IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2019

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.26043 of 2013
and
MP.Nos.1 of 2013

Saravanan ... Petitioner

Vs.

1. The Superintendent of Police,
   Dharmapuri.

2. The Inspector of Police,
   Dharmapuri Police Station,
   Dharmapuri.

3. The Inspector of Police,
   All Women Police Station,
   Pennagaram,
   Dharmapuri.

4. A.Subramani

5. S.Vijayalakshmi

6. Anuradha

7. Janani

8. Sahana

9.Shanthi ... Respondents.

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(Respondents 4 to 9 are impleaded as
per the order of this Hon'ble Court dated
03.10.2018 made in Crl.MP.No.11845 of 2018
in Crl.OP.No.26043 of 2013)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to setaside the order of the first respondent made in C.No.255/B/XIII/DPI/2013 dated 28.08.2013 by ordering reinvestigation in connection with Crime No.238 of 2012 pending on the file of the Inspector of Police, Dharmapuri (now

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transferred to the Inspector of Police, Pennagaram, Dharmapuri District.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.R.Surya Prakash,
Government Advocate (Crl.Side)
for R1 to R3

: Mr.N.Manoharan
for Mr.S.Vijayakumar for
R4 to R9

O R D E R

This petition has been filed by the defacto complainant to set aside the Order passed by the first respondent in C.No.255/SB/XIII/DPI/2013 dated 28.08.2013 by ordering re-investigation in connection with Crime No.238/12 pending on the file of the Inspector of Police, Dharmapuri (now transferred to the Inspector of Police, All Women Police Station, Pennagaram, Dharmapuri District.

2. The petitioner herein has filed a private complaint before the Judicial Magistrate No.1, Dharmapuri, stating that on 16.12.2011 at 1.00 p.m., an unidentified person came in a Bajaj Pulsar Motor Cycle and enquired about him with his grand mother viz. Tmt. Vallinayagam and also criminally intimidated her and the said fact was informed by the grand mother to him and hence, the accused persons are liable to be punished under Sections 193, 195, 195A, 211, 294(B), 323, 341, 347, 387, 389, 420, 477 and 506 (II) IPC. The learned Judicial Magistrate No.1, Dharmapuri, has forwarded the said complaint to the Inspector of Police, Dharmapuri under Section 156 (3) Cr.P.C. On receipt of the said complaint, the Inspector of Police, Dharmapuri, has registered a case in Crime No.238 of 2012 under Sections 193, 195, 195A, 211, 294(b), 323, 341, 347,387,389,420,477 and 506 (II) IPC on 11.02.2012 and investigated the matter and filed charge sheet against the petitioners herein stating that they are liable to be punished under Sections 147, 294(b), 211, 387, 389 and 506(ii) IPC.

3. Based on the said charge sheet, the learned Magistrate No.1, Dharmapuri, has taken the case on file in C.C.No.30 of 2012. Subsequently, the first accused gave a petition before the Superintendent of Police, Dharmapuri stating that the petitioner herein has filed a false complaint and the Inspector of Police, Dharmapuri, colluded with the petitioner herein and without proper investigation has hurriedly filed a charge sheet. Based on the said petition, the Superintendent of

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Police, Dharmapuri, has passed the impugned order on 28.08.2013 directing the Inspector of Police, Tmt.Lakshmi, AWPS, Pennagaram, to re-investigate the matter and file a report within 15 days. In pursuance of the said order, the said Tmt.Lakshmi, AWPS, Pennagaram, has re-investigated the matter and filed a final report stating that the allegations made in the complaint are all false. Also stated that on 16.12.2011, the second accused was in Singapore. The petitioner herein has filed the present petition to quash the said impugned order.

4. Mr.Umapathi, the learned counsel for the petitioner has submitted that as per Section 173 (8) (3) Cr.P.C, the Police is empowered for further investigation, but, the Superintendent of Police has ordered for re-investigation and the same is not permissible under law. He further submitted that even for further investigation, the Police ought to have obtained permission from the concerned Magistrate, but in this case, no such permission has been obtained and therefore, he prayed to set aside the impugned order passed by the Superintendent of Police, Dharmapuri. In support of the said contention, he relied upon the decision in Kishan Lal v. Dharmendra Bafna and Another (2009) 7 Supreme Court Cases 685.

5. Per Contra, Mr.N.Manoharan for Mr.S.Vijaya Kumar, learned counsel for the respondents 4 to 9 has submitted that even though in the impugned order passed by the Superintendent of Police, Dharmapuri, it is stated that re-investigation has to be done, virtually only further investigation was ordered and that is why after passing the impugned order, he has issued a memorandum dated 14.09.2013, in which, he has stated that only further investigation has been ordered. He further submitted that for filing additional reports, only a formal order has to be obtained from the Magistrate and merely because the second investigating officer has not obtained formal order from the concerned Magistrate, the Second final report will not vitiate. He further submitted that Section 173(8) does not specifically state that the police has to obtain permission from the Court for further investigation. He further submitted in Raman Lal Narang v. State (Delhi Administration) AIR 1979 SC 1791: (1979) 2 SCC 322: LNIND 1979 SC 715, the Hon'ble Supreme Court has held that it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light and therefore, merely because formal order did not obtain, the second final report is not vitiated. He further submitted that in the complaint filed before the Court, the petitioner has simply stated that on 16.12.2011 at 1.00 p.m., an unidentified person came in a motorcycle and enquired with his grand mother viz. Tmt.Vallinayagam and also criminally intimidated and subsequently, his grand mother had informed the said fact to him

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and except the aforesaid allegations, no other allegations made in the complaint. He further submitted that in the said complaint, the petitioner has not at all stated that the petitioners herein came to his house on 16.12.2011 and committed any offence. He further submitted that the second accused was in Singapore on the date of alleged crime and without investigating the matter properly, the Inspector of Police, Dharmapuri has colluded with the petitioner during investigation and filed a charge sheet, stating that the petitioners herein have committed offences. He further submitted that based on the said charge sheet, non-bailable warrants have been issued and the petitioners were subjected to harassment and hence, the first accused has submitted a petition before the Superintendent of Police, Dharmapuri. He further submitted that on considering the said petition, the Superintendent of Police, Dharmapuri, has ordered for further investigation. He further submitted that even though the word re-investigation is mentioned in the order, actually, further investigation was ordered. Therefore, the third respondent has conducted further investigation and filed a report stating that the allegations made in the complaint are totally false and also stated that the second accused was in Singapore at the relevant time. Therefore, he prayed to dismiss this petition.

6. The learned Government Advocate (Criminal Side) has adopted the arguments advanced by the learned counsel for the respondents 4 to 7.

7. In Kishan Lal v. Dharmendra Bafna and Another (2009) 7 cited supra, the Hon'ble Supreme Court in Paragraph Nos.15 and 16 has held as follows:

> " An Order of further investigation can be made at various stages including the stage of the trial, that is after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in Mithabhai Pashabhai Patel v. State of Gujarat in the following terms: (SCC pp.336-37, paras 12-13)
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> > "12. This Court while passing the order in exercise of its jurisdiction under Article 32 of the Constitution of India did not direct reinvestigation. This Court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not

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be insisted upon.

13. It is, however, beyond any cavil that ' further investigation ' and ' reinvestigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a ' State' to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat,J in Ramachandran V.R.Udhayakumar, opined as under: (SCC p.415, para 7).

'' 7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the Police has right to further investigate under sub-section(8), but not fresh investigation or reinvestigation"

We have referred to the aforementioned decision only because Mr Tulsi contends that in effect and substance the prayer of the appellant before the learned Magistrate was for reinvestigation but the learned Magistrate had directed further investigation by the investigating officer inadvertently."

16. The Investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different

angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. "

8. In Ram Lal Narang v. State (Delhi Administration), (supra) the Hon'ble Supreme Court in Paragraph Nos.20 and 21 has

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held as follows:

> "20. Anyone acquainted with the day today working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a

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> Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.
>
> 21.As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desi ed to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

From the aforesaid decisions, it is clear that Section 173(8) Cr.P.C empowers the police for further investigation. Though, the said provision does not expressly say that the investigating officer should get prior permission from the Magistrate for further investigation, in the interest of purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light. It is also clear that the Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and or otherwise unfair or is otherwise necessary in the ends of justice. It is also clear that the direction of a re-investigation is forbidden in law. In this case, admittedly, the third respondent has not obtained

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permission for further investigation from the concerned jurisdictional Magistrate. Therefore, this court is of the view that the impugned order passed by the first respondent is liable to be set aside and consequently, the second final report submitted by the third respondent also to be set aside.

9. In the result, this petition is allowed. The impugned order passed by the first respondent is set aside. Consequently, the second final report filed by the third respondent also set aside. It is made clear that it would not preclude the police for further investigation as provided under Sub-section 173(8) of Cr.P.C., after getting necessary permission from the concerned Judicial Magistrate. If the police decided to conduct further investigation, such investigation shall be monitored by the Superintendent of Police concerned. Consequently, connected miscellaneous petition is closed.

vv

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Superintendent of Police,
   Dharmapuri.

2. The Inspector of Police,
   Dharmapuri Police Station,
   Dharmapuri.

3. The Inspector of Police,
   All Women Police Station,
   Pennagaram,
   Dharmapuri..

4. The Public Prosecutor,
   High Court, Madras.

+3CCs to Mr.P.Kannan Kumar,Advocate, SR.No.8878

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