

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15197 of 2019

and

Crl.M.P.No.7456 of 2019

1.K.K.S.M.Thoulathkhan Baqavi @ Sheik Mohammed

2.S.Ameer Hamsaa

3.S.V.Raja

4.R.Yasar .. Petitioners/Accused 8 to 11

Vs.

State rep. by
The Inspector of Police,
Flower Bazaar Police Station,
Chennai District. .. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C.:

(a) to call for the records in C.C.No.1555 of 2018 pending on the file of the Metropolitan Magistrate VIII, George Town, Chennai, and quash the same.

(b) and grant such other equitable relief deemed fit and proper in the interest of justice and equity.

For Petitioners : Mr.Rajamohamed .A

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

O R D E R

This petition has been filed seeking to quash the proceedings pending in C.C.No.1555 of 2018.

2.The FIR was registered against the petitioner for an offence under Section 143 and 188 IPC and Section 174 (A) of the Railway Act, 1989. The Inspector of Police, who

registered the FIR also conducted the investigation and he has filed the final report before the Court below. The list of witnesses who have been examined by the investigating officer are all police officers belonging to the same Police Station. Ultimately a final report came to be filed against the petitioner for an offence under Sections 147 and 290 of IPC.

3.The learned counsel for the petitioner submitted that the entire Investigation is vitiated due to the fact that the complainant himself was the investigating officer and the persons who have been examined by the complainant are all police officers belonging to the same Police Station and the same officer also laid the final report. Therefore, the learned counsel submitted that there is absolutely no independent investigation that was conducted in this case. The learned counsel further submitted that the FIR was registered for an offence under Sections 147 and 188 of IPC. Only a complaint should have been filed by the authorized officer where the offence is shown registered under Section 188 of IPC. However an FIR was registered and the same was investigated and the final report has been filed and therefore the final report is vitiated as per the judgment of this Court in Jeevanandham and others v. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another reported in 2018 2 LW (Cri) 606.

4.The learned Additional Public Prosecutor submitted that there are sufficient materials to sustain the final report filed by the respondent police and the petitioner/s engaged in illegally forming themselves into an unlawful assembly and had conducted the protest without any permission and thereby had caused public disruption.

5.This Court has carefully considered the submissions made on either side and the materials available on record.

6.The fact that an FIR was registered under Section 188 of Cr.P.C. and the investigation was conducted thereon itself vitiate the entire investigation. The law has been settled in this regard by the judgment of this Court in Jeevanandham and others v. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another reported in 2018 2 LW (Cri) 606.

7.It is true that the Hon'ble Supreme Court in the judgment in Varinder Kumar v. State of Himachal Pradesh has clarified the position regarding the effect of its earlier judgment in Mohanlal v. State of Punjab to the effect that it will only have a prospective operation. However, the Hon'ble Supreme Court itself has stated that the cases shall be governed by the individual facts. Therefore, if the Court finds that the investigation is vitiated on the facts of the case, the Court can always interfere with the same in line with the ratio in Mohanlal v. State of Punjab.

8.In this case, the officer who had registered the FIR had also conducted the investigation and has taken the statements of the police officers of his own Police Station and thereafter has proceeded to file a final report also. By no stretch this can be called as a fair investigation and the fundamental principles of criminal law that the informer and the investigator must not be the same person will squarely apply in the present case.

9.In order to get over the bar of registering an FIR under Section 188 of Cr.P.C. and filing a final report, the respondent police thought it fit to file a final report for an offence under Sections 147 and 290 of IPC. Section 290 of IPC.

10.This Court is of the considered view that the entire investigation and the final report is an abuse of process of law and the same is unsustainable.

11.In the result, this Criminal Original Petition is disposed of and the proceedings in C.C.No.1555 of 2018 on the file of the learned Metropolitan Magistrate No.VIII, George Town, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Metropolitan Magistrate VIII,
George Town, Chennai.

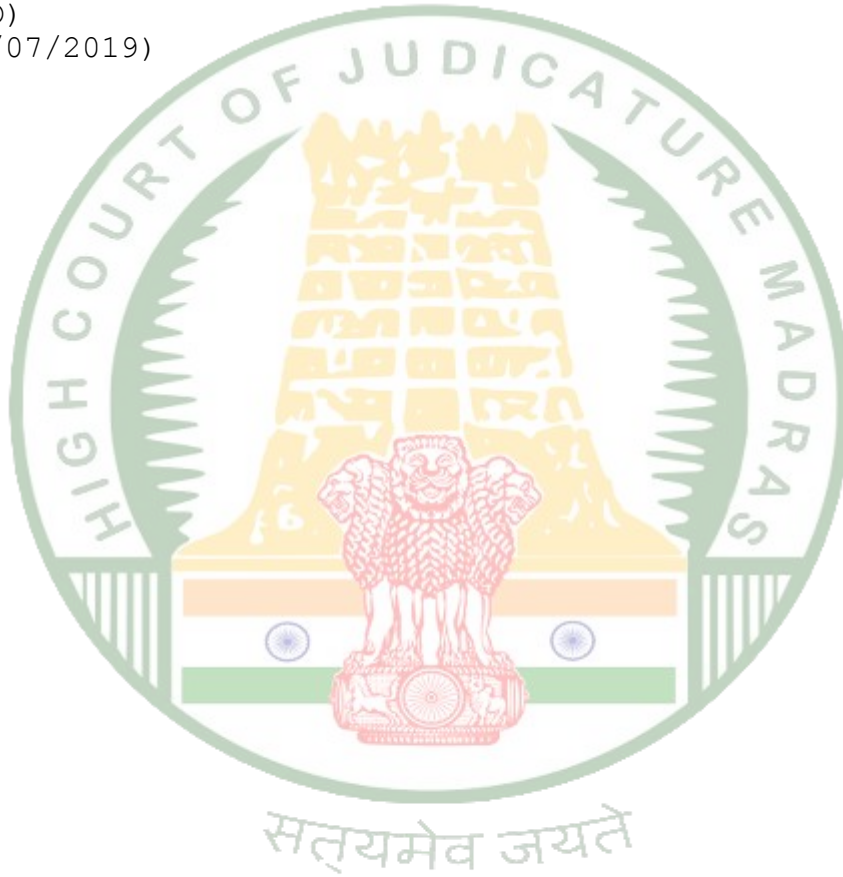
2.The Inspector of Police,
Flower Bazaar Police Station,
Chennai District.

3.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.Rajamohamed .A , Advocate SR.No. 48753

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ks (CO)
A.SK(02/07/2019)



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