

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2019

PRONOUNCED ON : .09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1513 of 2012
and M.P.No.1 of 2012

Hemavathy

Petitioner

Vs.

1. P.Jayaraj

2. Chella Durai

3. G.C.Padmanaba Naidu

4. Radambal @ G.N.Radh

5. State represented by

The Inspector of Police,

Central Crime Branch-XVIII,

Egmore, Chennai - 600 008.

Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 01.11.2012 passed in
Crl.M.P.No.1582 of 2012 in Crime No.215 of 2008 on the file of
the Chief Metropolitan Magistrate Court, Egmore, Chennai - 600
008.

For Petitioner : Mr.C.Kanagaraj

For R1 : Mr.N.Deivanayagam

For R5 : Mrs.P.Kritika Kamal
Govt.Advocate (Crl.Side)

O R D E R

This petition has been filed seeking to set aside the order
dated 01.11.2012 passed in Crl.M.P.No.1582 of 2012 in Crime
No.215 of 2008 on the file of the Chief Metropolitan Magistrate
Court, Egmore, Chennai-600 008.

2. The facts of the case, in brief, are as under:

2.1 On the complaint lodged by Jayaraj, the Inspector of Police, Central Crime Branch-XVIII, registered a case in X Crime No.215 of 2008 for the offences under Sections 420, 465, 466, 467, 471 and 120-B IPC, against Chelladurai (A1), G.C.Padmanaba Naidu (A2), Hemavathy (A3) and Radambal (A4).

2.2 After completing the investigation, the police filed a final report before the Chief Judicial Magistrate, Chennai, closing the case as civil in nature. On notice, Jayaraj filed a protest petition in CrI.M.P.No.1582 of 2012 alleging that the police had not conducted the investigation properly.

2.3 After hearing Jayaraj, the learned Chief Metropolitan Magistrate, Chennai, by order dated 01.11.2012 in CrI.M.P.No.1582 of 2012, directed the police to reinvestigate the matter.

2.4 Challenging the aforesaid order, Hemavathy (A3), the proposed accused, has preferred the present revision.

3. Heard Mr.C.Kanagaraj, learned counsel for Hemavathy (A3), Mr.Nellaiyappan, learned counsel representing Mr.N.Deivanayagam, learned counsel on record for Jayaraj/de facto complainant and Mrs.P.Kritika Kamal, learned Govt.Advocate (CrI.Side) for R5/State.

4. The learned counsel for Hemavathy (A3) submitted that the police had conducted the investigation properly, by taking into consideration, the pendency of civil litigations viz., O.S.Nos.4522 of 2012, O.S.No.4584 of 2007 and C.M.A.No.42444 of 2007. He also submitted that the two powers of attorney viz., Document Nos.442 & 443 of 2006, which were the subject matter of the investigation in X Crime No.215 of 2008 have been cancelled. He further submitted that G.C.Padmanaba Naidu (A2) has died. In short, the learned counsel for Hemavathy (A3) tried to support the final opinion of the Investigating Officer. He placed strong reliance upon the judgment of the Full Bench of this Court in Chinnathambi @ Subramani Vs. State.

5. Per contra, the learned counsel for Jayaraj/de facto complainant and the learned Government Advocate (CrI.Side) for R5/State refuted the submissions made by the learned counsel for the petitioner.

6. This Court gave its anxious consideration to the rival submissions.

7. In the impugned order dated 01.11.2012 passed in CrI.M.P.No.1582 of 2012, the learned Magistrate has used the expression "reinvestigation" instead of "further investigation". When a closure report is not accepted by a Magistrate and investigation is ordered, it means further investigation.

8. This revision petition deserves to be dismissed on the following grounds:

(a) The proposed accused has no locus standi to challenge the directions for further investigation that has been ordered by the Magistrate on the protest petition filed by the de facto complainant;

(b) An order of further investigation passed on the protest petition is prior to the stage of cognizance and hence, Section 173 (8) Cr.P.C. will not apply;

(c) An order of further investigation passed by a Magistrate on the protest petition, can, at the most be construed as one issued under Section 156 (3) Cr.P.C., against which, a revision petition will not lie in the light of the judgment of this Court in Nathan Vs. Vaithinathan & Others².

9. In paragraph No.44 (ii), the Full Bench of this Court, in Chinnathambi @ Subramani (supra) has held as follows:

"(ii) An order of a Magistrate ordering further investigation on receiving a police report is a non judicial order."

When it is not a judicial order, the same is not amenable to the revisional jurisdiction under Section 397 r/w 401 Cr.P.C.

In view of the aforesaid reasons, this criminal revision petition is dismissed. The Investigating Officer shall conduct a thorough investigation in X Crime No.215 of 2008 and if he finds that there was no criminality in the alleged transactions, it is open to him to reiterate the earlier opinion or inter alia file a charge sheet, as the case may be.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

nsd

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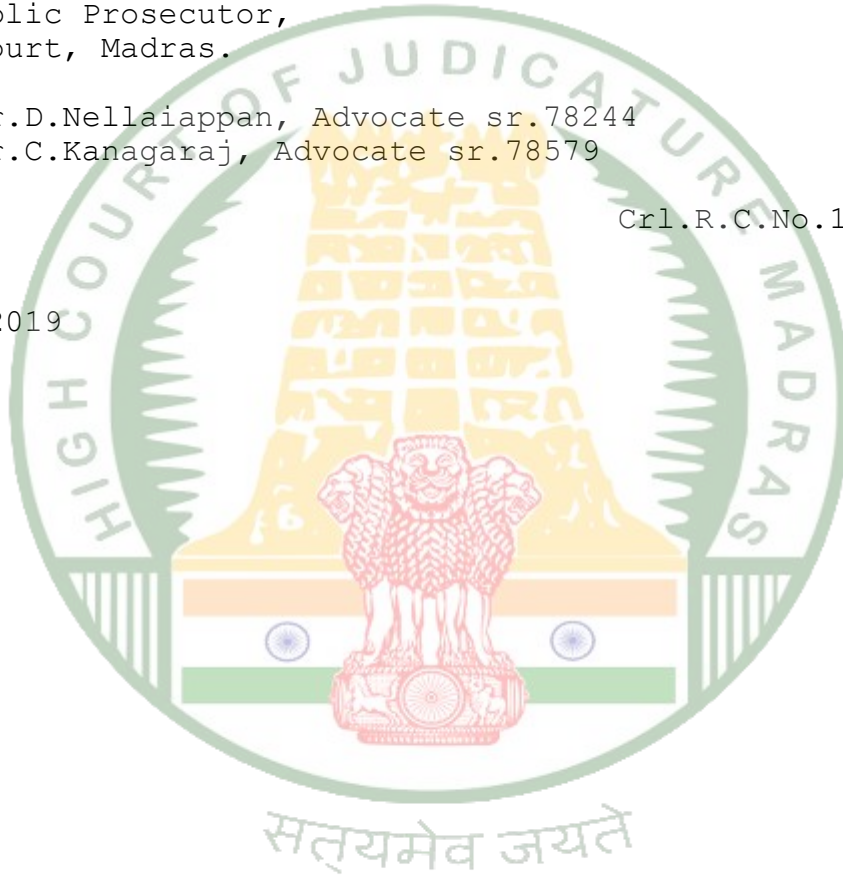
1. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
Central Crime Branch-XVIII,
Egmore, Chennai - 600 008.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Nellaiappan, Advocate sr.78244

+1cc to Mr.C.Kanagaraj, Advocate sr.78579

Cr1.R.C.No.1513 of 2012

ssd(co)
nr 24/10/2019



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