



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2018

Delivered on : 16.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.5172 of 2013

and

M.P.(MD)No.1 of 2013

Karunakaran

... Petitioner

Vs.

1. State Rep. by
The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.

2. The Deputy Superintendent of Police,
Paramakudi,
Ramanathapuram District.

3. Balakrishnan ... Respondents

[R3 impleaded as per the order of this Court, dated 06.02.2018,
made in M.P.(MD)No.2/2013 in Crl.O.P.(MD)No.5172/2013]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 24.08.2012, passed in Cr.M.P.No.5028 of 2012, on the file of the Judicial Magistrate Court, Paramakudi, and set aside the same.

For Petitioner	:	Mr.S.Ramasamy
For R1 & R2	:	Mr.A.Robinson Government Advocate (Criminal side)
For R3	:	Mr.T.Lenin Kumar

ORDER

The petitioner herein is the accused in Crime No.104 of 2011 on the file of the Inspector of Police, Parthibanoor Police Station, Ramanathapuram District. This Criminal Original Petition has been filed by the petitioner, in which, he is seeking the

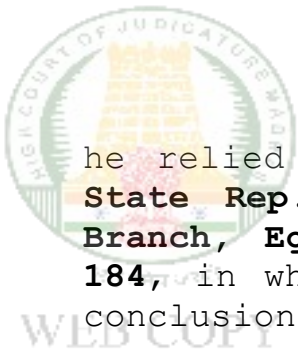


relief to set aside the order, dated 24.08.2012, passed by the learned Judicial Magistrate, Paramakudi, in Cr.M.P.No.5028 of 2012.

2.The case of the prosecution is that the third respondent - Balakrishnan filed a private complaint before the learned Judicial Magistrate, Paramakudi, against the petitioner and three others in Cr.M.P.No.3074 of 2011 and the same was referred to the first respondent police for investigation under Section 156(3) Cr.P.C. After receiving the order passed by the learned Judicial Magistrate, a case has been registered by the first respondent in Crime No.104 of 2011 for the offences punishable under Sections 420, 468, 471 and 474 IPC, against the petitioner and three others. In the complaint, it is alleged by the third respondent that the property in S.No.241/11, measuring to an extent of 1 acre and 49 cents, was initially purchased by his grandfather - Vengu Thevar on 21.06.1956 from one Mahalingam, through a registered sale deed. After the demise of his grandfather, the said property was in possession and enjoyment of one Palusamy, Selvam, Ponnusamy, Samayamuthu, Ramayee and Yosthai, who are all the legal heirs of Vengu Thevar. In the abovesaid property, the third respondent herein had purchased 60 cents from the abovesaid Ponnusamy and Samayamuthu through an unregistered sale deed, dated 29.05.1988 and after enquiry, he came to know that the abovesaid sale deed was fabricated by the petitioner by forging the signatures in the sale deed in order to grab the land.

3.After completing investigation, the first respondent police filed a final report, closing the case as mistake of fact. Aggrieved over the same, the third respondent herein filed a protest petition and after considering the same, on 24.08.2012, the learned Judicial Magistrate, Paramakudi, passed an order, directing the Assistant Superintendent of Police, Paramakudi, for re-investigation, under Section 173(8) Cr.P.C. Challenging the same, the petitioner herein has filed the present Criminal Original Petition, for setting aside the order dated 24.08.2012, passed in Cr.M.P.No.5028 of 2012. With regard to the said order dated 24.08.2012, the learned Judicial Magistrate on 25.09.2012 sent a letter to the Assistant Superintendent of Police, Paramakudi, with a direction to re-investigate the dispute, which was mentioned in the complaint filed by the third respondent.

4.Now, in order to substantiate the claim made by the petitioner, the learned counsel appearing for the petitioner submitted as in a complaint case, the learned Judicial Magistrate had not vested with the power for ordering re-investigation. Moreover, only on the request made by the Investigation Officer, the learned Magistrate can pass an order for further investigation. Now, without following the procedure laid down in the Cr.P.C., the learned Judicial Magistrate directed the second respondent for re-investigation, which is against law. Further,



he relied on the judgment of this Court in **K.V.Balamurugan Vs. State Rep. By the Inspector of Police, XI Team Central Crime Branch, Egmore, Chennai and another** reported in **2003 MLJ (Cr1) 184**, in which, this Court considered this aspect and came to the conclusion as follows:

'15. There is no power, expressly or impliedly conferred under the Code, on a Magistrate in a private complaint after ordering investigation under Section 156(3) and receipt of final report to call upon the police to change their opinion so as to accord with his view when they have sent a report that the case is closed as civil in nature. The investigation under the Code takes in several aspects and stages ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial and the submission of either a charge sheet or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, is the final step in the investigation insofar as private complaint is concerned, and that final step is to be taken only by the police and by no other authority. Hence, the impugned order of reinvestigation under Section 173(8) Cr1.P.C. passed by the learned Magistrate is unsustainable in law.'

5. No doubt, the above facts and circumstances, which were mentioned in the above decision is squarely applicable to the case on hand. In this case also, the final report has been filed by the first respondent after the case was registered as per the order passed by the learned Judicial Magistrate. Accordingly, in the instant case, the impugned order dated 24.08.2012, is liable to be set aside and accordingly, it is set aside.

6. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed. However, it is open to the learned Judicial Magistrate, Paramakudi, to proceed with the matter on the basis of the original complaint, on merits and in accordance with law. I do



not want to mention anything about the merits of the case, as the same is within the domain of the learned Judicial Magistrate.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Paramakudi.
2. The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.
3. The Deputy Superintendent of Police,
Paramakudi,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.S.Ramasamy , Advocate in SR No. 55903
+ 1 cc TO Mr.T.Lenin Kumar , Advocate in SR No. 56051

smn2

AE/KK/SAR1/26.03.2018/4P/7C

order in
Crl.O.P. (MD) No.5172 of 2013
16.03.2018