



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.01.2022
CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Crl.R.C.No.33 of 2021
and
Crl.M.P.No. 384 of 2021

S.Rajendran,
S/o. Srinivasan

... Petitioner/Accused

Versus

State rep. by
Inspector of Police,
Vigilance and Anti-Corruption,
Salem Attachment,
Salem Dt.
(Cr. No.14/AC/2009/SL)

... Respondent/Complainant

PRAYER : Criminal Revision Case filed under Section 401 read with 397 of the Code of Criminal Procedure, to call for the records and set aside the order passed by the Special Judge for Trial of the case under the Prevention of Corruption Act, Salem in Crl.M.P.No.96 of 2020 dated 07.09.2020.

For Petitioner : Mr.M.Rajkumar

For Respondent : Mr.Hasan Mohamed Jinnah
Public Prosecutor assisted by
Mr. C.E.Pratap,
Govt. Advocate (Crl. Side)

ORDER

(This case has been heard through video conference)

This Criminal Revision Case has been filed against the order passed by the court below in a petition filed under Sec.173(8) of Cr.P.C. seeking for conducting further investigation in Crl.M.P. No. 96 of 2020 in Cr. No.14/AC/2009, dated 07.09.2020.

2. The petitioner is arrayed as A1 in this case. He has been charged with for the offences under Sec.120(b), 167, 409, 465, 467, 468, 471, 474 and 477(A) I.P.C. and Sec.13(2) r/w 13 (1)(c)(d) of the Prevention of Corruption Act. After investigation, the final report has been filed by the respondent dated 18.11.2014 stating that further action



dropped and that report was filed before the concerned Special Court and the complaint was also closed. Thereafter, the respondent has filed a petition under Sec.173(8) of Cr.P.C. seeking for further investigation and that petition has been allowed by the learned Special Judge ordering further investigation. Now, challenging the same, the present Criminal Revision Petition has been filed.

3. Mr. M.Rajkumar, learned counsel appearing for petitioner would submit that, earlier, the complaint has been investigated by the very same police and a negative final report has been filed as further action dropped. That was also accepted by the learned Special Court and the complaint had been closed. Thereafter, the petition filed under Sec.173(8) of Cr.P.C., seeking for further investigation is not maintainable. According to learned counsel, once the negative final report is filed, the only option is available to the respondent is to file a protest petition before the concerned court and it is for the Special Court considering the protest petition, either to accept or reject the same or taking cognizance, or ordering for further investigation. In absence of any such protest petition, now it is not open to the respondent to file a petition for further investigation and the learned Judicial Magistrate mechanically allowed the same. It is the further contention of the petitioner that, accepting the final report is a judicial order, that order cannot be reviewed or revised or annulled or cancelled by virtue of the bar under Sec. 362 Cr.P.C. In the said circumstances, the order passed by the Special Court is totally illegal and the same is liable to be set aside.

4. Per contra, learned Public Prosecutor appearing for respondent would submit that, the power under Sec.173(8) of Cr.P.C. is an independent judicial power and even after accepting the negative final report, the court is empowered to order further investigation, there is no bar and it is not prohibited under the Code of Criminal Procedure. The Special Court, considering entire materials, ordered for further investigation and there is no irregularity in it.

5. Heard and considered rival submissions made by learned counsel appearing for both sides and perused the records.

6. The question arises for consideration is that, after accepting the negative final report filed by the police and closing all further proceedings, is it open to the Special Court to order for further investigation under Sec.173(8) Cr.P.C. The above issue is no more res integra, the Full Bench of this Court, in the case of Chinnathambi @ Subamani vs. State, rep. by the Inspector of Police, Vellakovil Police



Station, Tirupur Dt. reported in 2017 (2) CTC 241, following the judgment of Hon'ble Supreme Court in the case of State of Rajasthan vs. Aruna Devi, reported in 1995 (1) SCC 1, has held that, accepting the negative final report would not deter the police from seeking further investigation under Sec.173(8) Cr.P.C. The relevant portion of the Judgment in paras 47 and 54 reads as follows :-

"47. This judgment of the Hon'ble Supreme Court clearly answer the issue involved in the present case. In this case, the Hon'ble Supreme Court has held that though the Magistrate had earlier accepted the negative final report that would not deter the police from further investigating the matter as provided in sub-section (8) of Section 173 of Cr.P.C. There is nothing illegal on the part of the learned Magistrate in taking cognizance of the offences on the said police report. But, unfortunately, this judgment of the Hon'ble Supreme Court in State of Rajasthan v. Aruna Devi was not brought to the notice of the Division Bench. In view of the law reiterated by the Hon'ble Supreme Court in Aruna Devi case (cited supra), we have no hesitation to hold that the judgment of the Division Bench in K.K.S.S.Ramachandran's case is not the correct position of law.

54. We sum our conclusions as follows :-

(i) An order of the Magistrate taking cognizance of offences on a police report is a judicial order.

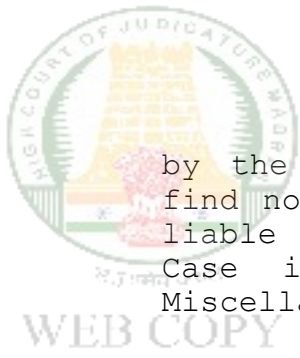
(ii) An order of a Magistrate ordering further investigation on receiving a police report is a non-judicial order.

(iii) An order of a Magistrate accepting a negative police report after hearing the parties is a judicial order.

(iv) An order of a Magistrate recording the report of the police as "undetectable" is not a judicial order.

(v) The power of the Magistrate to permit the police to further investigate the case as provided under Sec.173(8) of the Code is an independent power and the exercise of the said power shall not amount to varying, modifying or cancelling the earlier order of the Magistrate on the report of the police, notwithstanding the fact whether the said earlier order is a judicial or a non-judicial order of the Magistrate....."

7. In the above circumstances, accepting the negative final report is not a bar for ordering further investigation under Sec.173(8) of Cr.P.C., as it is an independent judicial power and it shall not amount to cancelling the earlier judicial order. This Court finds no error in the order passed



by the court below. Considering the above circumstances, I find no merit in this Criminal Revision Case and the same is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for Trial of the case under the Prevention of Corruption Act, Salem.

2. The Inspector of Police,
Vigilance and Anti-Corruption,
Salem Attachment, Salem Dt.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.T.Vijayaraghavan, Advocate Sr.NO. 4565
Crl.R.C.No.33 of 2021

EV(CO)
A.SK(03/03/2022)