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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.1166 of 2019
and Crl.M.P.Nos.15572 and 15573 of 2019

Dr.V.M.Ganesan

.. Revision Petitioner/Petitioner Accused No.5

Vs

The Deputy Superintendent of Police

Organised Crime Unit

Crime Branch CID, Salem City

..Respondent Respondent /Complainant

PRAYER : Criminal Revision Petition filed u/s.397 and 401 of Cr.P.C., praying to call for the records culminating in the impugned order dated 16.08.2019 passed by the learned Judicial Magistrate No.1, Dharmapuri in Crl.M.P.No.4289 of 2017 in C.C.No.132 of 2007, examine the correctness of the findings therein and to set aside the same and discharge the petitioner from the said case.

For Petitioner : Mr.Arun Anbumani

For respondent : Mr.S.Sugendran,
Govt.Advocate [Criminal Side]

O R D E R

This Criminal Revision Petition is filed praying to call for the records relating to the impugned order dated 16.08.2019 passed by the learned Judicial Magistrate No.1, Dharmapuri in Crl.M.P.No.4289 of 2017 in C.C.No.132 of 2007, to examine the correctness of the findings therein and to set aside the same and discharge the petitioner from the said case.

2. The respondent police registered the case in Crime No.28 of 2013. After investigation, the respondent police laid the



charge sheet before the Judicial Magistrate No.I, Dharmapuri. The learned Magistrate taken the charge sheet on file in C.C.No.132 of 2017. In the said case, the petitioner herein was arrayed as A-5. During the pendency of the said calendar case, the petitioner herein filed the petition under Section 239 Cr.P.C., to discharge him from the said case. The learned Magistrate, after taking the petition on file in CrI.M.P.No.4289 of 2017, dismissed the same. Challenging the said order, the petitioner filed the present Revision.

3.1. The learned counsel for the petitioner would submit that the registration of FIR in crime No.28 of 2013 by the respondent alleging commission of offence of Transplantation of removal of human organs itself is illegal and unsustainable in law, in view of the specific provision under the Transplantation of human organs and Tissues Act, 1994. Any investigation, that is said to have been conducted by the respondent pursuant to the said FIR consequently is illegal and void and abinitio.

3.2. There is specific procedure contemplated therein for carrying out investigation and filing of a complaint, however, the respondent, in order to circumvent it, had resorted to filing its final report by deliberately arraying offences punishable under the Indian Penal Code though the FIR in the case alleged commission of offences punishable under TOHO and Tissues Act also.

3.3. The learned Magistrate, despite the petitioner brought to notice about the judgment dated 18.02.2015 passed in CrI.O.P.No.17336 of 2013 in the case of Dr.Ganesan Vs. State reported in 2015 (3) MWN CrI.456 (DB) and the law laid down therein, failed to appreciate the legal position and chose to violate the same and committed error in rejecting the petition filed by the petitioner for discharge.

3.4 He would further submit that the impugned order was passed in respect of the FIR dated 12.06.2013 in Crime No.29 of 2013 in which the petitioner is arrayed as third accused. The learned Magistrate overlooked the clear and specific findings of this Court in the above referred to judgment. The Magistrate failed to appreciate the legal proposition that when an alleged act constitutes an offence under a special statute, which prescribes specific procedures to be followed, there cannot be any deviation from the same. If the acts alleged constitute offences of transplantation and removal of human organs without authority or in any illegal manner, then the same is to be investigated only by the appropriate authority under Section 13 (3) (iv) of the TOHO and Tissues Act and a complaint to be filed under Section 22 of the said Act and not by the respondent or other Police officers under the provisions of the Code of Criminal Procedure, 1973. Even in the FIR registered in Crime No.28 of 2013, the name of the petitioner was not found and



subsequently arrayed as A-5 in the charge sheet. The petitioner having already challenged the FIR in Crime No.29 of 2013 and orders having been passed by this court, prohibiting investigation by the respondent police, the present Final Report filed by the respondent Police in crime No.28 of 2013 implicating the petitioner also as an accused is thoroughly illegal and tainted with malafides. The petitioner has been made as an accused in the FIR in Crime No.28 of 2013, as was done in the FIR in Crime No.29 of 2013, he would have challenged the same before this Court and obtained similar order. Therefore, the trial court failed to look into the legal provisions and also the judgment of the Division Bench of this court referred to supra and wrongly dismissed the petition and stated that there is no bar under Section 13(3) (iv) of the TOHO to register and investigate the case for offence under IPC. Therefore, the order passed by the Magistrate is liable to be set aside.

4. The learned Government Advocate [Criminal Side] would submit that though the petitioner was originally not arrayed as accused in the FIR based on the information given by the Joint Director of Medical Education Department who was the member of the Authorisation Committee for Kidney Transplantation in the year 2012 sent a letter dated 19.10.2012 to the Superintendent of Police, Dharmapuri District, when the Authorisation Committee meeting held at Chennai and based on that, case was registered and subsequently, respondent police conducted the investigation and laid the charge sheet for the offences under Section 420, 465, 468, 471, 197 IPC read with Section 19 of the Transplantation of Human Organs and Tissues Act, (TOHO and Tissues Act) and there is no bar to file a case for the offence under IPC and found that there are prima facie materials and therefore, the learned Magistrate dismissed the case.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the records.

6. Admittedly, the case was registered against the petitioner and others in Crime No.29 of 2013. In that the petitioner was arrayed as A-3. The petitioner filed CrI.O.P.No.17336 of 2013 before this court, challenging the competency of the investigating authority to investigate the matter. So, a Division Bench of this Court passed the order referred to supra and the order passed by this court reads as follows:-

"40.At this juncture, this Court aptly points out that TOHO and Tissues Act, 1994 is a special Act and considering the offences pertaining to removal of Human Organs which is a sensitive and serious one, the enactment of the



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said regulatory statute is a primordial one. Generally, any one can set the 'Criminal Law' in motion. But insofar as TOHO and Tissues Act is concerned, the offences/specific areas of violations are to be dealt with only by the Authorities specified under the said Act. Other than the Authorised Officer no one can carry out the investigation in connection with a complaint the method and manner of investigation to be carried out have been laid down in TOHO and Tissues Act, 1994 (42 of 1994) and the rules framed thereunder. Undoubtedly, in terms of Cr.P.C. after completion of investigation etc., the Police can file its report in an ordinary case. However, in regard to the clear-cut ingredients of Section 22 of the TOHO and Tissues Act, the police is forbidden to file its report after completion of investigation. To put it precisely, by virtue of Section 22 of the TOHO and Tissues Act, Section 173(2) Cr.P.C. by implication is inapplicable and the investigation in terms of 13(3)(iv) of the Act must be conducted by an Authorised Officer. "

7. Admittedly, in the present case also, Crime No.28 of 2013 was registered and respondent police investigated the matter and laid charge sheet before Judicial Magistrate, Dharmapuri and for the offence punishable under Section 120-B, 419, 468, 420, 197, 471 and 465 IPC and under Section 19 of The Transplantation of Human Organs and Tissues Act, (TOHO and Tissues Act). After investigating the matter, the respondent police laid a charge sheet for the offence punishable under Sections 420, 465, 468, 471, 197 IPC read with Section 19 of the Transplantation of Human Organs and Tissues Act, (TOHO and Tissues Act). The petitioner is arrayed as 5th accused and the learned Magistrate taken the charge sheet on file in C.C.No.132 of 2017.

8. During the pendency of the above calendar case, the petitioner filed the petition for discharge. The learned counsel for the petitioner submitted that the petitioner was not involved in any offence and prima facie, no material is against the petitioner. However, the settled proposition of law is that at the stage of framing charge, no roving enquiry to be conducted on the materials produced by the respondent police and the court has to see only the prima facie case. Although it is urged by the learned counsel for the petitioner that a Division Bench of this court has already considered the legal provisions of Section 13(3)(iv) of the TOHO and Tissues Act and has held that only an Authorised Officer is to deal with all complaints and file the complaint before the Magistrate and not before the



Police. Though the case was registered based on information sent by the Authorisation Committee, the respondent police helped the committee to arrive at prima facie case and that the appropriate authority has to file the complaint and not the respondent police. Even though the Division Bench of this court earlier passed the order referred to supra in Crime No.29 of 2013, till hearing of this Revision, the appropriate authority has not taken any steps to file complaint and therefore, this court had called for the status report from the State Appropriate Authority.

9. The State Appropriate Authority, Human Organ Transplantation Act, 1994 and Director of Medical and Rural Health Services, Chennai, submitted the status report stating that it formed the following investigation Team vide Ref.No.40057/E7/1/2015 dated 26.05.2016.

1.Dr.G.Mohanan, Joint Director of Health Services, Tiruvallur-Chairman

2.Dr.S.Gurunathan, Joint Director of Health Services, i/c Nagapattinam-Member

3.Dr.Dayalan, Deputy Director of Family Welfare, Thiruvallur-Member

4.Mr.Narasimhavarman, Assistant Commissioner of Police, O/o.the Director of Medical and Rural Health Services, Chennai-06-Member.

5.Thiru.M.Kamalakannan, Office Superintendent, O/o the Director of Medical and Rural Health Services, Chennai-06 - Member.

It is stated that the investigation team completed the investigation and also they filed complaint before the District Munsif cum Judicial Magistrate, Pennagaram, Dharmapuri District, and sent a letter dated 16.02.2021. The Joint Director Medical and Rural Health Services, Dharmapuri, filed the private complaint before the Magistrate only on 16.03.2021 and the same was returned by the Magistrate due to some defects and the same was represented by the Director, Medical and Rural Health Service, Dharmapuri, on 30.03.2021 and the same was posted for hearing on 05.04.2021. Subsequently, the same was taken on file in C.C.No.17 of 2021 under Sections 19(a), (b), (c), (d), (g) of the Transplantation of Human Organs and Tissues Act, 1994, against the three accused including the petitioner.

10. Therefore, such being the case, allegation and the charge sheet of this case in Crime No.28 of 2013 also falls under the Transplantation of Human Organs Tissues Act. Therefore, the respondent police, has no authority to conduct investigation against this petitioner since already this petitioner filed Crl.O.P.No.17336 of 2013 before this court and a Division Bench of this court also directed that insofar as



TOHO and Tissues Act is concerned, the offences are to be dealt with only by the Authorities specified under the said Act and based on the said direction, the State Appropriate Authority filed the case before the Magistrate in C.C.No.17/2021.

11. Therefore, under these circumstances, based on the directions of a Division Bench of this court and considering the legal position in this regard, the petitioner is discharged from the case in C.C.No.132 of 2017. However, the State Appropriate Authority, Human Organ Transplantation Act, 1994, can file a complaint against the petitioner herein in the manner known to law. However this court does not say anything to proceed the case in respect of the other accused in C.C.No.132 of 2017. Therefore, as far as the petitioner is concerned, Revision Petition is allowed and the order dated 16.08.2019 passed by the learned Magistrate in CrI.M.P.No.4289 of 2017 in C.C.No.132 of 2017 is set aside. As far as the petitioner is concerned, the petitioner is discharged from C.C.No.132 of 2017. However it is for the Appropriate Authority to file complaint against the petitioner in the manner known to law.

12. With the above directions, this Criminal Revision Petition is allowed. Consequently, CrI.M.Ps., are closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

nvsri

To

- 1.The Deputy Superintendent of Police
Organised Crime Unit
Crime Branch CID, Salem City
- 2.The Judicial Magistrate No.1,
Dharmapuri.
- 3.The District Munsif-cum Judicial Magistrate,
Pennagaram.
- 4.The Principal District Judge,
Dharmapuri.



5.The State Appropriate Authority,
Human Organ Transplantation Act, and
Director of Medical and
Rural Health Services, Chennai.

6.Director of Medical and
Rural Health Services, Dharmapuri.

7.The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Mr.Arun Anbumani, Advocate, S.R.No.33719

Crl.R.C.1166 of 2019

PL(CO)
CT/25/08/2021