



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.11.2019**

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.9426 of 2018

WEB COPY

Shahul Hameed

... Petitioner/*De-facto* Complainant

Vs.

1.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

2.The Inspector of Police,
Chathirakudi Police Station,
Ramanathapuram District.

... Respondents /Respondents

PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to direct the Inspector of Police, Chathirakudi Police Station, Ramanathapuram District, to cause de-nova investigation of the case in Crime No.101 of 2014 pending on his file and further direct him to file a supplementary charge sheet within the stipulated period as prescribed by this Hon'ble Court and pass such any further or other order as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.

For Petitioner : Mr.R.Anand

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

O R D E R

This petition has been filed for de-nova investigation in Crime No.101 of 2014 on the file of the second respondent.

2.It is seen that the second respondent has already completed the investigation and filed a final report and the same has been taken cognizance in C.C.No.142 of 2017 on the file of the learned Judicial Magistrate, Paramakudi District.

3.The learned counsel appearing for the petitioner relied upon the judgment in **Crl.A.Nos.478-479 of 2017 - Vinubhai Haribhai Malaviya and Others V. The State of Gujarat and another**, wherein, the Hon'ble Supreme Court has held in paragraph Nos.38, 39 and 40 as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



''38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156 (1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpatory or exculpatory certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding



further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi (supra)*. Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel (supra)*, *Athul Rao (supra)* and *Bikash Ranjan Rout (supra)* have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361* and *Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129* also stand overruled.

39. We now come to certain other judgments that were cited before us. *King Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18*, was strongly relied upon by Shri Basant for the proposition that unlike superior Courts, Magistrates did not possess any inherent power under the CrPC. Since we have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of the CrPC, no question as to a Magistrate exercising any inherent power under the CrPC would arise in this case.

40. *Union of India and Anr. v. W.N Chadha (1993) Supp. 4 SCC 260*, is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance of the requirements of fair investigation Likewise, the judgments in *Smt. Nagawwa v. Veeranna Shivalongappa Konjalgi & Ors. (1976) 3 SCC 736*, *Prabha Mathur and Anr. v. Pramod Aggarwal & Ors., (2008) 9 SCC 469*, *Narender G. Goel v. State of Maharashtra (2009) 6 SCC 65* and *Dinubhai Bhogabhai Solanki v. State of Gujarat & Ors. (2014) 4 SCC 626*, which state that the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, *Babubhai v. State of Gujarat & Ors. (2010) 12 SCC 254*, is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power



is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, Romila Thapar v. Union of India, (2018) 10 SCC 753, held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that has been decided by us in the facts of this case.''

4. The petitioner is at liberty to approach the trial Court for seeking further investigation in Crime No.101 of 2014 and on receipt of the said application, the trial Court is directed to pass orders on merits and in accordance with law in the light of the above judgment of the Hon'ble Supreme Court of India.

5. With the above directions, this Criminal Original Petition stand disposed of.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

vsd

To

1.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

2.The Inspector of Police,
Chathirakudi Police Station,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.9426 of 2018

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