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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 19.04.2022	Orders Pronounced On 27.05.2022
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CrI.O.P.No.28409 of 2017
and
CrI.MP.Nos.16140 & 16141 of 2017

1.G.K.Narayanasami
2.N.Gunachanderan

... Petitioners

Vs.

State by
Inspector of Police,
CBCID Tiruppur,
Tiruppur District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.32 of 2013 and quash the order dated 14.12.2017 passed by the learned Chief Judicial Magistrate, Tiruppur.

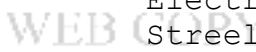
For First Petitioner: Mr.I.Subramanian
Senior Counsel
for Mr.K.P.Anantha Krishna

For Second Petitioner: Mr.V.Karthick
Senior Counsel
for Mr.Karthikeyan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

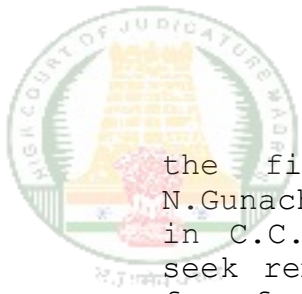
ORDER

The petitioners/A2 and A6 in C.C.No.32 of 2013 facing trial for the offence under Section 379 IPC r/w. Sections 39(1) and 44 (1)(c) of Indian Electricity Act and Sections 120(B) r/w. 466, 477 and 109 IPC, 120B r/w. 201, 204 IPC filed this quash



2.The gist of the case is that on 06.08.2001, the Electricity Board squad inspected the factory of G.K.Alloys Streel Company situated at Velayuthampalayam, Avinashi, the first pettioner G.K.Narayanasami/A2 is the Managing Director. During the inspection, it was found that the electrical meter fitted in the Company was tampered and energy theft to the tune of Rs.23,36,76,893/- was detected. The Assistant Engineer, TNEB, North Coimbatore lodged a complaint and a case in Crime No.507 of 2001 under Section 379 r/w. 39(1) and 44 of Indian Electricity Act, 1910 was registered on 06.08.2001 by the Avinashi Police against the first petitioner G.K.Narayanasami. On completion of investigation, charge sheet was filed on 25.10.2002 against A/1G.K.Alloy Steels Ltd., Velayuthampalayam, Avinashi, A2/G.K.Narayanasami/petitioner herein, A3/Venkatesan, A4/Selvaraj and A5/Murugayan and the same was taken on file in C.C.No.68 of 2003 by the learned Judicial Magistrate, Avinashi on 18.02.2003. The second petitioner/A6, N.Gunachandran was the Assistant Director of R&D Division, Tamil Nadu Forensic Science Department, Chennai. During investigation, the electric meter which was seized from the factory was sent to TNFSL, Chennai for analysis. One Sekar, Grade I Constable, Avinashi Police Station collected the expert opinion report from TNFSL, Chennai on 10.07.2002 and submitted the same to the learned Judicial Magistrate, Avinashi on 12.07.2002. A copy was also sent to the Investigating Officer, on perusal of the report, found that tampering took place in the report and consequently, it was informed to the TNFSL. The Director of TNFSL Mr.Damodaran, who caused an internal enquiry, found the allegation to be true and confirmed that the expert opinion report forged and tampered, that happened in the TNFSL Laboratory which is a serious matter, since TNFSL is a restricted area and the work involves confidentiality and secrecy. Hence, he lodged a complaint to the CBCID, Metro and a case was registered in Crime No.1 of 2003 under Sections 465, 468, 471, 420 r/w. 34 IPC on 11.01.2003. After completion of investigation, the CBCID filed charge sheet against G.K.Narayanasami/A1, N.Gunachandran/A2 and P.Sekar/A3 under Section 120B, 466, 471 and 109 IPC and the same was taken on file in C.C.No.7110 of 2005 on 29.12.2005 before the learned XI Metropolitan Magistrate, Saidapet, Chennai.

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



the first petitioner G.K.Narayanasami, it also discharged N.Gunachandran/ second petitioner and P.Sekar from the charges in C.C.No.7110 of 2005 giving liberty to the CBCID Police to seek remedy by invoking provisions under Section 173(8) Cr.P.C. for further investigation in Crime No.507 of 2001. In the meanwhile, the Director General of Police in Rc.No.255178/Crime.IV(2)/2010 dated 05.01.2011 on the request of the Additional Director General of Police, Crime Branch, CID, Chennai transferred the case in Crime No.507 of 2001, Avinashi Police Station to the file of the Crime Branch, CID. The CBCID filed a petition for further investigation on 20.04.2012 and on 10.08.2012. Thereafter, the CBCID filed additional final report on 05.01.2014 wherein three persons were arrayed as accused, namely, G.K.Narayanasami, N.Gunachandran and P.Sekar. Since G.K.Narayanasami was already an accused in Crime No.507 of 2001, only additional charges to be added against him, as regards Gunachandran/A6 and P.Sekar/A7 were added as additional accused. Initially, Avinashi Police arrayed five persons as accused and after filing of additional charge sheet by CBCID, there are now totally seven accused in the case.

4.The other side of progression of the case is that after order was passed in CrI.R.C.No.148 of 2007 discharging all the accused in C.C.No.7110 of 2005, the second petitioner herein filed a petition in C.M.P.No.357 of 2017 in C.C.No.32 of 2013 seeking a direction to the Regional Passport office, Chennai to renew and issue the passport for the petitioner, which was dismissed. Against which, CrI.R.C.No.755 of 2017 was filed before this Court. While disposing of this petition on 15.09.2017, this Court had gone in detail, considering the various petitions filed, delay taken in proceeding of the case, finally observed that though additional charge sheet was filed as early as on 05.01.2014, the Trial Court is not in a position to take cognizance of the case and proceed further for the reason that quash petition in CrI.O.P.No.12982 of 2003 filed before this Court and stay was obtained. Thereafter, on verification it was found that case in CrI.O.P.No.12982 of 2003 was disposed on 24.10.2009 and the bundle was found missing despite all efforts taken. After dismissal of CrI.O.P.No.12982 of 2003 on 24.10.2009, there is no progress in the trial since the dismissal was not informed and communicated to the Trial Court and hence this Court directed the Trial Court to proceed with the trial on the additional charge sheet filed on 05.01.2014 immediately in CrI.R.C.No.755 of 2017 dated 15.09.2017.

5.Aggrrieved against the said order, the second petitioner approached the Apex Court challenging the order dated 15.09.2017 in CrI.R.C.No.755 of 2017. The Apex Court in SLP.(CrI.).No.9077 of 2017 dated 01.12.2017 observed as follows:

"In the operative portion of the impugned order,



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the High Court has issued a mandatory direction to the learned Magistrate to take cognizance of the additional final report filed on 05.01.2014 and proceed with the trial.

We make it clear that the above need not be taken as a mandatory direction, since it is for the Magistrate to apply his/her mind and take further action in accordance with law.

It is open to the petitioner to take all available contentions before the learned Magistrate before taking cognizance.

Subject to the above clarification, the special leave petition is disposed of.

Pending application(s), if any, shall stand disposed of."

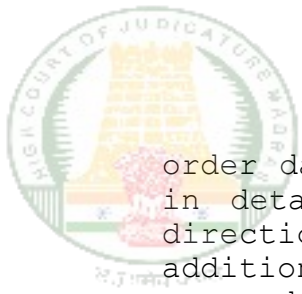
6. In the meanwhile, the Trial Court on the directions issued in CrI.R.C.No.755 of 2017 dated 15.09.2017 took cognizance of the offence as per the additional charge sheet filed on 05.01.2014 against the accused, finding prima facie case made out issued summons to all the accused including the petitioners and posted the case on 05.12.2017. On 05.12.2017, a memo was filed by the first petitioner stating that since the order passed by this Court in CrI.R.C.No.148 of 2007 summons could not be issued to the petitioner, further referred to the judgment of this Court reported in 2011 (2) MLJ(CrI.) 5, wherein it is held that no summons could be issued to persons who got discharged, unless after commencement of proceedings and evidence appears against him in the course of trial. Likewise, the second petitioner filed a petition questioning the issuance of summons relying upon the decisions of Iqbal Singh Marwah and another vs. Meenakshi Marwah and another reported in 2005 SCC (Cr.) 1101 and Perumal vs. Janaki reported in 2014 (1) RCR (Criminal) 851 and questioned the issuance of summons when the High Court quashed the case in C.C.No.7110 of 2005 for the same charges. Both the petitions were taken in C.M.P.No.940 of 2017, the learned Chief Judicial Magistrate, Tiruppur by order dated 14.12.2017 finding that already cognizance taken, summons issued, at that stage the order of the Apex Court was strictly complied with, dismissed the petition filed by the petitioners herein and directed them to appear before the Trial Court on 20.12.2017. Against which the present petition is filed.

7. Mr. I. Subramaniam, learned senior counsel appearing for the first petitioner submitted that the first petitioner is arrayed as A2 in Crime No.507 of 2001 under Section 379 r/w. 39 (1) and 44 of Indian Electricity Act, 1910, on completion of investigation the Inspector of Police, Avinashi Police Station filed charge sheet against the petitioner and four others in C.C.No.68 of 2003. This being so, another case filed in Crime No.1 of 2003 by the Inspector of Police, CBCID Metro, Chennai,



on completion of investigation charge sheet filed and the same was taken on file by the learned XI Metropolitan Magistrate, Saidapet, Chennai in C.C.No.7110 of 2005. The first petitioner filed discharge petition in C.M.P.No.2333 of 2006 which came to be dismissed, against which, he filed a revision petition before this Court in CrI.R.C.No.148 of 2007. The primary contention of the learned senior counsel is that the charges and the allegations relating to the CBCID case is connected with the earlier case in which the petitioner and other accused are implicated for theft of energy under Indian Electricity Act. He further submitted that filing of another FIR for the subsequent event, would amount to filing of second FIR and relying upon the decision of the Apex Court in the case of T.T.Antony vs. State of Kerala reported in [2001] 6 SCC 181 made his submission before this Court in Revision Petition in CrI.R.C.No.148 of 2007. In the revision petition, this Court accepting the submission of the learned senior counsel by order dated 03.09.2010 held if the Investigating Agency [CBCID] is having any further material or further information disclosing commission of offence, they can resort by invoking provisions under Section 173(8) Cr.P.C. for further investigation. It is further clarified that even after filing a final report, if the Investigating Agency comes into portion of the further information or material they need not register fresh FIR, they are empowered to conduct further investigation, normally with the leave of the Court and during further investigation any materials collected, the Investigating Agency is obliged to forward the same under Section 173(8) Cr.P.C. Thus, following the principles laid down by the Apex Court finding that registration of FIR by CBCID in Crime No.1 of 2003 is not proper, quashed the FIR and charge sheet in Crime No.1 of 2003 and C.C.No.7110 of 2005 with liberty to the prosecution to file petition under Section 173(8) Cr.P.C. in Crime No.507 of 2001.

8.The CBCID Police in the meanwhile took up the investigation from the Avinashi Police and filed a petition under Section 173(8) Cr.P.C. on 20.04.2012 seeking clubbing of investigation done in Crime No.1 of 2003 in Crime No.507 of 2001. Further, filed a petition under Section 173(8) Cr.P.C. on 10.08.2012 with similar prayer and thereafter, filed additional final report which is not proper. He further submitted that without any further investigation whatever materials earlier collected in Crime No.1 of 2003 was attempted to be clubbed in Crime No.507 of 2001 which is not proper. The observation of this Court in CrI.R.C.No.148 of 2007, is only if any material is available to be investigated and not already available materials. He further submitted that one of the accused filed a petition seeking issuance of passport before the Trial Court in C.M.P.No.357 of 2017 which was dismissed, against which revision petition was filed in CrI.R.C.No.755 of 2017 and this Court by



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order dated 15.09.2017 gone into the entire sequence of the case in detail and finally dismissed the revision petition with a direction "the Trial Court shall take cognizance of the additional final report filed on 05.01.2014 immediately and proceed with the trial". He would further submit that taking cognizance on the materials produced after analysing the materials applying its mind is a discretion of power of the concerned Magistrate to pass judicial order and no Court can compel or direct the Trial Court to take cognizance de hors applying its mind. He further submitted that against which the other accused approached the Hon'ble Supreme Court and the Apex court set aside the mandatory direction issued in CrI.R.C.No.755 of 2017. The Trial Court in the meanwhile took cognizance of the case, issued summons to the petitioners on 27.11.2017, the petitioner filed a memo, objected to the Trial Court, in taking cognizance of the offence which is against the direction and the dictum of the Apex Court. The Trial Court failed to consider the same and passed an order rejecting the memo of the petitioner on 14.12.2017, against which, he filed this petition.

9.He further submitted that the first petitioner already filed a Writ Petition which is pending before this Court, with regard to the calculation of loss of energy and how it was arrived, the Electricity Department is yet to file its report giving details and work sheet for the energy theft and the electricity loss sustained by them, on the other hand pressurizing the Police to proceed with the case as though energy theft committed. The learned senior counsel submitted that the Trial Court cannot brush aside or give its own interpretation that the Apex Court order has been complied with, making it appear that it is only a formality which is not proper and it is in total disregard to the directions of the Hon'ble Apex Court. It is suffice that the petitioner's objections and their submissions to be heard by the Trial Court as per the directions of the Apex Court to consider all the available materials and contentions of the petitioner.

10.Mr.V.Karthick, learned senior counsel appearing for the second respondent submitted that the second petitioner initially not an accused in Crime No.507 of 2001 in C.C.No.68 of 2003, on the complaint of the Director of TNFSL, a case in Crime No.1 of 2003, FIR registered against the petitioner and two others and on conclusion of investigation, charge sheet filed in C.C.No.7110 of 2005 before the learned XI Metropolitan Magistrate, Saidapet, Chennai. He further submitted that the second petitioner/A6 filed a discharge petition in C.M.P.No.2988 of 2006 before the learned XI Metropolitan Magistrate, Saidapet, Chennai which was dismissed. The other accused filed C.M.P.No.2333 of 2006 which was also dismissed and the same was challenged in CrI.R.C.No.148 of 2007 before this Court. This



Court by order dated 03.09.2010 dealt with the contention of the learned senior counsel in detail and finally held that the registration of FIR in Crime No.1 of 2003 is nothing but second FIR and hence, quashed the proceedings in Crime No.1 of 2003, consequently quashed C.C.No.7110 of 2005 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and gave a liberty to the Prosecution Agency to file appropriate petition under Section 173(8) Cr.P.C., on collection of further materials, additional charge sheet can be filed. In this case, the Investigating Agency failed to collect any additional materials, conveniently clubbed all the materials earlier collected in Crime No.1 of 2003 in Crime No.507 of 2001 and sought a direction to file a final report. He further submitted that as regards this petitioner, the allegation is that the Forensic report was tampered with and it was done by the second petitioner in conspiracy with A2 and A7.

11.He further submitted that the case against the second petitioner is that the forensic report submitted in C.C.No.68 of 2003 was a computer typed one, the original report was manually typed and the discrepancies found in the forensic report which is a matter of serious in nature. TNFSL is an independent primary Body which conducts verification and examination of documents, handwriting, physical and clerical features of disputed articles. It is a restricted place. In the meanwhile, Crime No.1 of 2003 was registered by CB CID Metro against both the petitioners and one Sekar/A7. The case is that the said Sekar who was the property constable attached to the Avinashi Police produced the Tampered Report of the forensic department. On 10.07.2002, he came to the forensic department, received a report and expended articles of the case. Thereafter, he produced the same before the Judicial Magistrate Court, Avinashi on 12.07.2002. In the meanwhile, the report tampered with and changed favouring the accused. According to the forensic officials, the report was typed in manual Typewriter and not computer typed as produced before the Court which was with correction and insertion. Thereafter, a case in Crime No.1 of 2003 was registered. This case culminated as charge sheet in C.C.No.7110 of 2005, a discharge petition filed before the XI Metropolitan Magistrate Court, Saidapet, in CrI.M.P.No.2333 of 2006 by the accused A1/Narayanasamy and A2/Gunachandran in CrI.M.P.No.2988 of 2006, both came to be dismissed, against which a Revision was filed before this Court in CrI.R.C.No.148 of 2007 by A1/Narayanasamy, this Court by order dated 03.09.2010 found the registration of the second First Information Report is in violation and not following T.T.Antony's case dictum, quashed the case in Crime No.1 of 2002 giving liberty to the Investigating Agency to invoke provision under Section 173(8) Cr.P.C. Thereafter, the investigation of case transferred to the file of the CB CID by the orders of the Director General of



Police, and further investigation under Section 173 (8) of Cr.P.C., filed by the Inspector of Police, CB CID and additional charge sheet including N.Gunasekaran and Sekar as A6 & A7 was filed in C.C.No.32 of 2013.

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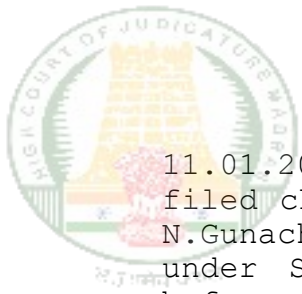
12.The learned senior counsel would submit that this Court in Crl.R.C.No.148 of 2007 quashed the entire proceedings in Crime No.1 of 2003 in all aspects and discharged the petitioners and the other accused. In view of the same, when there is specific Judicial order passed, without setting aside the Judicial order. Under the guise of further investigation, on the same materials, the second petition cannot be prosecuted. The learned counsel further submitted that the second petitioner filed a petition seeking return of his pass port in Crl.R.C.No.755 of 2017, this Court by the order dated 15.09.2017 went into other aspects of the case, dismissed the petition, directed the trial Court to take cognizance of the additional final report filed on 05.01.2014, which was not a Lis in Crl.R.C.No.755 of 2017. Aggrieved against the same, the second petitioner approached the Hon'ble Apex Court in SLP.No.9077 of 2017. The Apex Court by the order dated 01.12.2017 found that no mandatory direction can be given to the Magistrate to take cognizance, since it is the concerned Magistrate to take further action on the materials produced before him on application of mind to take a decision. Further gave liberty to the petitioner to make his contention before the concerned Magistrate before taking cognizance. The trial Court without following the Apex Court orders, took cognizance of the case by the order dated 27.11.2017, following the direction of this Court in Crl.R.C.No.755 of 2017 on 15.09.2017. Further the learned Senior Counsel submitted that the prosecution's specific stand is that, already final report after further investigation was filed on 05.01.2014. The petitioner filed a Copy Application on 24.08.2021, on that date, the Copy Application for additional final report filed by the CB CID dated 05.01.2014, returned by the Chief Judicial Magistrate, Thirupur with endorsement that the records are not available in the case bundles, hence, it is confirmed that as on 24.08.2021 there is no further report, the trial Court mechanically passed an order, further cognizance order does not reflect application of mind. Further there is nothing to show how, on what material and on what basis, the Trial Court got satisfied and cognizance taken. The trial Court not followed the Apex Court's order and the present Revision is filed.

13.The learned senior counsel further submitted that the forensic report of TNFSL, both manually typed and computer typed was submitted to the Government Examiner of Questioned Documents, Hyderabad, who examined both documents and gave a report. This report is in favour of the second petitioner and



there is nothing to show that the petitioner had anything to do with the report. Further submitted that now the case against the main offender in C.C.No.32 of 2013 is proceeded based on the original forensic report, mechanically typed. The alleged computer typed forensic report not relied. The petitioner is being proceeded merely on assumption and presumption. There is no recovery pursuant to the confession of A7 and hence confession cannot be looked into. The only other material which is being projected against the second petitioner is that font size in the report and the printer available in the second petitioner's office are identical as per the report of the Director, Ramanujan Computing Centre, Anna University, Chennai which alone will not confirm any role of the petitioner. The data matrix printer format will be one and the same universally. It is not the case of the prosecution that the printer is in exclusive possession and with petitioner's usage. Merely on assumption and presumption the petitioner not to undergo the ordeal of trial. The second petitioner, a Scientist with credential who have authored several books, presented several research papers, a visiting faculty, a Guest Lecturer and also an excellent trainer in the field of Forensic Science, due to the above case his entire professional career is stigmatized and unable to carry on with his professional and research work, submit research papers, etc. He further submitted that due to the internal bickering in TNFSL organization, he is falsely implicated in this case. The TNFSL Department knowing about the same, not conducted any departmental enquiry, further citing the above case, not granted the petitioner, his terminal benefits. The petitioner is more concerned and worried on the stigma attached to him due to the above case. The petitioner is retired and in the evening of his life. Now asking the petitioner on the insufficient materials to undergo the ordeal of trial, that to at a far off place would cause great hardship. There is no material to show that the petitioner is a beneficiary in any manner.

14.The learned Additional Public Prosecutor made his submission and filed his counter produced the statement of witnesses, submitted that the second petitioner/A6 was the Assistant Director of R&D Division, Tamil Nadu Forensic Sciences Department, Chennai. During investigation, the electric meter from the SOC was seized and sent to TNFSL, Chennai for analysis. Gr.IPC 377 P.Sekar of Avinashi Police Station collected the expert opinion report from TNFSL, Chennai on 10.07.2002 and handed over the same to J.M. Court, Avinashi on 12.07.2002. When the Investigating Officer perused the report, it was found that some tampering and insertion taken place, immediately, the Director, TNFSL lodged a complaint and a case in CBCID Metro Crime No.1 of 2003 u/s.465, 468, 471, 420 r/w. 34 IPC registered by Mr.Ravichandran, Inspector of Police, CBCID Metro, Chennai on



11.01.2003. After completion of investigation, CBCID, Chennai filed charge sheet against the accused (1) G.K.Narayanasami, (2) N.Gunachandran (3) Gr.IPC 377 P.Sekar of Avinashi Police Station under Section 120-B r/w. 466, 471 and 109 IPC on 30.11.2005 before the Hon'ble XI Metropolitan Magistrate Court, Saidapet, Chennai and it was taken on file in C.C.No.7110 of 2005 on 29.12.2005. It is further submitted that as per the order of this Court, the Director General of Police, Chennai, Tamil Nadu, directed the Investigating Officer, CBCID, Metro to take up further investigation in Avinashi PS Crime No.507/2001. During investigation, the Investigating Officer examined the witnesses Tmt.Hemalatha and Mr.Ranjithcicil, Assistant Directors of Tamil Nadu Forensic Science Laboratory, Chennai, in their statement implicate A6/N.Gunachandran/second petitioner herein approached them and influenced them to prepare forensic report in favour of the accused/petitioner A2/G.K.Narayanasami/first petitioner herein and A6/N.Gunachandran informed and requested them that his son is working in the factory owned by A2/first petitioner herein and requested to prepare report in favour of accused G.K.Narayanasami otherwise his son life would be spoiled. This clearly indicates involvement of A6/N.Gunachandran in this case. Both are key witnesses of this case, who examined the electric meter seized from the SOC and gave the original analysis report.

15.It is further stated that another witness Gokulamaran, Lab Technician, R&D Division, TNFSL, Chennai state that he saw A2/G.K.Narayanasami, A7/Sekar along with A6/N.Gunachandran in the office of A6 on the date of occurrence. He further stated that A6 received the original report kept in the Kakki cover from A7/Sekar at his office. Moreover, on the date of occurrence during night hours he saw A6 was typing in the computer in his office. This clearly established the involvement of A2, A6 and A7. Likewise, Mr.Damodharan, Mr.Thirunavukarasu, Mrs.Lakshmi and Mrs.Vanaja have stated about the involvement of A6 in this occurrence. Further, confession statement of A7/Sekar clearly establish the fact that on the date of occurrence, A2 and A7 met A6 at his office, R&D Division, Chennai. At that time, A6 received the original TNFSL report from A7 and subsequently on the same day returned the report in a sealed cover and conveyed to A7 corrections made in the report. Thus, during investigation, involvement of A2, A6 and A7 established. It is further submitted that during investigation, the Investigating Officer seized the computer and printer from the office of A6 and sent the same to experts of Ramanujan Computing Centre, Anna University, Chennai. Mr.Chellappan, Director of Ramanujan Computing Centre, Anna University, Chennai given a report that bogus report containing the letters are identical with the printers seized from the office of A6 and confirmed that it is a forged one. It is further stated that earlier to the order of the Hon'ble Supreme



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Court, the learned Chief Judicial Magistrate, Tiruppur following the orders of this Court in CrI.R.C.No.755 of 2017 took cognizance of the additional charge sheet on 27.11.2017 in C.C.No.32 of 2013, the same is pending and issued summons to the accused including A2 and A6 to appear before the Trial Court on 05.12.2017. Subsequently, on 05.12.2017 A2 appeared before the learned Chief Judicial Magistrate, Tiruppur and produced the order of the Hon'ble Supreme Court in SLP(Crl.)No.9077 of 2017. But the petition filed by A6 in C.M.P.No.940 of 2017 was dismissed on 14.12.2017 stating that already the Trial Court applied its mind and took cognizance of the additional charge sheet and posted the case to 20.12.2017 for appearance of the accused. It is further submitted that investigation was done in proper manner, totally 51 witnesses examined, sufficient material evidences are produced before the Trial Court to prove the offences committed by the petitioners and the pendency of the stay order affect the speedy trial.

16.In support of his contention, the learned Additional Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in the case of Sonu Gupta vs. Deepak Gupta and others reported in [2015] 3 SCC 424 and submitted that the Apex Court had reminded time and again that at the stage of cognizance and summoning, the Magistrate is required to apply his judicial mind only with a view to take cognizance of offence.

17.Considering the submissions made and on perusal of the materials placed before this Court, it is seen both the petitioners filed a common petition with a prayer to quash the order dated 14.12.2017 passed in C.M.P.No.940 of 2017 in C.C.No.32 of 2013. On perusal of the order, it is seen both the petitioners have filed a memo with a copy of the order passed by the Hon'ble Supreme Court in SLA(Crl.)No.9077 of 2017 dated 01.12.2017. As per the order of the Apex Court the directions given in CrI.R.C.No.755 of 2017 dated 15.09.2017 not to be taken as mandatory direction and it was for the Magistrate to apply his mind and take further action in accordance with law. Further, the Apex Court gave liberty to the petitioners to take all available contentions before the learned Magistrate before taking cognizance. It is a directive for the Magistrate to hear the contentions put forth by the petitioners before taking cognizance. On the other hand, the learned Magistrate took cognizance by a detailed speaking order on 27.11.2017, on the additional final report filed by the respondent. It is apathy to see that the Magistrate in his order dated 14.12.2017 observes that the order of the Apex Court dated 01.12.2017 perused and as directed by the Apex Court, the Trial Court has already applied its mind and passed a detailed order on 27.11.2017 itself. Further, it is stated that the directions of the Hon'ble Supreme Court was strictly complied with in letter



and spirit before taking cognizance. It is apparent that the order of the Apex Court is dated 01.12.2017 and the cognizance order passed by the Magistrate is much earlier on 27.11.2017 which is not proper.

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18. Further, the learned senior counsel appearing for the first petitioner/A2 submitted that it would suffice to set aside the cognizance order by directing the learned Chief Judicial Magistrate, Tiruppur to hear the first petitioner/A2, consider the documents and materials produced before taking cognizance.

19. The learned senior counsel appearing for the second petitioner/A6 submits that apart from setting aside the cognizance order, on the facts and merits of the case, no case is made out as against the second petitioner. The case proceeds against the second petitioner only on surmises and conjunctures. The Government Examiner of Questioned Documents, Hyderabad in his report confirms that there is nothing against the second petitioner. The Director of Ramanujan Computing Centre, Anna University in his report confirm the font size in his report. He further submitted that no material is available against the second petitioner/A6. Due to professional jealousy, the officials of Tamil Nadu Forensic Science Laboratory falsely implicated the second petitioner. The second petitioner/A6, a Scientist with credential is well known, he is an authority in his subject, submitted several articles, published books, a visiting faculty to several Institutions, a Guest Lecturer and an excellent Trainer in the field of Forensic Science.

20. The learned Additional Public Prosecutor referred to several witnesses, more particularly from the Forensic Science Department stating that they were approached by the second petitioner/A6, the presence of the first petitioner/A2 along with A7 is spoken by witnesses, they were also seen along with the second petitioner/A6.

21. Though that will not alone be sufficient for the second petitioner to be the reason for the forged forensic report, this Court restrains from further dwelling into the veracity of the document or statement of witnesses considering the limited prayer seeking to set aside the order passed by the learned Chief Judicial Magistrate taking cognizance by order dated 27.11.2017. It is not in dispute that the learned Chief Judicial Magistrate taken cognizance, issued summons to the petitioners even before looking at the order of the Apex Court. The order of the Apex Court is dated 01.12.2017 and the cognizance order is much earlier which is dated 27.11.2017. It is the duty of every Court to follow the orders of the Apex Court in letter and spirit, any violation of the same would amount to violating Article 142 of the Constitution of India.



In view of the same, this Court is inclined to set aside the order passed by the learned Chief Judicial Magistrate taking cognizance of the case.

22. Accordingly, the order passed by the learned Chief Judicial Magistrate, Tiruppur in C.M.P.No.940 of 2017 dated 14.12.2017 is set aside. The Trial Court is directed to hear both the petitioners/A2 and A6, consider the submissions and materials produced and thereafter, pass appropriate orders. The Judicial order to reflect the application of mind. It is made clear that the observations made herein with regard to the merits of the case is only for the limited purpose of disposing of the above petition, the Trial Court dispassionately to dispose of the petition filed by the petitioners uninfluenced by the observations made herein.

23. With the above directions, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

cse

To

1. The Inspector of Police,
CBCID Tiruppur,
Tiruppur District.
2. The Chief Judicial Magistrate,
Tiruppur.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.P.Anantha Krishna, Advocate SR.No.31906

Crl.O.P.No.28409 of 2017

RK(CO)
GMY(10/06/2022)