



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P. (MD) No.17740 of 2016

and

Cr..M.P(MD)Nos.8839 and 8840 of 2016

(Through video Conference)

1.Sivaji

2.Kodeeswaran

... Petitioners /Accused Nos.2&3

Vs.

1.State rep. by,
The Deputy Superintendent of Police,
Tiruchendur Sub-Division,
Tiruchendur.

2.The Inspector of Police,
Tiruchendur Police Station,
Tiruchendur.

3.The Inspector of Police,
Kulasekarapattinam Police Station,
Kulasekarapattinam,
Tuticorin District.

... Respondents 1 to 3/Complainants

4.Vinoth

... 4th Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the Charge Sheet in C.C.No.50 of 2016 pending on the file of the learned Judicial Magistrate, Tiruchendur, Tuticorin District and quash the same as illegal and abuse of process of law.

For Petitioner : Mr.B.Ramkumar Adityan

For R1 to R3 : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

For R4 : No appearance



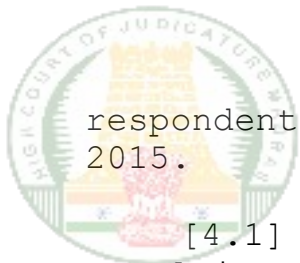
O R D E R

This petition, under Section 482 of Cr.P.C., is filed by the accused Nos. 1 & 2 in C.C.No.50 of 2016 on the file of the learned Judicial Magistrate, Tiruchendur, on the premise that the final report filed by the Investigation Officer by name, Sivasubramanian is beyond the jurisdiction of the Investigation Officer since the Deputy Superintendent of Police of the concerned jurisdiction police has already directed the Investigation Officer/Sivasubramanian to transfer the investigation to one Mr.Meenakshinathan, Inspector of Police of the neighbouring police station, namely, Kulasekarapattinam police station.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

3. The prime contention of the petitioner herein is that the Investigation Officer/Sivasubramanian had an animosity with the petitioner and his family members and therefore, he was biased towards them. His investigation was not on the proper direction. In this regard a representation was given to the higher officials to transfer the investigation to some other officer other than Sivasubramanian. In spite of the order of transfer of investigation, Sivasubramanian proceeded with the investigation, anti-dated the final report and filed the report before the learned Judicial Magistrate, Tiruchendur, which was taken on file and calendar case number was assigned. It is further submitted that on the representation of the petitioner, the Deputy Superintendent of Police of Tiruchendur Sub-Division Mr.Gopal, directed the Inspector of Police, Kulasekarapattinam to take up the investigation of that case and he has also completed the investigation and prepared draft charge sheet. While so, contrary to the direction of the superior officer, the said Sivasubramanian has filed final report, which has been taken on file by the learned Judicial Magistrate, Tiruchendur. For the said reason, the final report in C.C.No.50 of 2019 on the file of the learned Judicial Magistrate, Tiruchendur to be quashed, he contended.

4. The learned Additional Public Prosecutor has filed a counter on behalf of the respondents 1 to 3, wherein it is stated that on 13.08.2015, the Deputy Superintendent of Police, Tiruchendur, vide order, dated 13.08.2015 in C.No.146/SDO(T)2015, directed the said Meenakshinathan, Inspector of Police, Sankarankovil Taluk Police Station, Tenkasi District (neighbouring police station), to take up further investigation of the cases in Tiruchendur police station in Crime Nos.228 of 2015 and 229 of 2015. The defacto complainant in Crime No.228 of 2015 is Mr.Sivaji, who is the first petitioner herein. The fourth



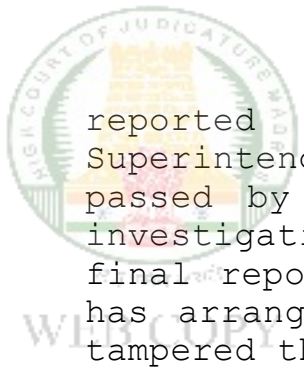
respondent herein is the defacto complainant in Crime No.229 of 2015.

[4.1] On receipt of the CD file pertaining these two complaints, Meenakshinathan found that the investigation has already been completed by the said Sivasubramanian, Sub Inspector of Police, Tiruchendur police station and charge sheeted on 14.07.2015 in respect of Crime No.228 of 2015, whereas the investigation in Crime No.229 of 2015 registered against one Kannan and his two sons, namely, Sivaji (1st petitioner herein) and Kodeeswaran(2nd petitioner herein) was taken up for investigation by Sivasubramanian and had prepared the charge sheet on 10.07.2015.

[4.2] After considering the above fact, he has reported the fact to the Deputy Superintendent of Police, Tiruchendur and continued the investigation of both cases as mandated under Section 173(8) Cr.P.C. and he concluded that the case in Crime No.228 of 2015 is true and case in Crime No.229 of 2015 is untrue. Accordingly, he prepared a positive final report in Crime No.228 of 2015 and a negative final report in Crime No.229 of 2015 and informed the same to his higher official, namely, the Deputy Superintendent of Police, Tiruchendur Sub-Division. As per the instruction of the Deputy Superintendent of Police, he despatched the CD files and original final report, statement of witnesses to Inspector of Police, Tiruchendur.

[4.3] It is further stated in the counter-affidavit filed by Mr.Meenakshinathan, who was taken up the subsequent inspection as instructed by the Deputy Superintendent of Police that the material collected by him in the course of further investigation were removed from the CD file and the earlier final report prepared by Sivasubramanian has been forwarded to the learned Judicial Magistrate, Tiruchendur, was taken cognizance of the final report in C.C.No.50 of 2016 and C.C.No.224 of 2016 on 04.08.2016 and 01.04.2016 respectively.

5. The learned counsel for the petitioners/A2 and A3 by way of statement of dates and events would submit that till 13.08.2015 the enquiry in Crime Nos.228 and 229 of 2015 was not completed. Infact, on 13.08.2015, the first petitioner attended the enquiry before the first respondent and the Investigation Officer Sivasubramanian, after given the representation to the Superintendent of Police, Thoothukudi requesting change of investigation. Thereafter, vide order, dated 13.08.2015 investigation was transferred to Mr.Meenakshinathan by the Deputy Superintendent of Police, Tiruchendur. While so, if really Sivasubramanian has made ready the final report, he would have



reported it to the higher officials, namely, the Deputy Superintendent of Police, but he never did it. But after the order passed by the Deputy Superintendent of Police to transfer the investigation of both the cases, hurriedly by anti-dating the final report, the said Sivasubramanian, Sub Inspector of Police, has arranged for filing the final report belatedly and also had tampered the records.

6. This Court is able to appreciate the submission made by the learned counsel for the petitioner in this regard. However, perusal of the CD file produced by the learned Additional Public Prosecutor indicates that the complaint registered in Crime Nos.228 of 2015 and 229 of 2015 on the file of the Tiruchendur police had reached the logical conclusion and on filing the final report before the learned Judicial Magistrate, Tiruchendur, he has taken the final report on file and has assigned C.C.No.50 of 2016 and C.C.No.224 of 2016, respectively. Presently, the petitioners herein want to take advantage of the draft final report closing the complaint against them, prepared by one Meenakshinathan, who was instructed by the Deputy Superintendent of Police to continue investigation in this case. However, the dis-advantage for the petitioner herein is that the recent judgment of the Hon'ble Supreme Court rendered in ***Jitul Jentilal Koteeha v. State of Gujarat and others, etc.***, wherein the Hon'ble Supreme Court has categorically held that the draft final report cannot be taken note of for considering an application to quash the proceedings. The Hon'ble Supreme Court has specifically stated that the High Court cannot entertain petition for quashing under Section 482 of Cr.P.C., at the behest of persons, who are not named in the FIR, purely on the basis of the name appearing in the draft charge sheet. The spirit of the above dictum is that draft final report is for the consumption of the investigation agency. Unless and until the draft final report is filed in the Court of law after duly approved by the learned Public Prosecutor, Court cannot take note of those report for the purpose of invoking Section 482 Cr.P.C.

7. In this case, admittedly, the higher official has ordered change of investigation, but the earlier Investigation Officer has already completed the investigation and filed final report under Section 173(1) of Cr.P.C. Therefore, the draft final report prepared subsequent to filing of final report neither fall under the category of further investigation under Section 173(8) of Cr.P.C., or re-investigation. The officer in-charge of the police station is at liberty to take note if any additional evidence obtained, during further investigation and forward the same to the learned Judicial Magistrate. Just because there is a draft final report available in the case dairy, this Court exercising its



power under Section 482 Cr.P.C., cannot quash a final report duly filed and taken cognizance. It is always open to the investigation agency to place necessary records before the Magistrate, who has already taken cognizance of the offence and submit further investigation report.

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8. For the above said reasons, this Court find that Section 482 Cr.P.C., cannot be invoked in this case to quash the C.C.No.50 of 2016 pending on the file of the learned Judicial Magistrate, Tiruchendur. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Judicial Magistrate,
Tiruchendur.
- 2.The Deputy Superintendent of Police,
Tiruchendur Sub-Division,
Tiruchendur.
- 3.The Inspector of Police,
Tiruchendur Police Station,
Tiruchendur.
- 4.The Inspector of Police,
Kulasekarapattinam Police Station,
Kulasekarapattinam,
Tuticorin District.



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

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