

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2018

Pronounced on : 02.08.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.129 of 2018
and
Crl.M.P.No.943 of 2018

V.Seetharaman ... Petitioner/Accused

Vs.

1.State Represented by
Inspector of Police,
CBCID Metro Wing,
Chennai.

... Respondent/Complainant

2.Jeera Begum

... Defacto Complainant

Prayer: Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., against the order dated 19.10.2016 passed in CBCID Crime No.1 of 2012, on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondents : Mr.G.Harihara Arun Soma Sankar (for R1)
Government Advocate (Crl.Side)

Mr.S.Sathia Chandran (for R2)

O R D E R

This present Criminal Revision Petition has been filed seeking to set aside the order dated 19.10.2016 passed by the learned XIth Metropolitan Magistrate, Saidapet, as against the Final Report in Crime No.1 of 2012 filed by the 1st respondent.

2.The brief facts of the case is that on 24.07.2010, based on a complaint of one Jainulabdeen, a case was registered at MGR Nagar Police Station in Crime No.742 of 2010 under Section 380 of I.P.C. and after investigation a final report was filed as against an accused namely Sabura before the learned XXIIIrd Metropolitan Magistrate, Saidapet, Chennai on 24.03.2011. Jeera

Begum, who happens to be mother of the accused sabura, made certain allegations as against the investigation officer in the case and approached this Court. Subsequently, this Court in W.P.No.6311 of 2011, by order dated 23.12.2011 has passed an order directing the 1st respondent to register the complaint of said Jeera Begum.

3.The learned counsel for the petitioner argued that the order passed by the learned XIth Metropolitan Magistrate, Saidapet, is liable to be set aside on the ground of want of jurisdiction, as it is clear from the order of the learned Chief Metropolitan Magistrate dated 05.08.2016 withdrawing all cases of CBCID Metro Wing from the file of the learned XIth Metropolitan Magistrate, Saidapet. According to him, it is not even remotely relevant as to which Court the case is transferred to. All that matters is whether the learned Chief Metropolitan Magistrate is within his powers to pass the order dated 05.08.2016 under Sections 19(3) and 410 of Code of Criminal Procedure, 1973. The act of the learned XIth Metropolitan Magistrate, Saidapet to continue the conduct of proceedings in violation of and in utter disobedience of the order of learned Chief Metropolitan Magistrate dated 5.8.2016 amounts to contempt and as such there cannot be any excuse or protection to either the Magistrate or the order passed by him without jurisdiction. The material circumstances in the subject case show causes that the learned XIth Metropolitan Magistrate, Saidapet is motivated to favour the accused in C.C.No.1024 of 2011.

4.The learned Government Advocate (Criminal Side) contended that pursuant to the order of the learned XIth Metropolitan Magistrate, Saidapet, dated 19.10.2016, the subject case is presently pending further investigation on the file of the Inspector of Police, Organised Crime Unit-II, Crime Branch CID, Chennai and that the jurisdiction Court for Organised Crime Unit-II is XIth Metropolitan Magistrate, Saidapet and therefore, the case does not fall within the ambit of the order of the learned Chief Metropolitan Magistrate dated 05.08.2016 in ROC.No.1698/2016/D. Regardless of the correctness of the Final Report filed by the then Investigation Officer, the further Investigation being conducted by the present Investigation Officer is progressing. He has also pointed out that pursuant to the impugned order, the learned XIth Metropolitan Magistrate, Saidapet has also issued oral instruction to the Investigation Officer to file further investigation report and also to arrest and produce the petitioner.

5.The learned counsel for the 2nd respondent vehemently argued that pursuant to the impugned order, the respondent police have not filed any report till today and their lethargy is clear from the fact that the learned XIth Metropolitan

Magistrate, Saidapet has pulled up the present Investigation Officer and have instructed her in open Court to arrest the petitioner and to conclude investigation and file a positive final report at the earliest. He also vehemently contested that the daughter of the defacto complainant is accused in C.C.No.1024 of 2011 and she is facing trial for about six years now and that the case against her was dropped as "the privilege of benefit of doubt stands on her part with the offence" and even the said report was rejected vide the impugned order directing further investigation in C.C.No.1024 of 2011 apart from the subject case in Crime Branch CID Metro Wing Crime No.1 of 2012. Therefore, any procedural lapse on the part of the learned Magistrate may be condoned under Section 462 of Code of Criminal Procedure, 1973.

6.The learned XIth Metropolitan Magistrate, Saidapet submitted his report before this Court stating that he had some confusion on the order of the learned Chief Metropolitan Magistrate dated 05.08.2016 and that he has sought clarification on the same. In course of awaiting clarification on 29.11.2016 the learned Chief Metropolitan Magistrate has reiterated the order dated 05.08.2016 and thereafter he has not passed any order in the case.

7.This Court has considered the arguments of the parties and also the affidavit filed by the learned Magistrate. I have perused the records of the trial Court. The Special Court for Exclusive Trial of CCB cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Egmore at Allikulam Complex was established and inaugurated on 05.08.2016 and 08.08.2016 respectfully. The consequential transfer of cases was effected by the order of the learned Chief Metropolitan Magistrate, Chennai invoking his powers under Section 19(3) and 410 of Code of Criminal Procedure, 1973, on the same day. Section 19 of Code of Criminal Procedure, 1973 is as follows:

"19.Subordination of Metropolitan Magistrates

(1) The Chief Metropolitan Magistrate and every Additional Chief Metropolitan Magistrate shall be subordinate to the Sessions Judge, and every other Metropolitan Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Metropolitan Magistrate.

(2) The High Court may, for the purposes of this Code, define the extent of the subordination if any, of the Additional Chief Metropolitan Magistrates to the Chief Metropolitan Magistrate.

(3) The Chief Metropolitan Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Metropolitan Magistrates and as to

the allocation of business to an Additional Chief Metropolitan Magistrate."

8. Section 410 of Code of Criminal Procedure, 1973 is as follows:

410. Withdrawal of cases by Judicial Magistrates:

(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under sub-section (2) of section 192 to any other Magistrate and may require into or try such cases himself."

9. By virtue of Section 19 of Code of Criminal Procedure, 1973, it is clear that all the learned Metropolitan Magistrates are Subordinates of the respective Chief Metropolitan Magistrate and by virtue of Sections 19(3) and 410 of Code of Criminal Procedure, 1973, it cannot be disputed that the learned Chief Metropolitan Magistrate is well empowered to cause withdrawal of case(s) from any Metropolitan Magistrate Subordinate to him and also to transfer the same to the file of any other Metropolitan Magistrate, Subordinate to him. The order passed by the learned Chief Metropolitan Magistrate, Chennai on 05.08.2016 is as follows:

"ORDER:

In compliance to the direction of the Hon'ble High Court as referred in 7th reference cited above and in exercise of powers u/s 19(3) and sec.410 of Cr.P.C. 1973 the cases pertaining to CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases, pending on the file of Metropolitan Magistrates Courts are hereby withdrawn and the same shall be transferred to the newly constituted court in the cadre of Civil Judge (Senior Division), Egmore at Allikulam Complex, Chennai-3 which is to be inaugurated and commenced from 08.08.2016.

All the Metropolitan Magistrates are directed to consign the case bundles to the transferee court (New Court) after proper indexing of the case bundles.

-sd/-J.Chandran,
CHIEF METROPOLITAN MAGISTRATE,
EGMORE AT ALLIKULAM COMPLEX,
CHENNAI - 03."

10.The order of the learned Chief Metropolitan Magistrate dated 5.8.2016 firstly effects withdrawal of CBCID Metro cases including the subject case in CBCID Metro Crime No.1 of 2012 from the file of the learned XIth Metropolitan Magistrate Court, Saidapet. It is precisely this reason the learned XIth Metropolitan Magistrate Court, Saidapet has got no jurisdiction or authority to continue hearing the subject case after 5.8.2016 and secondly, it is only the transferee Special Court, which has got exclusive jurisdiction to hear the subject case from 8.8.2016. Even if the learned Chief Metropolitan Magistrate decides to repost the subject case before the learned XIth Metropolitan Magistrate Court, Saidapet, it can be done only vide a specific order separately, which is not the present case.

11.Moreover, it is an admitted fact that the learned XIth Metropolitan Magistrate Court, Saidapet, in open Court, during the hearing on the trial in C.C.No.1024 of 2011, has instructed the investigation officer to arrest the petitioner and to file final report as against the petitioner in Crime Branch CID Metro Wing Crime No.1 of 2012, clearly shows his personal motives to retain the case despite lack of jurisdiction. The learned Magistrate has intentionally omitted to transfer the subject case files to the newly constituted Special Court.

12.The explanation of the learned XIth Metropolitan Magistrates Court, Saidapet, was called for under highly disturbing circumstances. This Court has passed an order of stay in the present Revision Petition on 25.01.2018 and thereafter the said order was intimated to the learned Magistrate Court by the petitioner's counsel. It is not disputed that the learned counsel produced the order copy along with his memo of appearance to the learned Magistrate when the case in C.C.No.1024 of 2011 was called. The learned counsel filed an affidavit before this Court that the learned Magistrate has dishonourably refused the memo of appearance and return back the order copy to him. On perusal of the explanation of the learned Magistrate and also the records, it could be clearly seen that there is no note in the records of CBCID Metro Crime No.1 of 2012 indicating the memo of appearance of the petitioner's counsel or the order copy produced by him. Moreover, the learned Magistrate has made note of the stay order in C.C.No.1024 of 2011 as if the stay order was intimated by the SHO and as if the stay order was pertaining to C.C.No.1024 of 2011.

13.Furthermore, the learned Magistrate seeking to be pardoned under Section 462 of Code of Criminal Procedure, 1973 is no vail to his motivated exercise of powers. Section 462 of Code of Criminal Procedure, 1973 as follows:

“462.Proceedings in wrong place.

No finding, sentence or order of any Criminal

Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

14.It is clear the above provision is only applicable for a bonafide error of territorial jurisdiction and not for wilful disobedience of the orders passed by the learned Chief Metropolitan Magistrate under Section 19(3) and Section 410 of Code of Criminal Procedure. Needless to say, that the disobedience to the directions of law and wilful omission on his part to obey the order of the learned Chief Metropolitan Magistrate cannot, by any stretch of imagination, fall within the ambit of his official capacity.

15.As pointed out by the learned counsel for the petitioner, the decision in Krishnan v. Krishnaveni reported in (1997) 4 SCC 241, the Hon'ble Apex Court has held that

"... the revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice."

The Consequential action pursuant to the impugned order is also liable to be considered by this Court and appropriate order is required to be passed to nullify such action.

16.The Hon'ble Apex Court in Dwarka Prasad Agarwal (D) By Lrs. and Another v. B.D.Agarwal and Others 2003 (6) SCC 230, held that

"It is now well-settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such."

17.The primary issue that arose for consideration whether on 19.10.2016, the learned XIth Metropolitan Magistrate, Saidapet has got jurisdiction to pass the impugned order, has to be necessarily be answered in the negative and the impugned order is liable to be set aside on this ground alone. It is pertinent to note the transfer of the subject case to a new officer and ongoing further investigation pursuant to the impugned order is also wholly illegal and without jurisdiction. Therefore, this Court is constrained to invoke the inherent powers under Section 482 of Code of Criminal Procedure to quash the further investigation and all such consequential action.

18.Hence, this Criminal Revision Case is allowed and the order dated 19.10.2016 passed in CBCID Crime No.1 of 2012, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The XI Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The Inspector of Police,
CBCID Metro Wing, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

Copy to
The Section Officer,
Criminal Section, High Court, Madras.

+4cc to Mr.S.Haja Mohideen Gisthi, Advocate Sr.52768, 53000

Crl.R.C.No.129 of 2018
and
Crl.M.P.No.943 of 2018

gj II[col]
srg 24/01/2019