



Crl.O.P.No.15152 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.15152 of 2020

and

Crl.M.P.No.5760 of 2020

State Represented by
The Inspector of Police,
E-2 Royapettah Police Station,
Chennai – 600 014.

... Petitioner

Vs.

- 1.S.Immanuel Devakadatcham,
Presbyter-in-Charge,
CSI Zion Church,
No.4, AM Arunachalam Street,
Chintadripet,
Chennai-600 002.
2. Samuel Aarun,
Sexton, St.George's Cathedral Church,
224, Cathedral Road,
Chennai-600 086.
3. Shiva,
Staff, St.George's Cathedral Church,
224, Cathedral Road,
Chennai-600 086.



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4. John Mathew

5. Kovil Pitchai

6. Linora James

7. Samuel Devaprasad

8. Stella Alfred

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 7.2.2020 made in Crl.M.P.No.3705 of 2019 in C.C.No.463 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and order reinvestigation/further investigation in C.C.No.463 of 2015 on the file of the said Court in Crime No.515 of 2014 on the file of E-2 Royapettah Police Station, Chennai by a Superior Officer of the rank of Assistant Commissioner of Police.

For Petitioner : Mr.A.Gopinath
Govt.Advocate (Crl.Side)

For R1, R2, R6, R7 : Mr.V.Raghavachari

For R3, R4, R5, R8 : Mr.R.C.Paul Kanagaraj



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ORDER

This petition has been filed to set aside the order dated 07.02.2020 made in Crl.M.P.No.3705 of 2019 in C.C.No.463 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai, whereby dismissed the petition filed under Section 173(8) of Cr.P.C to permit the Investigation Officer to conduct further investigation in Crime No.515 of 2014.

2. The defacto complainant lodged complaint and on receipt of the same, the petitioner registered FIR in Crime No.515 of 2014 for the offences punishable under Sections 147, 451, 380 and 506(i) of IPC as against the accused persons. After completion of investigation in Crime No.515 of 2014, the petitioner filed final report and the same has been taken cognizance in C.C.No.463 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai. When the matter was pending for Trial, the defacto complainant gave a representation to the Assistant Commissioner of Police, Royapettah, stating that certain



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documents have been stolen by the accused from the Trust Office and requested for further investigation. While the said request was under consideration, the defacto complainant approached this Court for further investigation in Crl.O.P.No.3052 of 2016. This Court dismissed the petition as infructuous and observed that it is open to the Investigation Officer to approach the learned Magistrate Court by filing an appropriate application under Section 173(8) Cr.P.C, seeking permission for further investigation. Therefore, the petitioner is being the Investigation Officer filed a petition under Section 173(8) Cr.P.C, seeking permission for further investigation. The Trial Court dismissed the petition for seeking further investigation and aggrieved by the same, the present petition is filed.

3. The learned Government Advocate (Crl.Side) submitted that the Investigation Officer can lay all the fresh evidence which is even available after filing the final report to substantiate the charge made against the accused persons. At any time in the course of Trial, when further evidence is available, the investigation agency should be afforded



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an opportunity to unearth the same and place it before the Trial Court.

The details of the documents which were stolen and the names of the key witnesses not examined by the Investigation Officer have already furnished by the defacto complainant by his representation to the Deputy Commissioner of Police and also the Assistant Commissioner of Police which cannot be revealed to the accused as it will tamper the evidence and hamper the investigation. He also pointed out that when the defacto complainant filed petition seeking further investigation in which this Court held that, it is clear that as per Section 173(8) Cr.P.C, further investigation can be ordered only on the request of the Investigation Officer. Further, the investigation cannot be asked by the defacto complainant. But in that case, admittedly, the defacto complainant has not filed any application before the Magistrate Court to give direction to the Investigation Officer for further investigation. However, this Court had given liberty to the Investigation Officer to approach the Trial Court seeking permission for investigation under Section 173(8) Cr.P.C. Accordingly, the Investigation Officer rightly approached the Trial Court and however, the Trial Court without considering the above aspect,



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dismissed the petition for the reason that the Investigation Officer represented before this Court in Crl.O.P.No.3052 of 2016, that basis on the complaint given by the defacto complainant, a case has been registered in Crime No.515 of 2014 and thereafter they had completed the investigation and filed final report and the same has been taken cognizance in C.C.No.463 of 2015 and as such there is no necessity to conduct further investigation.

4. That apart, the Investigation Officer failed to state about any new facts about the documents said to have been stolen by the accused persons and the prosecution failed to furnish any details about the documents as stated in the final report. In support of his contentions he relied upon the Judgment of the Hon'ble Supreme Court of India in **2004 5 SCC 347** in the case of ***“Hasanbhai Valibhai Quershi Vs. State of Gujarat and others”***, wherein held as follows,

“The police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as



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much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.”

5. Thus, the provisions under Section 173(8) Cr.P.C confers power upon the officer in charge of the police to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2) of Section 173 Cr.P.C. Therefore, it is always open for the Investigation Officer to apply for further investigation, even after forwarding the report under sub-section(2) of Section 173 Cr.P.C and even after the discharge of the accused. However, it shall be at the instance of the Investigation Officer in charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation after he discharges the accused.

6. The learned Government Advocate (Crl.Side) relied upon the Judgment reported by the Hon'ble Supreme Court of India in **1979**



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(2) **SCC 322** in the case of **“Ram lal Narang Vs. State (Delhi Administration)”** and **“Om Prakash Narang and another Vs.State (Delhi Administration)”**, wherein held as follows

“21. As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.”

7. He also relied upon the Judgment of the Hon'ble Full Bench of this Court in **Crl.A.No.663 of 2016** in the case of **“ Chinnathambi @ Subramani Vs. State Rep. By the Inspector of Police, Vellakovil Police Station, Tirupur District. [Crime No.555 of 2005]”**.



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“40. Section 173(8) Cr.P.C., empowers the Police to further investigate. Though the said provision does not explicitly say that the Investigating Officer should get prior permission from the jurisdictional Magistrate before whom earlier a report was submitted by him, the Courts have held the view that in order to maintain procedural propriety, the Investigating Officer is required to seek a formal permission from the Court to do further investigation if the conditions of Section 173(8) Cr.P.C., are satisfied. This power of the learned Magistrate under Section 173(8) Cr.P.C., is not a power to review, revise, vary or cancel the earlier judicial order passed by the learned Magistrate accepting the final report under Section 173 (2) Cr.P.C. Notwithstanding the fact whether the order of the learned Magistrate is either a judicial order or a mere ministerial order, the power of the learned Magistrate under Section 173(8) Cr.P.C., is an independent judicial power to grant permission because, statutorily the Investigating Officer has been empowered to do further investigation provided the conditions of the said provisions are satisfied.”

8. The learned counsel for the respondents submitted that further investigation is not an automatic. If any material is available on record, then the Investigation Officer can go for further investigation. Whereas, in the case on hand there is absolutely no new material available to order further investigation. In fact, the Investigation Officer



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himself reported before this Court in Crl.O.P.No.3052 of 2016 filed by the defacto complainant for further investigation that there is no necessity to conduct further investigation, since already the investigation officer completed the investigation and filed final report and the same has been taken cognizance in C.C.No.463 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai. The Investigation Officer now seeking further investigation only on the ground that the defacto complainant made representation before the Assistant Commissioner of Police, alleging that some of the documents have been stolen by the accused. Even till today, no details were furnished about what are all the documents have been stolen by the accused. On mere allegation the Investigation Officer cannot seek further investigation, without any material to substantiate the allegation. The defacto complainant or the Investigation Officer even till now failed to produce any new facts about the documents said to have been stolen by the accused and failed to furnish any details about the documents as stated in the final report. Therefore, the Court below rightly rejected the request made by the petitioner for further investigation.



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9. Heard Mr.A.Gopinath, learned Govt.Advocate (Crl.Side) appearing for the petitioner, Mr.V.Raghavachari, learned counsel appearing for the respondents 1, 2, 6 and 7 and Mr.R.C.Paul Kanagaraj, learned counsel appearing for the respondents 3, 4, 5 and 8.

10. The Investigation Officer/Petitioner herein filed a petition seeking permission for further investigation under Section 173(8) Cr.P.C in Crime No.515 of 2014, registered against the respondents herein for the offences under Sections 147, 451 and 506(i) of IPC by deleting the offence under Section 380 of IPC. However, while pending the Trial, the defacto complainant submitted representation and alleged that some of the documents of the Trust were stolen by the accused persons and in that regard, the defacto complainant seeks further investigation. Though, the petition filed by the defacto complainant was rejected by this Court in Crl.O.P.No.3052 of 2016, by an order dated 20.08.2018, this Court had given liberty to the Investigation Officer to approach the Trial Court for further investigation by filing an application under Section 173(8) of



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Cr.P.C. Accordingly, the Investigation Officer filed a petition seeking permission for further investigation. However, the Trial Court rejected the said request for the reason that there is no new facts or material available for further investigation. It is relevant to extract the provision under Section 173(8) of Cr.P.C as herein under,

“173(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

11. A mere reading of the above provision makes it clear that irrespective of the report under Sub-section (2) forwarded to the Magistrate, if the Investigation Officer obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. Thus, it is clear that further investigation is permissible. That apart, law does



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not mandate taking prior permission from the Magistrate for further investigation. Even after filing of the charge-sheet, further investigation is a statutory right of the Investigation Officer.

12. The Hon'ble Supreme Court of India held in **1979 (2) SCC 322** in the case of ***“Ram lal Narang Vs. State (Delhi Administration)”*** and ***“Om Prakash Narang and another Vs.State (Delhi Administration)”*** that there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence, where the police decide to make further investigation, the police can express their regard and respect for the Court by seeking its formal permission to make further investigation. Thus, it is clear that the investigation agency can do further investigation by seeking its formal permission from the Trial Court, since already the investigation officer filed final report under Section 173(8) Cr.P.C.



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13. The Hon'ble Full Bench of this Court also held in ***Crl.A.No.663 of 2016*** in the case of “ ***Chinnathambi @ Subramani Vs. State Rep. By the Inspector of Police, Vellakovil Police Station, Tirupur District. [Crime No.555 of 2005]***”, in order to maintain procedural propriety, the Investigation Officer is required to seek a formal permission from the Court to do further investigation if the conditions of Section 173(8) Cr.P.C., are satisfied. Further held that the learned Magistrate under Section 173(8) Cr.P.C., has no power to review, revise, vary or cancel the earlier judicial order passed by the learned Magistrate accepting the final report under Section 173 (2) Cr.P.C.

14. Thus, it is a settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the police. The material collected in further investigation cannot be rejected only because it has been filed at the stage of Trial.



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15. Insofar as the objections of the accused is concerned, the Hon'ble Supreme Court of India held in ***Crl.A.No.353 of 2020*** in the case of ***“Sathishkumar Nyalchand Shah Vs. State of Gujarat and others”***, that the accused has no locus or any say in the application filed by the Investigation Officer for further investigation under Section 173(8) of Cr.P.C. The accused is not a necessary or a proper party. There is nothing in Section 173(8) Cr.P.C to suggest that the Court is obliged to hear the accused before any direction for further investigation is made. Therefore, when the accused against whom the further investigation is sought for, is not required to be heard and there is no question of hearing all the accused against whom the charge-sheet is already filed. Therefore, the respondents have no say who are being the accused in this case while ordering further investigation under Section 173(8) Cr.P.C.

16. In view of the above, the order dated 07.02.2020 made in Crl.M.P.No.3705 of 2019 in C.C.No.463 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai is hereby set aside. The petitioner is directed to complete the further investigation and file



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additional report in Crime No.515 of 2014, within a period of three months from the date of receipt of a copy of this order. On receipt of the additional final report if any, the Trial Court is directed to complete the Trial, within a period of six months thereafter.

17. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

22.06.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
mn/cda

To

1. The XVIII Metropolitan Magistrate Court, Saidapet, Chennai.
2. The Inspector of Police,
E-2 Royapettah Police Station,
Chennai – 600 014.
3. The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

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