



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.11.2019

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.O.P (MD)No.13951 of 2019

S.Palanichamy

... Petitioner

Vs

1.State represented by,

The Superintendent of Police,
Vigilance and Anti Corruption
(Southern Range),
NCB 21 to 25, Greenways Road,
Raja Annamalaipuram,
Chennai.

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Trichy.
Trichy District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the respondents to make further investigation of the case in Crime No.7 of 2014, which is now pending as Special Case No.11 of 2018 on the file of the learned Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli and file final report in accordance with law.

For Petitioner

: Mr.M.Saravanan

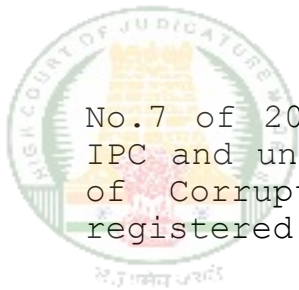
For Respondents

: Mr.K.K.Ramakrishnan
Additional Public Prosecutor

O R D E R

The defacto complainant in Crime No.7 of 2014 has filed this application to make further investigation of the case in Crime No.7 of 2014, which is now pending as Special Case No.11 of 2018 on the file of the learned Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli and file final report in accordance with law.

2.The case of the petitioner is that he gave a complaint on 13.05.2014 against seven accused to the second respondent and the same was registered against the accused No.1 and others in Crime



No.7 of 2014 for the offence under Sections 167, 465, 467, 471 of IPC and under Section 13(1) (d) r/w Section 13(2) of the Prevention of Corruption Act. According to the petitioner, the FIR was registered only after the direction of this Court.

3. Though the FIR was registered by the respondent police, they have not added other accused in this case. Even while filing final report the real beneficiaries in this case have not been added as accused and therefore, he approached this Court in view of the guidelines issued by the Honourable Supreme Court in the case of **Chinnathambi @ Subramani Vs. State** reported in **2017(2) CTC 241** wherein para 44 is held as follows:

"44. We sum up our conclusions as follows:

(i) An order of the Magistrate taking cognizance of offences on a Police Report is a Judicial Order.

(ii) An order of a Magistrate ordering further investigation on receiving a police Report is a non Judicial Order.

(iii) An order of a Magistrate accepting a negative Police Report after hearing the parties is a Judicial Order.

(iv) An order of a magistrate recording the Report of the Police as "undetectable" is not a Judicial Order.

(v) The Power of the Magistrate to permit the Police to further investigate the case as provided under Section 173(8) of the Code is an independent power and the exercise of the said power shall not amount to varying modifying or cancelling the earlier order of the Magistrate on the Report of the police, notwithstanding the fact whether the said earlier order is a Judicial Order or a non-Judicial Order of the Magistrate.

(vi) For seeking permission for further investigation under Section 173(8) of Cr.P.C by the Police the earlier order either Judicial or Non-Judicial, passed by the Magistrate on the report of the Police need not be challenged before the higher forum.

(vii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C., after cognizance has been taken on the Police Report can be exercised by the Magistrate only on a request made by the Investigating Agency and not, at the instance of anyone other than the investigating Agency or even suo motu. [Vide Judgment of the Hon'ble Supreme Court in **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai patel, 2017 (2) SCALE 198**].

(viii) The Power to grant permission for further investigation under Section 173(8) of Cr.P.C can be



exercised by the Magistrate before accepting the Negative Police Report thereby acting on the protest petition by the victim or the defacto complainant [Vide **Kishan Lal Vs. Dharmendra Bafna and another, 2008 (2) MWN (Cr.) 58 : 2009(7) SCC 685**]

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(ix) We clarify that anyone, who is aggrieved by any order made by the Magistrate on a police report as aforesaid in Sub-paragraphs (i) to (iv) hereinabove may approach the higher forum for remedy, if any.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that the investigation has been completed and final report has also been filed in this case and the same has been taken cognizance before the Special Court for cases under the Prevention of Corruption Act, Tiruchirappalli and the same is pending in S.C.No.11 of 2018 and charges have also been framed. According to the learned Additional Public Prosecutor, the power to grant permission for further investigation under Section 173(8) Cr.P.C can be exercised only by the Magistrate and on a request made by the investigating agency and not, at the instance of anyone other than the investigating agency or even *suo motu*. He also relied upon the judgment referred by the learned counsel appearing for the petitioner cited supra wherein para 44 (vii) held as follows:

44.(Vii).The power to grant permission for further investigation under Section 173(8) of Cr.P.C., after cognizance has been taken on the Police Report can be exercised by the Magistrate only on a request made by the Investigating Agency and not, at the instance of anyone other than the investigating Agency or even *suo motu*. [Vide Judgment of the Hon'ble Supreme Court in **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai patel, 2017 (2) SCALE 198**].

5. Heard the learned counsel on either side and also perused the records.

6. Admittedly in this case a final report has also been filed and the trial has also taken cognizance and charges have been framed as against the accused No.1 to 3. It is the grievance of the petitioner that the real beneficiaries have not been added as accused. The petitioner can make out the case only under Section 173 (8) Cr.P.C. Moreover, at this stage, the accused has filed an application to quash the proceedings pending before this Court. Therefore, this Court issued a direction to the trial Court to conclude the trial and complete the same within a period of one year from the date of receipt of a copy of this order. Under such circumstances, it would not be appropriate for this Court to order for further investigation. However, if the prosecution discloses the



role played by the other accused in this case, then, the other accused can be added as accused as per Section 390 Cr.P.C. It is open to the petitioner/defacto complainant to establish the role of the accused before the trial Court through evidence.

7. With the above observation and direction, this criminal original petition is disposed of.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

vsg

To

1. The Special Judge for Cases
under the Prevention of Corruption Act,
Tiruchirappalli.
2. The Superintendent of Police,
Vigilance and Anti Corruption
(Southern Range),
NCB 21 to 25, Greenways Road,
Raja Annamalaipuram,
Chennai.
3. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Trichy, Trichy District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-96671[F] dated 07/11/2019)

CRL.O.P (MD) No.13951 of 2019

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JMN(27.12.2019) 4P : 6C