

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.21331 of 2017

and

CRL.M.P.No.12558 of 2017

M.Sivanantham

... Petitioner/Accused 1

Vs.

1.S.Bharathi

Sub Inspector of Police,
J-5, Police Station, Sasthrinagar,
Chennai.

2.State Represented by

The Inspector of Police,
J-5, Police Station,
Sasthri Nagar,
Chennai.

(Crime No.2202 of 2017)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in C.C.No.8029 of 2017 on the file of the IX Metropolitan Magistrate, Saidapet and quash the same as far as the petitioner is concerned. (Amended as per order in Crl.MP.No.16391/2018 in Crl.OP.No. 21331/2017 dated 04.12.2018).

For Petitioner : Mr. P.K.Ganesh

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This Criminal Original Petition was originally filed seeking to quash the FIR in Crime No.2202 of 2017. During the pendency of this petition, the respondent police had filed a final report and therefore, the petitioner had sought for amendment of the prayer to challenge the final report filed by the respondent police and the amendment is also allowed by this Court.

2. The final report has been filed by the respondent police for an offence under Sections 143, 188 and 353 of IPC.

3. The learned counsel for the petitioner primarily raised two issues before this Court. The first issue that was raised by the learned counsel for the petitioner is that the informant and the investigator in this case are the same person and

therefore, the entire investigation is vitiated and the final report is liable to be quashed on this ground alone. In order to substantiate his submission, the learned counsel for the petitioner relied upon the recent Judgment of the Hon'ble Supreme Court reported in 2018 SCC Online SC 974 [Mohan Lal versus State of Punjab].

4. The second issue that was raised by the learned counsel for the petitioner is that the respondent police could not have filed a final report under Section 188 of IPC and it has been held by the reported Judgement of this Court in 2018 2 LW 606 [Jeevanandham and others Vs. State Rep. by Inspector of Police and another], that a final report under Section 188 of IPC cannot be taken cognizance on a police report filed under Section 173 (2) Cr.P.C and it can be taken cognizance only based on the complaint given by the concerned public servant, in the light of Section 195 of the Code. The learned counsel would further submit that the allegations made in the final report does not attract the provisions of Section 353 of IPC. Since, neither a criminal force nor an assault as contemplated under Section 350 and 351 of IPC has been made out. If these two provisions are not made out, automatically, the offence under Section 143 of IPC will also fall.

5. This Criminal Original Petition has to be allowed on the very first issue that has been raised by the learned counsel for the petitioner. It is seen that the complaint, investigation and also the final report has been filed by the very same police officer. Therefore, the entire investigation stands vitiated and the facts of this case is squarely covered by the Judgment of the Hon'ble Supreme Court referred supra.

6. In the result, the proceedings in C.C.No.8029 of 2017 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

rp/vsa

To

1.The IX Metropolitan Magistrate,
Saidapet, Chennai

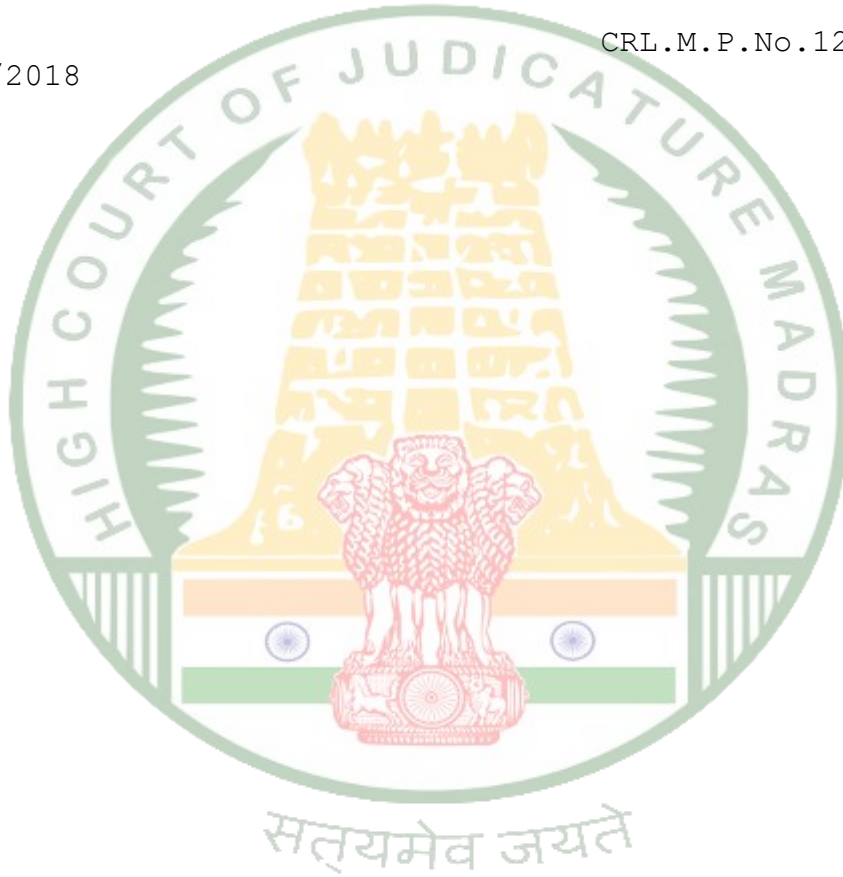
2. The Inspector of Police,
J-5, Police Station,
Sasthri Nagar,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.K.Ganesh, Advocate, S.R.No.82794

CRL.O.P.No.21331 of 2017
and
CRL.M.P.No.12558 of 2017

rrs 20/12/2018



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