



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.10.2021

PRONOUNCED ON:20.12.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD) .No.791 of 2016

and

Cr1.M.P. (MD) No.11374 of 2016

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1.V.Mannayathevar
2.Mathiarasu
3.Vetrivel
4.Tamil @ Tamilarasan : Petitioners/Respondents/
Accused 1 to 4

Vs.

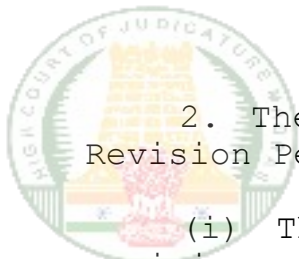
1.State represented by
The Inspector of Police,
Thanjavur East Police Station,
Thanjavur.
(Crime No.575 of 2013) : 1st Respondent/1st Respondent/
Complainant
2.V.Mohan : 2nd Respondent/Petitioner/
Defacto complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, against the order dated 02.11.2016, passed in Cr.M.P.No.394 of 2015, in S.C.No.238 of 2015, on the file of the learned Additional Assistant Sessions Judge, Thanjavur, Thanjavur District.

For Petitioners : Mr.Suresh Kannan
for Mr.N.Subramani
For Respondents : Mr.M.Muthumanikkam
Government Advocate (Cr1.Side)
for R.1
: Mr.V.Chandrasekar
for R.2

ORDER

This Criminal Revision Petition is directed against the order passed in Cr.M.P.No.394 of 2015 in S.C.No.238 of 2015, dated 02.11.2016, on the file of the Additional Sessions Judge, Thanjavur in allowing the petition filed under Section 173(8) Cr.P.C.



2. The facts that led to the filing of the present Criminal Revision Petition in short are as follows:

(i) The second respondent is the defacto complainant. The revision petitioner No.1/first accused is none other than the defacto complainant's sister's husband and the second accused is none other than his own brother. The defacto complainant has lodged a complaint with the first respondent and on that basis F.I.R., came to be registered in Cr.No.575 of 2013 for the alleged offences under Sections 368, 386 and 506(ii) I.P.C., and the final report was taken on file in P.R.C.No.38 of 2014, on the file of the Court of the Judicial Magistrate No.1, Thanjavur, against the present revision petitioners. Thereafter, the learned Judicial Magistrate, after complying with all necessary legal formalities, has committed the case to the Court of Sessions and the case was taken on file in S.C.No.238 of 2015 and subsequently, the said case was made over to the Additional Assistant Sessions Court, Thanjavur.

(ii) The second respondent/defacto complainant, alleging that the first respondent has not conducted the investigation properly, has filed a petition under Section 173(8) Cr.P.C in Cr.M.P.No.394 of 2015 seeking orders directing the first respondent to investigate the matter further and file a fresh charge sheet incorporating all the material facts. The first respondent as well the accused 1 and 2 and the accused A.3 and A.4 have filed counter statements rising serious objections.

(iii) The learned Additional Assistant Sessions Judge, after enquiry, has passed an order dated 04.03.2016 dismissing the said petition. Aggrieved by the said order of dismissal, the defacto complainant has preferred a revision before this Court in Crl.R.C. (MD)No.177 of 2016 and this Court, vide order dated 11.08.2016, has allowed the revision, setting aside the order passed in Cr.M.P.No.394 of 2015 and directed the learned Additional Assistant Sessions Judge to restore the said application to his file, to rehear the matter and pass orders in accordance with law. In pursuance of the said orders of this Court, the petition was restored to file and after hearing the learned Counsel for all the parties and on perusing the materials placed on record, the learned Additional Assistant Sessions Judge, has passed the impugned order dated 02.11.2016, allowing the petition and thereby directed the first respondent to investigate the matter further under Section 173 (8) Cr.P.C. and file a fresh charge sheet within two months, incorporating all the material facts. Aggrieved by the said order, all the four accused have now come forward with the present Criminal Revision Petition.

3. In the petition filed under Section 173(8) Cr.P.C., in Cr.M.P.No.394 of 2015, the defacto complainant has listed out the following the defects in the investigation and the same are



" 1. There are actually 8 accused committing the crime. But the I.O., has omitted 4 accused for the reasons best known to him.

2. Place of occurrence is shown as road running from West to East instead of the fact that the road is actually running from North to South.

3. The Registration No of the TATA Sumo car has been shown as T-51-R-0617 in FIR and Charge Sheet. But the Registration No has been quoted as "TN-49R-0617 in the statement given by the confession witness by name R.Marimuthu whereas the Registration No has been quoted as "TN-59R-0617" in the statement given by the confession witness by name Ragu.

4. The witness by name R.Marimuthu who happened to be the eye witness witnessing the scene of occurrence regarding the execution of the sale at Vallam Sub Registrar Office has been wrongly cited as the witness for the confession given by the A.2."

4. In the present Criminal Revision Petition, during the arguments, the defacto complainant has raised the following investigation defects:

"(i) The owner of the car which was involved in the commission of offence has not been examined by the Investigating Officer, even after the car was already seized by the police.

(ii) The person who had driven the two wheeler, after abduction of the defacto complainant, has not been arrayed as accused and the Investigating Officer has not made any attempt to trace out the said accused."

5. It is pertinent to mention that initially the prosecution has raised objections for ordering further investigation and in the counter statement filed by the first respondent it has been stated that the defacto complainant after having remaining silent all along the proceedings, has come forward with the vexatious application and that too, when the trial is about to be commenced and that if the defacto complainant had not been satisfied with the investigation, he should have approached the High Court seeking further investigation or fresh investigation and that therefore, the petition for further investigation is not maintainable and the same is liable to be dismissed. But now, relying upon the judgment of the Honourable Supreme Court in **Vinubhai Haribhai Malviya Vs. State of Gujarat**, reported in **(2019)17 SCC 1**, has supported the order for further investigation and sought for dismissal of the Criminal Revision Petition.



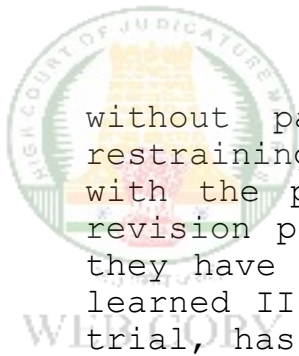
6. The accused in their counter statements have taken a stand that the defacto complainant neither in his complaint nor in his statement recorded under Section 161 Cr.P.C., has mentioned about the involvement of 8 accused, that he has mentioned about the alleged involvement of 8 accused only in the petition filed under Section 173(8) Cr.P.C., that the Registration Number of the TATA Sumo car is neither mentioned in the F.I.R., nor in the statement of the defacto complainant recorded under Section 161 Cr.P.C., that the defacto complainant has not named the witness Marimuthu as eye-witness in his complaint or in his statement recorded under Section 161 Cr.P.C. and that wrong direction mentioned in the rough sketch is immaterial to the case.

7. The learned Additional Assistant Sessions Judge, in his order, has also specifically stated that the defacto complainant did not mention in his complaint that there were 8 accused, that he did not mention about the registration number of the TATA Sumo vehicle used in the commission of offence, that the defacto complainant did not mention that the said Marimuthu had witnessed the execution of sale deed before the Sub Registrar, Vallam and that the defacto complainant has not even averred the said facts in his statement recorded under Section 161 Cr.P.C. But, the learned Additional Assistant Sessions Judge, by referring to the statement given by the said witness Marimuthu to the effect that the Registration number of the vehicle allegedly involved as TN-49-R-0617 and also noting the direction of the road running from West to East, which is also not correct, has come to a decision that there are lapses in the investigation and hence, the matter is to be investigated further. But this Court is of the view that the above aspects are not material aspects that warrant the matter to be investigated further.

8. During the arguments, the learned Counsel for the second respondent has taken a new plea that the competent civil Court has already passed a judgment cancelling the sale deed alleged to have been taken by the accused from the defacto complainant, as the same was taken under threat and coercion, that the judgment and decree is binding on the Investigating Agency as well the Criminal Court, that the respondent police has not at all taken any positive steps to investigate regarding the so called execution of the sale deed and that the learned Additional Assistant Sessions Judge has rightly directed the respondent police to proceed with further investigation and to file a fresh charge sheet.

9. The learned Counsel for the second respondent would further submit that the further investigation is absolutely necessary to enlighten the truth in the light of the findings rendered by the competent civil Court.

10. It is not in dispute that the defacto complainant has filed a suit in O.S.No.77 of 2016 for cancellation of the sale deed dated 19.05.2013 and the same was obtained by threat and coercion and



without paying any consideration and for permanent injunction restraining the defendants and their men or agents from interfering with the peaceful possession and enjoyment of the property. The revision petitioner 1 and 2/accused 1 and 2 are the defendants and they have contested the suit by filing the written statement. The learned II Additional District Judge, Thanjavur, after full fledged trial, has passed the judgment and decree dated 31.07.2019 granting the reliefs sought for and thereby cancelling the sale deed dated 19.07.2013 as the same was obtained by threat and coercion and without paying any consideration.

11. It is also not in dispute that the revision petitioners 1 and 2 preferred an appeal before this Court and obtained stay order. The learned Counsel for the second respondent would submit that the stay order was not subsequently extended, as the defendants were not ready to proceed with the first appeal, that this Court has only granted stay for filing of fresh charge sheet, not with respect to the direction for further investigation and that the respondent police has not proceeded with further investigation, as directed by the trial Court till now.

12. Turning to the arguments of the learned Counsel for the defacto complainant that the judgment of the competent Civil Court is binding on the criminal Court, no doubt, the Honourable Supreme Court in **Karam Chand Ganga Prasad And Anr. vs Union Of India (Uoi) And Ors** reported in **AIR 1971 SC 1244**, has held that it is a well established principle of law that the decisions of the civil Courts are binding on the criminal Courts and that the converse is not true.

13. In **P. Swaroopa Rani vs M. Hari Narayana @ Hari Babu** reported in AIR 2008 SC 1884, the Honourable Supreme Court has held as follows:

"It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.

Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute. ... It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."

14. The Honourable Supreme Court, in **Kishan Singh (dead) through LRs. Vs. Gural Singh and Others**, has observed that in **Syed**



Askari Hadi Ali Augustine Imam and Another vs State (Delhi Admn.) & Another reported in (2009)5 SCC 528, this Court considered all the judgments on the issue and held that while deciding the case in **Karam Chand's case**, this Court failed to take note of the Constitution Bench judgment rendered in **M.S.Sheriff Vs. State of Madras and others** reported in AIR 1954 SC 397 and therefore, it remains *per incuriam* and does not lay down the correct law. The Honourable Apex Court has further held that a similar view has been reiterated by this Court in **Vishnu Dutt Sharma Vs Daya Sapt (smt)**, reported in 2009(13) SCC 729, wherein it has been held that the decision in **Karam Chand's case** stood overruled in **K.G.Premshanker Vs. Inspector of Police and another** reported in AIR 2002 SC 3372, and the Honourable Supreme Court, after referring the earlier judgments, has concluded thus:

"19. In view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

15. Applying the settled position of law to the case on hand, the contention of the learned Counsel for the defacto complainant that the judgment passed in O.S.No.77 of 2016 is binding on the criminal Court, is devoid of merits and the same is liable for rejection. But at the same time, it is pertinent to mention that though the defacto complainant has specifically alleged that the document was obtained from him by threat and coercion, as rightly contended by the defacto complainant, there is absolutely no investigation on that aspects. Though the charge sheet has been laid that the land of the defacto complainant was forcibly taken before the Sub Registrar Office, Vallam by threat, they have not shown any materials with respect to the alleged taking of sale deed and that too, at the Sub Registrar Office, Vallam.

16. Considering the above, this Court is of the clear view that the investigation conducted by the second respondent with regard to the aspects above referred, is faulty and defective and hence, further investigation is necessary.



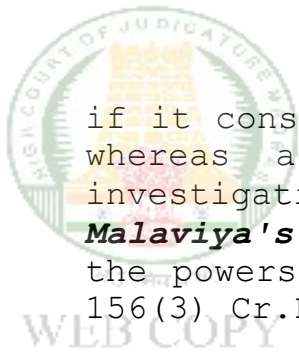
17. As already pointed out, the learned Additional Assistant Sessions Judge has not only passed the order directing the first respondent to conduct further investigation, but also directed to file a fresh charge sheet. The learned Additional Assistant Sessions Judge, in his previous order dated 04.03.2016, by relying on some decisions of the Honourable Supreme Court as well as this Court, has come to the conclusion that Section 173(8) Cr.P.C., does not empower a Judicial Magistrate to order further investigation at the instance of the defacto complainant and on that basis, dismissed the said petition. The learned Single Judge of this Court, in the order passed in Crl.R.C.(MD)No.177 of 2016, by observing that it is well settled that not only at the instance of the police, even at the instance of the defacto complainant, further investigation under Section 173(8) Cr.P.C., can be undertaken by the police to find out the truth of the matter, has directed the trial Court to rehear the matter and decide that petition in accordance with law.

18. As per the Oxford Dictionary, the Investigation means "an official examination of the facts about a situation, crime etc.". The Code of Criminal Procedure defines the word Investigation in Section 2(h) as collection of evidence conducted by the Police Officer or by any other person other than a Magistrate, who is authorised by a Magistrate in his behalf. The investigation includes all the proceedings under Cr.P.C., for the collection of evidence conducted by a police officer or by any other person authorised by a Magistrate.

19. It is pertinent to mention that the Magistrate can order further investigation under Section 173(8) Cr.P.C., In case, if a report is filed under Section 173 Cr.P.C., by the Investigating Agency, the Magistrate may either accept the report and take cognizance of the offence and issue process or may disagree with the report and drop the proceedings or may direct further investigation and require the police to make a further report.

20. On considering the provisions of Section 173(8) Cr.P.C., it is always open to the Investigating Agency to file a petition for further investigation and the Court may, on the application by the Investigating Agency, permit further investigation. A Full Bench of the Honourable Supreme Court in **Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat and another** reported in (2019)17 SCC 1, has settled the position of law to the effect that the Magistrate has power to order further investigation into an offence even at a post cognizance stage until the trial commences.

21. The Honourable Supreme Court in **Babubhai v. State of Gujarat & others**, reported in 2010(12)SCC 254 has distinguished between further investigation and re-investigation and held that the superior Court in order to prevent miscarriage of criminal justice,



if it considers necessary, it may direct for investigation *de nova*, whereas a Magistrate's power is limited to ordering further investigation. The Honourable Supreme Court in **Vinubhai Haribhai Malaviya's case**, after referring various judgments, has listed out the powers of Magistrate in terms of Section 173(2) r/w 173(8) and 156(3) Cr.P.C., which are as follows:

"40. Having analysed the provisions of the Code and the various judgments as afore indicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (*de novo*) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three- Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge- sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."



22. In the decision reported in **(1998)5 SCC 223 (K. CHANDRASEKHAR vs THE STATE OF KERALA & ORS.)**, whereunder the Honourable Apex Court has observed as follows:

"The dictionary meaning of 'further' (when used as an adjective) is 'additional'; more; supplemental. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab-initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports - and not fresh report or reports- regarding the 'further' evidence obtained during such investigation."

23. In the case on hand, since the learned trial judge has only ordered for further investigation, the question of filing fresh charge sheet does not arise at all. As already pointed out, the Honourable Supreme Court has made specific distinction between further investigation and re-investigation. Though the Magistrate has power to order for further investigation, he has no power to order for fresh or re-investigation. Considering the above, the order of learned trial Judge directing the respondent police to file a fresh charge sheet is very much against settled position of law and the same is liable to be set aside.

24. Considering the above, the Criminal Revision Petition is partly allowed and the order of the learned trial Judge directing further investigation is confirmed and the direction for filing of fresh charge sheet is set aside. The first respondent police is directed to proceed with further investigation under Section 173(8) Cr.P.C. and file further or additional report within a period of three months from the date of receipt of a copy of this order. The learned trial Judge is directed not to proceed further till the filing of further or additional report by the respondent police. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

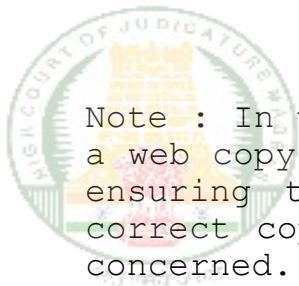
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Additional Assistant Sessions Judge,
Thanjavur, Thanjavur District.
- 2.The Principal District and Sessions Judge,
Thanjavur.
3. The Inspector of Police,
Thanjavur East Police Station,
Thanjavur.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.N.SUBRAMANI, Advocate (SR-39885[F] dated 21/12/2021)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-39665[F] dated 21/12/2021)

ORDER MADE IN
CRL.R.C.(MD).No.791 of 2016
20.12.2021

NSN(CO)
GC(05.01.2022) 10P 9C