

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN**W.P (MD) No.12535 of 2013****and****M.P (MD) No.1 of 2013**

A.Manoharan

... Petitioner

Vs.

The Deputy Superintendent of Police,
Sattur Division,
Virudhunagar District.
[Cr.No.188/2007 on the file of
Irukkankudi Police Station]

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the final report in P.R.C.No.26 of 2013 on the file of the learned Judicial Magistrate No.II, Sattur and quash the same.

For Petitioner : Mr.N.Ananthapadmanaban

For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader**ORDER**

This writ petition has been filed seeking a writ of Certiorari to call for the records of the final report in P.R.C.No.26 of 2013 on the file of the learned Judicial Magistrate No.II, Sattur and quash the same.

2. Brief facts leading to the filing of the present writ petition are as follows:

2.1. One Mohana Das, Village Administrative Officer, N.Mettupatti Village, Additional in-charge of Pappakudi, as a complainant has given a complaint to the Sub Inspector of Police, Irukkankudi Police Station, wherein it is stated that a dead body is found in the place of occurrence. The complaint given by him has been registered in Cr.No.188 of 2007 as suspicious death. On 31.01.2010, the Inspector of Police, Irukkankudi Police Station has filed a final report on the file of the learned Judicial Magistrate No.II, Sattur, wherein it is stated that the crime mentioned in the complaint has not been detected. On the basis of the final report submitted by the Inspector of Police, Irukkankudi Police Station, the Judicial Magistrate Court No.II, Sattur, has recorded the same as 'undetected'.



2.2. Thereafter, the Inspector of Police, Irukkankudi Police Station, has submitted a requisition on 30.03.2012 to the Judicial Magistrate Court No.II, Sattur, wherein it is prayed to permit him to conduct reinvestigation and the Judicial Magistrate No.II, Sattur has given permission accordingly. On the basis of permission granted by the Judicial Magistrate No.II, Sattur, investigation has been done and subsequently filed a final report under Sections 120 (b), 176, 201, 217, 218, 302 and 302 read with Section 34 I.P.C., and the same has been taken on file in P.R.C.No.26 of 2013. Seeking to quash the final report in P.R.C.No.26 of 2013 filed on the file of the learned Judicial Magistrate No.II, Sattur, the petitioner herein/A.5, has filed the present writ petition.

3. Since the case was reopened by the learned Judicial Magistrate based on a petition filed by the subsequent Investigating Officer after two years of closure report filed by the previous Investigating Officer, who is the petitioner herein/A.5, the first accused, namely, K.K.S.S.Ramachandran filed CrI.O.P(MD)No.18476 of 2013 challenging the final report. When the matter was taken up for hearing, the learned Single Judge referred the matter to a Larger Bench to decide the issue, whether the Judicial Magistrate has got powers to reopen the matter after accepting the negative final report.

4. On reference, the Honourable Division Bench of this Court, by order dated 19.02.2015, passed in CrI.O.P(MD)No.18476 of 2013, held that the Judicial Magistrate has become functus officio and has got no powers to reopen the matter after accepting the negative final report filed by the Investigating Officer. The relevant portions of the said order are extracted hereunder:

"19. In the instant case, as narrated earlier, the Inspector of Police, Irukkankudi Police Station has submitted a final report stating 'undetected' and the same has been recorded by the Judicial Magistrate No.II, Sattur. After a lapse of two years, the Inspector of Police, Irukkankudi has submitted a requisition on 30.03.2012, whereby permission sought for to conduct reinvestigation.

20. As per the dictums given by the Hon'ble Apex Court, it has already been pointed out that Magistrate has no power to give necessary permission for conducting "reinvestigation" "fresh or de novo" investigation. Further, it is found earlier that the order passed by the concerned Magistrate on the basis of police report is nothing but judicial order and the same cannot be recalled nor revoked by the concerned Magistrate himself. Therefore, it is quite clear that permission to conduct reinvestigation on the basis of requisition dated 30.03.2012 by the Judicial Magistrate No.II, Sattur is ab initio void since the same has been passed



21. The Reference made by the learned Single Judge is as to "whether the judicial act of acceptance of a referred charge sheet (negative final report) by a Magistrate would have to be challenged and set aside before resort is had to further investigation under Section 173(8) of the Code of Criminal Procedure, 1973?"

22. It has already been pointed out that an order passed by a Magistrate on the basis of referred charge sheet (negative final report) is nothing but a judicial order and the same has to be challenged before superior forum and further, further investigation cannot be sought for under Section 173(8) of the Code of Criminal Procedure, 1973 in case of referred charge sheet and at the most, permission to conduct "reinvestigation" or "de novo" investigation can be sought for before appropriate forum and not before Magistrate, since Magistrate has no power to give necessary permission for conducting "reinvestigation" or "de novo" investigation.

23. In the light of the discussion made earlier, the contention put forth on the side of the petitioner is having acceptable force, whereas, the contention put forth on the side of the respondent is sans merit.

24. In fine, it is held that acceptance of a referred charge sheet (negative final report) by a Magistrate has to be challenged before appropriate forum for setting aside the same. Further it is held that Magistrate has no power to give necessary permission for conducting "reinvestigation" "fresh or de novo" investigation and accordingly the Reference is answered. The Registry is directed to post CrI.O.P(MD)No.18476 of 2013 and connected Miscellaneous Petitions before the concerned Court."

5. In view of the above categorical dictum of the Honourable Division Bench of this Court, the learned Single Judge, by order dated 19.03.2015, disposed of CrI.O.P(MD)No.18476 of 2013, in keeping with the findings of the Honourable Division Bench of this Court in paragraphs 20, 22 and 24 of its order dated 19.02.2015.

6. Since the very same final report in P.R.C.No.26 of 2013 on the file of the learned Judicial Magistrate No.II, Sattur, is being challenged in this writ petition and the issue has already been decided by this Court, this Court follows the orders passed in CrI.O.P(MD)No.18476 of 2013, dated 19.02.2015 and 19.03.2015 and accordingly, the final report in P.R.C.No.26 of 2013 on the file of the learned Judicial Magistrate No.II, Sattur, is quashed insofar as A.5/the petitioner herein is concerned.



7. In the result, this writ petition stands allowed as above. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Deputy Superintendent of Police,
Sattur Division,
Virudhunagar District.
2. The Court of Judicial Magistrate No.II,
Sattur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.N.ANANTHAPADMANABAN, Advocate Sr. No. 58778
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 59242

W.P(MD)No.12535 of 2013
and
M.P(MD)No.1 of 2013
03.04.2019

TR (12.04.2019) 4P 6C