

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CrI.O.P No.23943 of 2012
and
M.P.Nos.1 and 2 of 2012**

M.Viswanathan

... Petitioner

vs.

1.State represented by its
Inspector of Police,
Central Crime Branch,
Team-III, Egmore, Chennai-600 008.

2.The Joint Director,
Central Bureau of Investigation,
Chennai.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to direct the first respondent to withdraw and transfer the investigation in Cr.No.576 of 2005, pending in his file to the second respondent to conduct further investigation.

For Petitioner :Mr.Manivannan
for M/s.P.Rajamanickam

For Respondents : Mr.P.Govindarajan (for R1)
Additional Public Prosecutor

Mr.K.Srinivasan (for R2)
Special Public Prosecutor for CBI

JUDGMENT

The CrI.O.P.No.23943 of 2012 filed by the de-facto complainant with a prayer to direct the 1st respondent to withdraw the investigation in Crime No.576 of 2005 pending in his file to the 2nd respondent namely CBI to conduct further investigation.

2.The petitioner/de-facto complainant contended that there was no proper investigation by the Central Crime Branch at Chennai and the charge sheet filed before the Chief Metropolitan Magistrate Court, Egmore, Chennai is totally incomplete and hence warrants further investigation at the hands of the 2nd respondent CBI.

3.Per contra, the petitioners/accused in CrI.O.P.No.10828 of 2012 vehemently contended that the prayer is not maintainable and the de-facto complainant has no locus standi to seek further investigation in view of the provisions in Section 173(8) of Cr.P.C. As per Section 173(8) of Cr.P.C. the powers vest only with the investigating agency to seek further investigation and to support the said contention, relied on judgment of the Hon'ble Supreme Court in the case of ***Rubabbuddin Sheikh v. State of Gujarat and others*** reported in ***(2010) 2 Supreme Court Cases (Cri)***

1006 and the judgment of this Court in the case of **A.Mohan and others v. State, rep. by the Sub-Inspector of Police, Colleroon Police Station, Trichy and another** reported in **2012 (1) MWN (Cr.) 535**.

4.The learned Public Prosecutor contended that the investigation was duly conducted based on the available records and proper charge sheet has been filed before the learned Chief Metropolitan Magistrate, Chennai, and the same was taken on file in C.C.No.590 of 2012, no further investigation is warranted in the instant case and also reiterated the provisions in Section 173(8) of Cr.P.C. and prayed for the dismissal of the petition.

5.I heard Mr.Manivannan, learned counsel appearing for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor appearing for the 1st respondent and Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the 2nd respondent and perused the entire records.

6.The important question of law involved in this Criminal Original Petition is whether this Court having power to direct further investigation in Crime No.576 of 2005 pending on the file of the 1st respondent and transferred to the Central Bureau of Investigation to conduct further

investigation in spite of the fact that the 1st respondent had already filed the charge sheet in C.C.No.590 of 2012 before the learned Chief Metropolitan Magistrate, Egmore, Chennai.

7.It is the case of the petitioner is that being the defacto-complainant, he is aggrieved party entitled to further investigation through the 2nd respondent Central Bureau of Investigation. The Hon'ble Apex Court held that the aggrieved party cannot seek further investigation invoking Article 32 of the Constitution. It has been further held that if any aggrieved party feels that in some of areas of the charge sheet, investigation is inadequate, the aggrieved party namely, the prosecution alone can file only an Application under Section 173(8) of Cr.P.C. seeking further investigation.

8.The aggrieved party stated by the Hon'ble Supreme Court shall be interpreted and read it conformity with the provision under Section 173(8) of Cr.P.C., and the Hon'ble Apex Court stated in the case of **Rama Chaudhary v. State of Bihar** reported in 2009 (2) MWN (Cr.) 43 (SC) in para 12 is as follows:

"12.The Hon'ble Apex Court in Rama Chaudhary v. State of Bihar, 2009 (2) MWN (Cr.) 43 (SC) : 2009 (6) SCC 346, has held as

follows:

"17.From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the Police Report under sub-section (2) on completion of the investigation, the Police has a right to 'further' investigation under sub-section (8) of Section 173 but not 'fresh investigation' or 'reinvestigation'. The meaning of 'further' is additional, more or supplemental. 'Further' investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started a initio wiping out the earlier investigation altogether."

9.As per the order of the Hon'ble Supreme Court in the above case, the Hon'ble Supreme Court has clarified the terms re-investigation and further investigation. As per the interpretation further investigation is ordered, based on the additional material or evidence collected by the police/prosecution. However, re-investigation is ordered when the earlier investigation improperly conducted and not sustainable in law, to meet the ends of justice. Therefore, as per the provision of Section 173(8) of Cr.P.C. the aggrieved parties namely, the police/prosecution on collection of additional materials or evidence, the prosecution can seek for further

investigation, but the case in hand, the defacto-complainant have no right for further investigation through the 2nd respondent Central Bureau of Investigation.

10.The Hon'ble Apex Court very categorically held that further investigation cannot be ordered by invoking Article 32 of the Constitution or Section 482 of Cr.P.C. before this Court, however, the aggrieved party is entitled to invoke Section 173(8) of Cr.P.C. either through the Court or by the defacto-complainant. But the police/prosecution having power for seeking further investigation that too on collection of further materials and evidence. In the instance case, admittedly no further materials was collected by the 1st respondent and additional materials by the police. But the defacto-complainant, who is no way connected for the further investigation in the case having no power for seeking further investigation that too after filing the charge sheet by the 1st respondent, which was taken on file in C.C.No.590 of 2012 by the competent Court. The Hon'ble Supreme Court has clearly held that the further investigation cannot be ordered by invoking under Article 32 of the Constitution or Section 482 of Cr.P.C. However, the aggrieved party is entitled to invoke Section 173(8) of Cr.P.C. for seeking further investigation.

11.In view of the above legal position, the prayer sought for by the petitioner, who is the de-facto complainant under Section 482 of Cr.P.C. is not sustainable and hence the same is dismissed. Consequently, connected miscellaneous petitions are closed.

27.07.2017

Note:Issue order copy on 24.08.2017
vs

Speaking order
Index : Yes

To

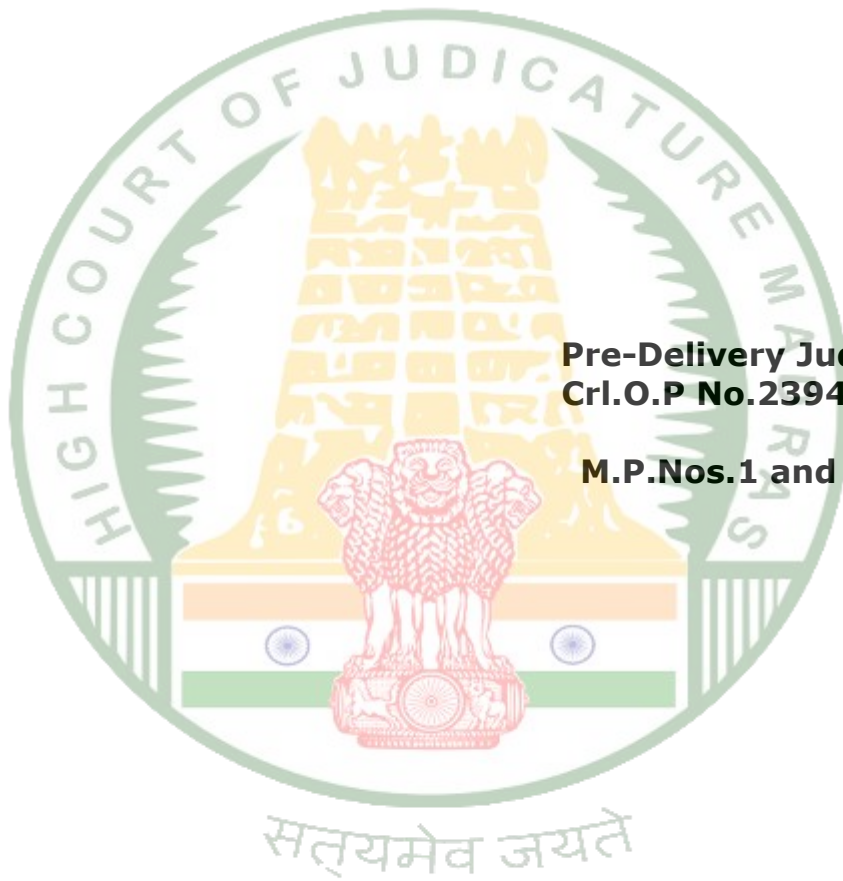
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- 2.The Joint Director,
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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.23943 of 2012
and
M.P.Nos.1 and 2 of 2012**

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