



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2017

Pronounced on : 18.09.2017

CORAM :

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) No.487 of 2015

and

M.P(MD)No.1 of 2015

1.Ganapathy

2.Ramesh

... Petitioners

Vs.

State represented by
the Deputy Superintendent of Police,
Tenkasi Division,
(Crime No.226 of 2011,
Kadayam Police Station),
Tirunelveli District.

... Respondent

Petition filed under Sections 397 read with 401 Cr.P.C, to admit this revision and to call for the records from the lower Court and to duly set aside the orders passed by the III Additional Sessions Judge, Tirunelveli, Tirunelveli District in Crl.M.P.No.24 of 2014 in S.C.No.27 of 2014, dated 01.08.2015 and consequently discharge the revision petitioners.

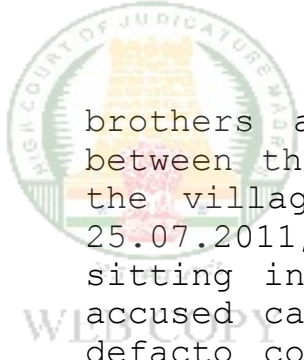
For Petitioners : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.C.Mayilvahanarajendran,
Additional Public Prosecutor.

ORDER

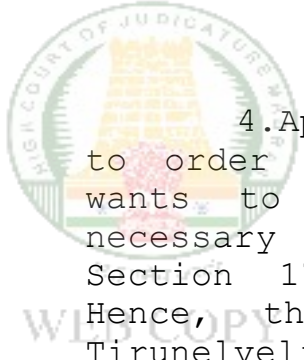
Challenging the order dismissing the petitioners application to discharge them from the charges, the present Criminal Revision Case has been filed.

2.The petitioners are arrayed as A4 and A5 in S.C.No.27 of 2014, on the file of the III Additional Sessions Judge, Tirunelveli. Earlier, a crime has been registered by the respondent police against three persons namely, Mariraj, Kalidoss and M. Murugan. Crime No.226 of 2011, for the offence under Sections 294 (b), 324, 323, 307 and 302 IPC. The above complaint has been registered on the ground that, the above said accused are



brothers and there was a wordy quarrel in a temple festival between the accused and the deceased and it was later settled by the village elders. Subsequently, due to the above motive on 25.07.2011, while one injured witness and the deceased were sitting in their house of the defacto complainant all the three accused came with weapon and attacked the deceased in which the defacto complainant and one Muthukumar suffered injuries and the deceased succumbed to the injuries on the way to the hospital.

3. After registering the complaint, the Inspector of Police, who was in charge of Kadayam Police Station, commenced investigation. During the course of investigation, the Inspector of Police recorded the statement of witnesses under Section 161 Cr.P.C. In the meantime, the father of the deceased, one Jeganathan filed a petition before the Superintendent of Police, Dindigul District stating that the Inspector of Police did not conduct investigation properly and he has not even recorded the statement of injured witnesses who was admitted in the hospital. Considering the petition filed by the father of the deceased, the Superintendent of Police, Tirunelveli District directed the Deputy Superintendent of Police, Tenkasi to conduct reinvestigation of the above said crime. Thereafter, the Deputy Superintendent of Police conducted reinvestigation and recorded the statement of witnesses afresh under Section 161 Cr.P.C and also recorded the statements of witnesses under Section 164 Cr.P.C before the Judicial Magistrate, Cheranmahadevi and after completion of investigation, he filed a final report against nine accused wherein the petitioners were arrayed as A4 and A5 and the petitioners were charged for the offence under Sections 147, 148, 149, 342, 294(b), 324, 323, 109, 307 and 302 IPC. Thereafter, the petitioners filed a petition to discharge them from the above charges contending that already the Inspector of Police has completed the investigation and recorded the statement of witnesses wherein all the witnesses stated that only three persons were involved in the crime. Thereafter, as per the direction issued by the Superintendent of Police, Tirunelveli District, the Deputy Superintendent of Police, Tenkasi conducted reinvestigation once again and recorded the statement of witnesses and filed final report implicating nine accused and also managed to record the statements before the Judicial Magistrate under Section 164 Cr.P.C. According to the petitioners, the Superintendent of Police has no power to order reinvestigation in the absence of any allegation of bias or prejudice against the Investigating Officer and the change of investigation by the Superintendent of Police is not warranted, already all the witnesses were given statement under Section 161 Cr.P.C implicating only three accused. But in the reinvestigation the very same witnesses have contradicted their previous statements and implicated six more accused including the petitioners.

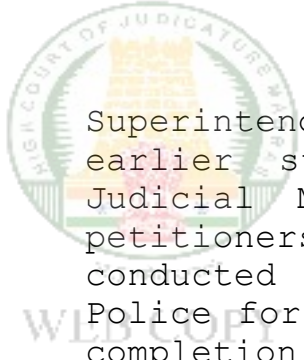


4. Apart from that the Superintendent of Police has no power to order reinvestigation. If at all, the investigation agency wants to conduct further investigation, they have to file necessary application before the concerned Magistrate under Section 173(8) seeking permission for further investigation. Hence, the order passed by the Superintendent of Police, Tirunelveli District for reinvestigation itself is void ab initio and therefore, the consequential investigation conducted by the respondent police is also not valid in the eye of law. In the above circumstances, the petitioners sought to discharge them from the charges.

5. The above discharge petition has been contested by the respondent police stating that the Superintendent of Police, Tirunelveli District only ordered a further investigation by the Deputy Superintendent of Police and the witnesses have also given statements under Section 164 Cr.P.C before the Judicial Magistrate, and all the witnesses have clearly stated about the involvement of these petitioners and others and there was no contradiction in the statements given by the witnesses under Section 161(3) Cr.P.C and the statements given before the Judicial Magistrate under Section 164 Cr.P.C. From their statements, a prima facie case is made out against the petitioners and hence a final report has been filed by the Deputy Superintendent of Police.

6. Considering the rival contentions, the Court below dismissed the application filed by the petitioners holding that the earlier investigation was not conducted properly by the Inspector of Police, hence, the Superintendent of Police directed the Deputy Superintendent of Police to further investigate the case and file a final report. Based on the same, the Deputy Superintendent of Police conducted investigation and filed final report on 18.07.2012. As the re-investigation was conducted before filing a final report, there is no necessity to seek permission under section 173(8) Cr.P.C from the Court. Apart from that the statement of witnesses given under Section 161 Cr.P.C as well as under Section 164 Cr.P.C clearly implicate these petitioners and there is prima facie case made out against them to proceed with. Now, challenging the above said order, the petitioners have filed the present revision before this Court.

7. Learned Senior Counsel appearing for the petitioners would contend that immediately after the occurrence one of the injured witness has given a complaint clearly implicating three accused with specific overt-act for each of the accused. Even while he was admitted in the hospital he has stated only three persons attacked them and in the first investigation, all the witnesses have given statement under Section 161 Cr.PC stating that only three accused have attacked them with weapon. Thereafter, during reinvestigation conducted by the Deputy



Superintendent of Police, the witnesses have contradicted their earlier statement and given an improved version before the Judicial Magistrate under Section 164 Cr.P.C implicating the petitioners and others. The above reinvestigation has been conducted based on the order passed by the Superintendent of Police for which the Superintendent of Police has no power. After completion of the earlier investigation, if at all, the respondent police wants to conduct any further investigation, he should necessarily approach the Judicial Magistrate under Section 173 (8) Cr.P.C and sought permission from the Judicial Magistrate. But in the instant case, after the investigation has completed by the Inspector of Police, the Superintendent of Police on his own ordered reinvestigation and hence, the very order itself is illegal and without jurisdiction and the investigation conducted based on the above said order is also void ab initio and on that ground alone, the petitioners are entitled to discharge from the charges.

8.The learned Senior Counsel would further contend that from the perusal of the statements given by the witnesses in the reinvestigation it reveals that the witnesses have improved their version and implicated six other accused which itself prima facie shows as a false implication and the entire reinvestigation is nothing but total abuse of process of law. The Court below without considering the case in proper perspective dismissed the application which is liable to be set aside.

9.Per contra, learned Additional Public Prosecutor appearing for the respondent would contend that since the Inspector of Police who has conducted investigation failed to record the statements of important witnesses including the injured witnesses, the defacto complainant filed a petition before the Superintendent of Police, Tirunelveli District complaining about the improper investigation and considering the grievance expressed by the defacto complainant, the Superintendent of Police, Tirunelveli District, ordered further investigation directing the Deputy Superintendent of Police, Tenkasi to conduct further investigation. Based on the said direction, the Deputy Superintendent of Police conducted further investigation and collected all the relevant documents and also examined witnesses in continuation of previous investigation and the statements of the witnesses were also recorded by the Judicial Magistrate under Section 164 Cr.P.C and the statement of witnesses clearly revealed the overt-act of the petitioners and as the materials available on record prima facie make out a case against the petitioners, the Deputy Superintendent of Police, filed final report implicating the petitioners in the case. He would further contend that the investigation conducted by the Deputy Superintendent of Police is only a continuation of the earlier investigation and it is not a de nova investigation and no permission is required from the Judicial Magistrate under Section 173 (8) Cr.P.C. The Court below



considering the entire materials available on record has rightly dismissed the application and there is no illegality or irregularity in the order passed by the Court below.

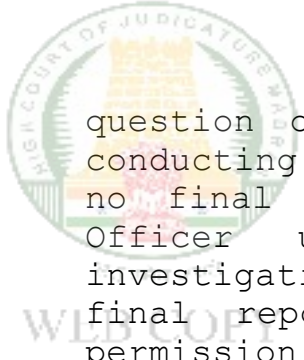
10. I have considered the rival submissions made on either side and perused the entire materials available on record.

11. The first and foremost contention of the learned Senior Counsel appearing for the petitioners is that once the Investigating Officer conducted investigation and completed the investigation, the Superintendent of Police has no power to order reinvestigation and hence, the subsequent investigation conducted by the Deputy Superintendent of Police is void and based on that investigation, no cognizance can be taken by the Judicial Magistrate. But the perusal of the records it could be seen that the Inspector of Police who was in charge of Kadayam circle, earlier conducted investigation and also recorded the statement of some witnesses. Not being satisfied with the investigation conducted by the Inspector of Police, the defacto complainant, the father of the deceased sent a petition to the Superintendent of Police, Tirunelveli District and considering the above complaint, the Superintendent of Police passed the following order:

"You are instructed to conduct re-investigation on Kadayam P.S.Cr.No.226/11 under Section 294(b), 323, 324, 307, 302 IPC and send your investigation findings within a weeks time."

Pursuant to the said order, the Deputy Superintendent of Police, Tenkasi Sub Division, took up investigation and examined the witnesses and recorded the statement of witnesses. The witness also given statement before the Judicial Magistrate under Section 164 Cr.P.C. Based on the above investigation, the Deputy Superintendent of Police filed a final report adding six more accused including the petitioners herein. Even though the order passed by the Superintendent of Police instructing the Deputy Superintendent of Police to conduct reinvestigation, it is only a further investigation, the Deputy Superintendent of Police has continued the investigation and filed a final report, the Superintendent of Police, Tirunelveli District also filed an affidavit to that effect.

12. Learned Senior Counsel appearing for the petitioners would contend that once the investigation is completed by earlier Investigating Officer, further investigation or reinvestigation is not permissible under law. But in the instant case, as stated earlier, it is not a reinvestigation, pending the earlier investigation based on the representation made by the defacto complainant, the Superintendent of Police only directed the Deputy Superintendent of Police to conduct further investigation and the Deputy Superintendent of Police also continued the earlier investigation filed a final report under Section 173 Cr.P.C. The

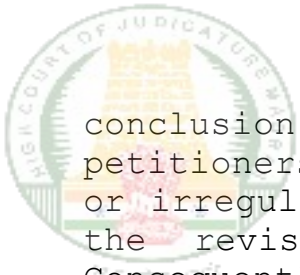


question of seeking permission under Section 173(8) Cr.P.C for conducting further investigation does not arise in this case, as no final report has been filed by the earlier Investigating Officer under Section 173 Cr.P.C and after conducting investigation, the Deputy Superintendent of Police only filed the final report for which the respondent need not obtain any permission from the Judicial Magistrate. The law is well settled on this aspect that the permission from the Judicial Magistrate for further investigation is necessary under Section 173 (8) Cr.P.C only after filing a final report under Section 173 (2) Cr.P.C.

13.Only in view of the complaint given by the defacto complaint alleging improper investigation, a further investigation was ordered by the Superintendent of Police. It is well settled law that a fair investigation is also part of right under Article 21 of the Constitution. The Hon'ble Supreme Court in Hema Vs.State through the Inspector of Police, Madras reported in 2013 (10) SCC 192 has held as follows:-

It is settled law that not only fair trial, but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Accordingly, investigation must be fair, transparent and judicious and it is the immediate requirement of rule of law. As observed by this Court in Babubhai vs. State of Gujarat and Others, 2010 (12) SCC 254, the Investigating Officer cannot be permitted to conduct an investigation in a tainted and biased manner. It was further observed that where non-interference of the Court would ultimately result in failure of justice, the Court must interfere.

14.The next contention of the learned Senior Counsel is that there are lot of contradictions in the statement of witnesses, during the investigation conducted by the Inspector of Police all the witnesses implicated only three accused, but during the further investigation conducted by the Deputy Superintendent of Police, the same witnesses have implicated six more accused including the petitioners and hence, it is only an after thought, and the Deputy Superintendent of Police has purposely implicated all the new accused, this contention cannot be considered at this stage. It is well settled that at the time of framing of charge, the Court should consider whether any prima facie case is made out against the petitioners to proceed further with the case. In the instant case, from the perusal of the records, it could be seen that all the witnesses have clearly implicated the petitioners and other accused and they have also given a statement before the Judicial Magistrate under Section 164 Cr.P.C. In the above circumstances, a prima facie case is made out against the petitioners to proceed further, the trial Court elaborately considered the entire materials and come to a



conclusion that there is prima facie case made out against the petitioners and dismissed the petitions, and I find no illegality or irregularity in the order passed by the Court below and hence, the revision fails and the same is accordingly dismissed. Consequently, M.P(MD)No.1 of 2015 is closed.

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Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1.The Deputy Superintendent of Police,
Tenkasi Division, Kadayam Police Station),
Tirunelveli District.
- 2.The III Additional Sessions Judge,
Tirunelveli, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.Prabhu, Advocate SR.No. 79526

Order made in
Cr1.R.C.(MD) No.487 of 2015
and
M.P(MD)No.1 of 2015
18.09.2017

sms
JM/MR KKR/SAR 3/26.09.2017/7P/5C