.

44. What Section 239 Cr.P.C would say is that if upon considering the police report, and the documents sent with it under Section 173 Cr.P.C and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

45. On coming to the instant case on hand, the investigating officer, who had laid the amended charge, sheet had usurped the power of the Court and decided the case holding that the earlier accused A8-Balasubramaniam could not be added as an accused as no grounds are available to proceed against him and subsequently the Investigating Officer has arbitrarily and deliberately concluded that the adequate grounds and evidences are available as against the petitioners M.R.J.Premnath, (petitioner in CrI.O.P.No.28084 of 2009) and (V.R.Nagarajan, petitioner in CrI.O.P.No.28111 of 2009), who have been shown in the amended charge sheet as A10 and A11 respectively. In this

connection, this Court finds it appropriate to make reference to the decision of the Orissa High Court in Smt.Pusparani Samal Vs. Suretha Kumar Biswal and Others, cited supra, wherein it is observed that while submitting the supplementary charge-sheet the Investigating Officer altered the said section to one under Section 323, IPC. The reason for doing so was that there was no injury on vital part of the injured. From this can it be said that he was fair to both sides? In my opinion he was not. When the learned S.D.J.M. on perusal of the case diary and the injury report was satisfied that there was a prima facie case under Section 307, IPC and accordingly took cognizance of the said offence it was for the competent Court to give a verdict after end of the trial, whether prosecution has been able to establish the offence under Section 307, IPC. But strangely enough the Inspector in-charge of Bhadrak Town P.S. usurped the power of the Court and practically decided the case holding the offence to be one under Section 323, IPC. This case is a glaring example where the police acted in a partisan spirit to help the opposite parties by taking the aid of Section 173(2), Cr. P.C. The power conferred under the said provision has been misutilised and mis-supplied.

46. It is also observed in the same paragraph that the S.D.J.M. in such circumstances should have been more vigilant and careful and uninfluenced by the materials collected during reinvestigation should have proceeded with the case in accordance with law against all the opposite parties because of the fact that at the earliest opportunity some eye-witnesses in their statements to the police had implicated all the opposite parties in the incident. Instead, he relied upon the subsequent report and without assigning any reason as to why he completely; ignored the earlier report opined that no offence has been made out against opposite parties Saratha Kumar Biswal and Laxmipriya Biswal. It is also observed that When two stories were before him it would have been legal and proper for him to leave the whole matter to be, considered during the trial.

47. Insofar as the given case on hand is concerned, since Balasubramaniam, who was shown as A8 in the earlier charge sheet, dated 27.03.2001, was subsequently deleted from the amended charge sheet and other two persons, A10 and A11 who are the petitioners in CrI.O.P.No.28084 of 2009 and CrI.O.P.No.28111 of 2009 have been implicated deliberately.

48.The learned senior counsel Mr.N.R.Elango, in this connection, has raised a question as to whether a statement of an accused person who was not even discharged or deleted by the

competent Court could be considered or taken into account for the implication of other two persons who were shown as witnesses in the earlier final report?

49. Viewing the act of the Investigating Officer from any angle, this Court finds that the act of the Investigating Officer is illegal and he cannot usurp the power conferred on the concerned Magistrate.

50. Section 482 of the Code encompasses three ingredients. The High Court can exercise the inherent powers:

- a) to give effect to any order under this code;
- b) to prevent abuse of the process of any Court; and
- c) otherwise to secure the ends of justice.

51. The second ingredient i.e. To prevent abuse of process of any Court is very much important. Here no adequate grounds or evidences are available to proceed against the petitioners, who are the accused 9, 10 and 11 in C.C.No.6876 of 2001. Even if the case is allowed to proceed, the chance of conviction is very bleak in respect of all the petitioners (See State Of Haryana And Ors vs Ch. Bhajan Lal And Ors reported in 1992 AIR 604). In this case, the Apex Court has laid down the guidelines to quash the criminal proceedings by way of illustrations as to under what circumstances the High Court can be justified in interfering with the criminal proceedings under Article 226 of the Constitution of India or Section 482 Cr.P.C. The Apex Court has also given Seven illustrative circumstances under which such interference may be justified. They are enumerated as under:

''(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and made out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

Of the seven circumstances illustrated above the circumstances Nos.1, 5 and 7 are very assume important and relevant to the facts of the given case on hand.

52. In view of the forgoing discussion, this Court is of the view that so called amended charge sheet is not sustainable. Hence, the criminal proceedings initiated against these petitioners in C.C.No.6876 of 2001 are deserved to be quashed.

In the result, these criminal original petitions are allowed and in consequence thereof the criminal proceedings initiated against the petitioners in C.C.No.6876 of 2001 on the file of the learned Additional Chief Metropolitan Magistrate, Chennai are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai-8
2. The Additional Chief Metropolitan Magistrate
Egmore, Chennai-8

Crl.O.P.Nos.28084, 28086 and 28111 of 2009 &
M.P.No.1 +1+1 of 2009 & M.P.Nos.2+2+2 of 2009

SR(CO)
CS/23/05/17

सत्यमेव जयते

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