



W.P. No.15601 of 2021
and W.M.P.No.16518 of 2021

R.N.MANJULA, J.,

This matter is listed today under the caption "For being mentioned".

2. On 27.10.2022, this Court has passed an order by allowing the writ petition.

3. Today, the learned counsel for the petitioner mentioned about some clerical errors crept in the order and requested to rectify the same.

4. Hence, the clerical errors are modified to the extent indicated below:

i) In paragraphs '2.3, 2.4 and 7' wherever the word "Deputy General of Police" is mentioned, the same shall be rectified as "Director General of Police".

ii) In the first line of paragraph '10' the word "Court" is added after the word "Supreme".

iii) In line No.8 of paragraph '21' the words "has been dealt with" is included after the words "Sessions case".

5. In other aspects, the earlier order dated 27.10.2022 in W.P. No.15601 of 2021, shall remain unaltered.

23.12.2022

bkn



WEB COPY



R.N.MANJULA, J.

bkn

W.P. No.15601 of 2021
and W.M.P.No.16518 of 2021

23.12.2022



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
Pronounced on

05.09.2022
27.10.2022

Coram:

The HONOURABLE Ms. JUSTICE R.N.MANJULA

W.P. No. 15601 of 2021
and W.M.P. No.16518 of 2021

V.Ramachandran

.. Petitioner

Vs.

1. The State by Director General of Police,
Head of Police Force,
Tamil Nadu, Chennai – 600 004.

2. Inspector of Police,
CBCID, Coimbatore.

3. Inspector of Police,
CCB Central Crime Branch,
Coimbatore.

4. Maruthavanan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorari to call for the records of the impugned
proceedings of the first respondent bearing Rc.No.1180794/Crime
3(1)/2021, dated 23.06.2021 and FIR in Crime No.1 of 2021 dated



07.07.2021 registered by the second respondent in pursuance of the impugned order dated 23.06.2021 and quash the same.

WEB COPY

For Petitioner : Mr. C.Mani Sankar
Senior Counsel
for T.N.Raja Gopalan

For Respondents 1-3 : Mr. A.Damodaran
Additional Public Prosecutor

4 : Mr. N.R.Elango
Senior Counsel
for Mr.Akilesh Kumar

ORDER

This Writ Petition is filed for the issuance of a Writ of Certiorari to quash the impugned proceedings of the first respondent bearing Rc.No.1180794/Crime 3(1)/2021, dated 23.06.2021 and FIR in Crime No.1 of 2021 dated 07.07.2021 registered by the second respondent in pursuance of the impugned order dated 23.06.2021.

2. The brief facts which are relevant for the filing of the Writ Petition is as follows:

The petitioner is a reputed Doctor in the city of Coimbatore and he is running a hospital in the name and style “Lakshmi Narayana Clinic”. One Dr.Umashankar who was a specialist in Cardiology was working in



WEB COPY

Apollo Hospitals at Chennai. The said Dr.Umashankar approached the petitioner to take over the petitioner's hospital and run the same in the name and style M/s.Chennai Hospitals Private Ltd (hereinafter referred to as 'CHPL'). On 05.07.2017 a lease agreement was entered into between the petitioner and CHPL represented by its Managing Director and the lease deed was registered as Document No.3673 of 2017 at the office of SRO, Ganapathy, Coimbatore. The period of lease is for ten years and CHPL has agreed to pay the rent in accordance with the terms of the lease deed. Dr.Umashankar had paid a sum of Rs.1,00,00,000/- as security deposit which is agreed to be refunded without interest at the time of handing over the premises.

2.1 The hospital was functioning as M/s.Chennai Hospitals Private Limited. As agreed, the amount was not paid to the petitioner. Hence, the petitioner sent a letter to Dr.Umashankar to vacate the premises. In view of the subsequent dialogue between the petitioner and Dr.Umashankar, a cheque for a sum of Rs.65,85,300/- was issued to the petitioner. However, the same was returned as “payment stopped by the drawer”. The petitioner came to know that Dr.Umashankar is trying to usurp the property upon himself. When the petitioner enquired the same with Dr.Umashankar and his Manager Maruthavanan (fourth respondent herein), they threatened the



WEB COPY

petitioner with dire consequences. Hence a complaint was lodged by the petitioner on 02.11.2020 and FIR was registered against Dr.Umashankar and his Manager Marudhavanan in Cr. No.36/2020 by the third respondent / CCB Central Crime Branch, Coimbatore, for the offences under Section 406, 420, 341, 506 (i) and 109 IPC. Thereafter, Dr.Umashankar approached the petitioner for compromise and agreed to vacate the premises. He had also given some cheques towards arrears of rent but they were returned as “funds insufficient”. Though Dr.Umashankar agreed to vacate the premises, on 04.12.2020, he along with his Manager and their henchmen entered the hospital premises with deadly weapons and threatened the petitioner to vacate the premises and hand over the possession to him. Hence on 05.12.2020 the petitioner gave another police complaint to Rathinapuri Police Station and registered a FIR in Cr. No.1376 of 2020 against Dr.Umashankar, his Manager Marudhavanan and others for offences under Section 147, 148, 452 and 506 (ii) IPC. In this connection a civil suit was also filed by the petitioner in O.S. No.1232 of 2020 seeking certain reliefs.

2.2 On 23.01.2021, Dr.Umashankar died in a road accident. One of the Directors of CHPL had filed a suit in O.S. No.490 of 2021 against the petitioner for the relief of permanent injunction restraining him from



encumbering the suit property. On 09.02.2021, Mrs. U.Revathi W/o. Dr.Umashankar and her daughters issued a legal notice to the petitioner for appointment of Arbitrator. On 17.02.2021, the third respondent Police filed charge sheet in the case in Cr. No.36 of 2020 before the learned Judicial Magistrate VII (FAC), Coimbatore and the learned Magistrate took cognizance of the case and the case was numbered as C.C. No.509 of 2021 and summons has also been issued to the accused.

2.3 On 21.05.2021, the Director of CHPL, issued notice by invoking arbitration clause in the lease agreement and nominated a retired Judge of High Court as an Arbitrator. The petitioner had sent a reply on 06.07.2021. However, on 23.06.2021, the first respondent / Deputy General of Police, Head of Police Force, by his proceedings in R.C. No.1180794/Crime/3(1)/2021 passed an order to transfer the investigation of the case in Cr. No.36 of 2020 from the third respondent / CCB Central Crime Branch to the CBCID, Coimbatore. The said order is being challenged in this Writ.

2.4 Subsequently an Investigation Officer was also nominated by the Deputy General of Police, CBCID, on 29.06.2021. The impugned order issued by the first respondent to transfer the investigation from the third



respondent to the second respondent is arbitrary, contrary to law and without jurisdiction.

WEB COPY

2.5 The second respondent who is a different investigation agency has filed a petition under Section 173 (8) Cr.P.C. on 02.07.2021 in CMP No. 14192 of 2021 seeking further investigation of the above matter. Even before the order of the Court is passed, the second respondent has given a fresh FIR in Cr. No.1 of 2021 of CBCID, Coimbatore. On 08.07.2021, the petition filed seeking for further investigation was dismissed by the learned Judicial Magistrate VII (FAC), Coimbatore by stating that the petition seeking for further investigation was not filed by the competent officer despite summons was issued under Section 91 and 160 Cr.P.C. Since the impugned order passed by the first respondent is not legal, the impugned order in Rc.No.1180794/Crime 3(1)/2021 and the resultant FIR registered in Cr. No.1 of 2021 dated 07.07.2021 are liable to be quashed.

3. Heard Mr.C.Mani Sankar, learned Senior Counsel appearing for the petitioner, Mr. A.Damodaran, learned Additional Public Prosecutor appearing for the respondents 1 to 3 and Mr. N.R.Elango, learned Senior Counsel appearing for the fourth respondent.



WEB COPY

4. Mr.C.Mani Sankar, the learned Senior counsel appearing for the petitioner submitted that after the case was registered in Cr. No.36 of 2020 dated 02.11.2020, investigation was conducted and after concluding the investigation, charge sheet was also filed in C.C. No.509/2021 before the learned Judicial Magistrate VII (FAC), Coimbatore on 17.02.2021; thereafter, the learned Magistrate had taken cognizance of the case and issued process to the accused; only at this juncture, the first respondent had issued *suo motu* proceedings dated 23.06.2021 for transferring the investigation to the file of second respondent; in fact, while passing the above direction, there was no charge sheet pending and hence there cannot be any question of transferring the investigation; in the proceedings of the first respondent dated 23.06.2021, nothing was forthcoming as to what prompted to initiate such proceedings; the proceedings dated 23.06.2021 is without jurisdiction and it is a clear abuse of process of law; filing of the second FIR for the same transaction is illegal and there is an attempt to dilute the case pending on the file of learned Judicial Magistrate VII (FAC), Coimbatore; hence the proceedings of the first respondent dated 23.06.2021 and FIR registered in pursuance of the said proceedings in Cr. No.1 of 2021 on 07.07.2021 by the second respondent are liable to be quashed.



4.1 In support of his above contention, the learned Senior Counsel for the petitioner relied on the following judgments:

1. (2013) 5 SCC 762 – *Vinay Tyagi Vs. Irshd Ali Alias Deepak & other*
2. (2017) 4 CC 177 – *Amrutbhai Shambubhai Patel Vs. Sumanbhai Kantibhai Patel*
3. (2019) 17 SCC 1 – *Vinubhai Haribhai malaviya Vs. State of Gujarat*
4. Order of this Court dated 27.08.2021 in the case of *Ravi @ Anubav Ravi Vs. The Inspector of Police*
5. (1974) 2 SCC 121 – *Nawabkhan Abbaskhan Vs. The State of Gujarat*

5. Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondents 1 to 3 submitted that the first respondent has got power to transfer the proceedings from one Unit to another Unit in view of the administrative and other contingencies; since the first respondent is the Head of Police force, the administration, supervision and control of the police is within his power and authority and hence the proceedings dated 23.06.2021 cannot be said to be without jurisdiction; subsequent to the registration of the FIR, Dr.Umashankar died in a road accident on 23.01.2021 in a suspicious manner; in this regard, a case has been



registered in Cr. No.60 of 2021 by Thudialur Police, Coimbatore on the complaint given by the fourth respondent; the fourth respondent has also filed a Writ Petition in W.P. No.6982 of 2021 seeking a Writ of Mandamus to issue direction to transfer the investigation in Cr. No.60 of 2021 to any other independent agency; the investigation of the said case has revealed that the charge sheet was filed against one of the accused by name Richat Joseph before the learned Judicial Magistrate I, Coimbatore and the case was taken on file in C.C. No.889 of 2021 on 26.03.2021; however on 02.08.2022, an order was passed in Writ Petition in W.P. No.6982 of 2021 to transfer the investigation pertaining to Cr. No. 60 of 2021 from the file of Inspector of Police, Thudialur Police Station to the Commissioner of Police, Coimbatore.

5.1 A petition was filed by one S.P.Rajendran for granting Anticipatory Bail in respect of Cr. No.60 of 2021 by way of filing Crl. O.P. No.14432 of 2022.; in the above order, the involvement of said S.P.Rajendiran and others has been observed; only in this sensitive situation, the first respondent was in need to pass the impugned order to transfer the investigation from the file of third respondent to the second respondent; since the order has been passed subsequent to the larger conspiracy which came to light, the proceedings were issued for further



investigation.

WEB COPY

5.2 In support of the above contention, the learned Additional Public Prosecutor has relied on the following decision:

1. Order of the Hon'ble Supreme Court made in Crl. A. No.192 of 2016 dated 04.03.2016.

6. On the complaint given by the petitioner against the deceased Dr.Umashankar and his Manager / the fourth respondent herein, a case in Cr. No.36 of 2020 was registered under Section 406, 420, 341 and 506 (i) IPC. Another case on the complaint given by the petitioner has also been registered in Cr. No.1376 of 2020 against the deceased Umashankar and others under Sections 147, 148, 452 and 506 (ii) IPC. Certain civil suits were also pending between the parties in connection with the hospital run by the deceased Dr.Umashankar as Director for CHPL. The petitioner who is also a Director owned a premises in which the CHPL was being run on an agreement of lease. The dispute arose because of the non-payment of the rentals in terms of the lease agreement. In the case registered in Cr. No.36 of 2020 by the third respondent police, investigation has been completed and charge sheet has also been filed. In fact, the charge sheet has been taken on file by the learned Judicial Magistrate -VII (FAC), Coimbatore in C.C. No.509 of 2021. Only during pendency of the such



WEB COPY

proceedings, the impugned proceedings were issued by the first respondent to transfer the investigation from the third respondent to the second respondent. When a case is pending for investigation, it is always open to the first respondent who is Head of Police Force to issue orders for appointing the Investigation Officers, changing the investigation between two investigation units / Officers and supervise the same.

7. It is claimed by the learned counsel for the respondent that such power of the first respondent is borne by Section 18 (1) of the Police Act and Section 36 Cr.P.C.; as per Section 36 Cr.P.C. the Police Officers who are superior in the rank to an officer in charge of police station may exercise the same power as that of an officer in charge of a police station throughout the local area to which they are appointed; so the Chief Police Officer is empowered to pass orders in accordance with his appreciation and estimation of the situations and that orders can also be to transfer the investigation between two officers or units; hence, it is claimed by the first respondent that within the state of Tamil Nadu, the Deputy General of Police has got the power to transfer the investigation between officers in accordance with his satisfaction.

8. In support of the above contention, a judgment of the Hon'ble



WEB COPY

Supreme Court dated 04.03.2016 rendered in Crl.A. No.192 of 2016 was relied on. In the said judgment, the import of Section 36 Cr.P.C. and Section 18 (1) of the Police Act have been dealt by the Hon'ble Supreme Court. However, the said judgment has confirmed that the superior officer has got the power to appoint appropriate officers to take up the investigation of a particular case even though it falls within the purview of some police station / officer.

9. In the above judgment, the officer to whom the investigation was transferred has filed an application before the Court for further investigation and it was allowed. When the said order was challenged before the High Court of Kerala, it was contended by the petitioner therein that the order of the superior officer namely the Director General of Police was in excess of the powers vested with him under Section 36 Cr.P.C. The High Court of Kerala has quashed the proceedings on the ground that the officer appointed by the Superior Officer to investigate the case was outside the territorial jurisdiction.

10. On appeal, the Hon'ble Supreme has held that the State Police Chief can appoint suitable and competent officer to investigate a case irrespective of the limits of local jurisdiction of such officer, if such a



WEB COPY

course of action is required. The operative part of the said judgment is extracted hereunder for the better understanding for the above proposition of law:

“7. Section 36 empowers police officers superior in rank to an officer in charge of a Police Station to exercise the same powers as that of an officer in charge of a police station insofar as the territorial/local area within the jurisdiction of such superior police officers is concerned. Section 18(1) of the State Police Act, on the other hand, vests the administration, supervision, direction and control of the police throughout the State in the State Police Chief. The power under Section 36, on a plain reading thereof, is to be exercised by the District Police Chief who, by virtue of the said section, is empowered to appoint an officer above the rank of an officer in charge of a police station to exercise the same powers as may be exercised by an officer

in charge of the police station. This is, however, subject to the condition that such superior officer would be competent to exercise powers within the territorial/local limits of his jurisdiction. We do not see how Section 36 Cr.P.C, in any way, can debar the exercise of powers by the State Police Chief to appoint any superior officer who, in his opinion, would be competent and fit to investigate a particular case keeping in view the circumstances thereof. Section 36 Cr.P.C does not fetter the jurisdiction of the State Police Chief to pass such an order based on his satisfaction. It is the satisfaction of the State Police Chief, in the light of the facts of a given case, that would be



WEB COPY



determinative of the appointment to be made in which situation the limits of jurisdiction will not act as fetter or come in the way of exercise of such jurisdiction by the superior officer so appointed. Such an appointment would not be hedged by the limitations imposed by Section 36 Cr.P.C. Section 18 State Police Act, on the other hand, does not confer any such power and merely recognises the State Police Chief as the head of the police force in the State.”

11. In the case on hand, it is not about the power of Director General of Police to appoint a police officer beyond the territorial jurisdiction in which the case has been registered, but the issue is with regard to the exercise of power by the Director General of Police, after the investigation of the case had been completed and the charge sheet has been filed before the Judicial magistrate and the Judicial Magistrate had also taken cognizance of the same.

12. When the learned Magistrate has taken cognizance of the case and if the executive continues to exercise his power, that power would supersede the powers of the Court or even the superintendence of High Court over the Magisterial Courts within the State. No doubt the powers of police to do further investigation with the permission of the Court is



WEB COPY

beyond controversy. In view of Section 173(8) Cr.P.C. even in a case where investigation is completed and charge sheet is laid, the police can approach the Court on reasonable grounds for further investigation. But the term 'further investigation' or 'reinvestigation' or '*de novo* investigation' are totally different. The direction for reinvestigation or *de novo* investigation / fresh investigation can be given only by constitutional Courts by exercising its powers under Article 226 and 32 of the Constitution of India. The purpose of investigation which has to unearth the truth should be accomplished at any stage of the case.

13. The Hon'ble Supreme Court has made a distinction between the kinds of investigation and the powers of police and Court in various decisions. In this regard, it is relevant to refer the judgment of the Division Bench of the Hon'ble Supreme Court rendered in the case of ***Vinay Tyagi Vs. Irshad Ali Alias Deepak & Other***, reported in **(2013) 5 SCC 762**. In the said judgment, it is laid down that two kinds of investigation were adopted in the scheme of the Criminal Procedure Code. So far as the initial investigation is concerned that is to be continued after recording a case as per sec.154 Cr.P.C or subsequent to the direction of the Magistrate under sec.156(3) Cr.P.C. The initial investigation should culminate into a final report under Section 173 (2) Cr.P.C. Further investigation will arise



only after completion of the initial investigation and filing of the final report. In case the Investigation Officer get further materials in connection with the case in the form of oral or documentary evidence, then the Court should accommodate to continue the investigation in the new lines opened or on the basis of availability of the new materials. In such cases, the further investigation should be done by getting formal permission from the Court and after completion, the further report or supplementary report can be filed. Though the fresh investigation or reinvestigation or *de novo* investigation also falls under the genre of investigation, no provision under Criminal Procedure Code confers the power either on police to do the same on its own or at the Judicial Magistrate. The only recourse for taking up fresh investigation or *de novo* investigation is to approach the constitutional Courts and get directions.

14. The fundamental difference between the types of investigation have been elaborately dealt by the Hon'ble Supreme Court in the case of ***Vinay Tyagi Vs. Irshd Ali Alias Deepak & other*** (cited supra) and reads as under:

“20. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a



complaint, the court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds:

- (i) Initial investigation,*
- (ii) Further investigation,*
- (iii) Fresh or de novo or reinvestigation.*

21. The “initial investigation” is the one which the empowered police officer shall conduct in furtherance of registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the Investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

22. “Further investigation is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous Investigation and, therefore, is understood and described as “further investigation”. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary Investigation. It is commonly described as “supplementary report”. “Supplementary report” would be the correct expression as the subsequent investigation



WEB COPY

is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the Initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation.

23. However, in the case of a "fresh investigation", "reinvestigation" or "de novo Investigation" there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct "fresh investigation". This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh"/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of



WEB COPY



the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation".

15. While the roles of the Court are minimised when initial investigation is done and further investigation is undertaken, the Court has to accord permission. On the request made for further investigation, the Court has to see whether there is any scope for further investigation. Permission or direction for further investigation can be given only in rare circumstances by completely taking into consideration of the new developments.

16. When a final report is filed, it is up to the learned Magistrate either to accept the report. In certain occasions, the Court by itself can direct for further investigation and call for further report. However, the said power of the Court cannot be extended after the final report was taken



WEB COPY

cognizance. Once summons has been issued to the accused and the accused had entered appearance, the Courts *suo motu* has the power to direct for further investigation. However, that will not prevent the investigation agency to approach the Court with relevant materials for seeking permission for further investigation even at post cognizance stage. The powers of Magistrate to order for reinvestigation is still available after the cognizance was taken and the process was issued or the accused is discharged on the application filed by the investigation agency. The position is made clear in the judgment of Hon'ble Supreme Court rendered in the case of ***Amrutbai Shambubai Patel Vs. Sumanbhai Kantibhai Patel*** reported in ***(2019) 17 SCC 1***. The Hon'ble Supreme Court has settled the above position of law as under:

In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singhs, the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/Informant, Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant



WEB COPY



after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 CrPC, whereunder any witness can be summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.

17. An interesting question would arise when the superior police officer entrusts the task of doing further investigation on a different officer than the one who has done the investigation and filed the charge sheet already. If the territorial police who had filed the charge sheet, is the special officer who has been appointed to do the initial investigation, the very same investigation officer who has done the initial investigation should seek permission for further investigation. There may be occasions where the State may feel that the case should be entrusted to a Special Officer or a different Investigation Officer than the one who had taken up the initial investigation. At this juncture, it is relevant to extract the



provision of Section 173(8) Cr.P.C.

WEB COPY

“(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)”

18. The above provision does not foresee an officer or the change of investigation agency that could be appointed by the superior officer for the purpose of further investigation. It is obviously because after the charge sheet was filed and the Court had taken cognizance, there cannot be any change in the representative for the State unless for any special reasons the leave of the Court is obtained in this regard. Curiously, the Courts at Magistrate levels do not have such powers to change the investigation of the investigating agency, though, on certain occasions, it accepts the additional report filed by some other agency other than the one who had filed the report of the initial investigation and on which the cognizance had been taken.



19. The power of the Chief Police Officer to transfer the investigation to Special Officer or another officer other than the one who holds the territorial jurisdiction is not questionable, before the Court takes cognizance of the final report. But it is questionable after the charge sheet is filed and taken cognizance and the case is pending in the Court. In that case, by following the procedure laid down under Section 173 (8) Cr.P.C., the Territorial Officer who has filed the initial report and on which the cognizance had been taken alone should file a petition seeking permission for further investigation. After obtaining permission for further investigation, the stage of the case relates back to the continuation of investigation or pending investigation. During that course, if the superior officer deems it fit to appoint some other special investigating agency or competent Investigation Officer, then such decision should be informed to the Court.

20. It is also obligatory to seek appropriate orders from the High Court to transfer the proceedings from one Court to another Court in case, the Special Officer or new investigating agency does not fall under the jurisdiction of the Magistrate before whom the case is pending.

21. In this context, it is relevant to distinguish between two



situations i.e. investigating a case at the stage of FIR, and taking up further investigation after the case had taken on file either as a Calendar Case or a Sessions Case. The above distinction is because of the further investigation taken up at post-cognizance of the chargesheet. In fact in the order of the Hon'ble Supreme Court rendered in CrI.A. No.192 of 2016, the powers of a Superior Officer to appoint a Special Officer to investigate a case before it is transformed as a Calendar Case or Sessions Case. Since the judgment rendered in CrI. A. No.192 of 2016 dated 04.03.2016 does not make any distinction between the investigation of a case at the pre-cognizance and post cognizance stages, the respondent cannot seek shelter under the above order and justify its power to transfer the investigation to some other officer, after the charges sheet was taken cognizance by the Court.

22. Since the territorial jurisdiction of the Magistrate is defined by the High Court, the transfer of a case between the Courts cannot be done either directly or indirectly through an order of a superior police officer. In other words, if an order of the Chief Police Officer might impact the transfer of a case between the Courts, then the competent forum which should be approached for such a transfer is the High Court and not any other agency. In the case on hand, by virtue of the impugned proceedings,



WEB COPY

the trial Court which took cognizance of the case was under the compulsion to transfer the case records to the Court which exercises jurisdiction to deal with CBCID cases. The order of an executive can be good so long it does not cause in change of jurisdiction between the Courts. In the instant case, the impugned proceedings would result in change of jurisdiction between the Courts, due to the fact that the Judicial magistrate VII (FAC), Coimbatore does not have the jurisdiction to deal with the cases falling under CBCID, Coimbatore. The competent Court which has to conduct the cases falling under the CBCID wing would be the Chief Judicial Magistrate, Coimbatore. So the natural corollary in such cases would be that the power of Chief Police Officer to transfer the investigation between two different agencies can be exercised for further investigation only with the leave of the Court.

23. There is absolutely no doubt that whenever fresh facts come to light, the powers of the police under Section 173(8) Cr.P.C. should be exercised by getting permission from the Court. But the competent authority in the understanding of the Court can be only that Investigation Officer who has filed the initial report. Hence direction for further investigation can be obtained only by the same officer who had the jurisdiction to do the first investigation. The powers of the police for



WEB COPY

undertaking further investigation post-cognizance has been settled positively. There is also no confusion in the minds of the Courts about the competent officer who has to invoke Section 173 (8) Cr.P.C. since it is understandable from the very language of Section 173(8) Cr.P.C.

24. In the case on hand, the learned Magistrate has observed rightly in the order passed in the petition filed in C.M.P. No.14192 of 2021 in C.C. No.509 of 2021 under Section 173(8) Cr.P.C. that the Magistrate cannot order further investigation to be done by a different agency. The learned Magistrate has referred the judgment of Hon'ble Supreme Court held in *Central Bureau of Investigation Vs. State of Rajasthan and another* reported in 2001 (3) SCC 333, wherein it is held that the change of investigation cannot be a matter of routine order passed by the Magistrate. In the said case, the Supreme Court had held that only the constitutional Court can have the power to order investigation by a different agency and not by the Magistrate. Since the order of the first respondent in the impugned proceedings has transferred the post-cognizance further investigation to some other officer other than the Territorial Officer who laid the charge sheet, the learned Judicial Magistrate cannot exercise his powers.



WEB COPY

25. The petition filed for further investigation was done by one R.Sumathi, the Inspector of Police, CBCID Police Unit, who was appointed by the first respondent as the new Investigation Officer to conduct further investigation post-cognizance. Since CBCID, does not come under the jurisdiction of Judicial Magistrate VII (FAC), Coimbatore and no orders have been issued by the High Court to Judicial Magistrate VII (FAC), Coimbatore to transfer the proceedings to the Chief Judicial Magistrate Coimbatore, which holds the jurisdiction for CBCID cases, the Magistrate was not able to grant permission to the new investigation agency. Such orders passed by the Magistrate would be ultra vires to his powers and hence the learned Magistrate has rightly dismissed the petition. The powers of the Chief Police Officer to appoint competent officer and transfer the investigation from one officer to another officer or one Unit to another Unit is distinguishable between two kinds of investigation i.e. initial investigation and further investigation.

26. So far as the reinvestigation and *de novo* trial is concerned, there is no difficulty because such permission can only be given by the constitutional Courts and it is up to the appreciation of constitutional Courts either to entrust reinvestigation with the same investigation agency or to a different investigation agency depending on the



circumstances of the case. So the powers of the Chief Police Officer as affirmed by the Hon'ble Supreme Court in the order passed in Crl.A. No.192 of 2016 can only be understood as the investigation with reference to pre-cognizance stage. Once the Courts had taken cognizance, the competent authority who can approach the Court for further investigation can be the very same officer who had laid the charge sheet as prescribed under Section 172(8) Cr.P.C.

27. In the case on hand, by virtue of the impugned order of the first respondent, the CBCID had taken up the investigation and registered a new case in Cr. No.1 of 2021 even without getting permission of the Court. In fact by order dated 08.07.2021, the Judicial Magistrate VII (FAC), Coimbatore has dismissed the petition filed under Section 173(8) Cr.P.C. However, the impugned case in Cr. No.1 of 2021 has been registered on 07.07.2021 itself by the second respondent CBCID. The order of dismissal passed in a petition filed under Section 173(8) Cr.P.C. before the Judicial Magistrate VII (FAC), Coimbatore, by a different agency on 08.07.2021 has been challenged before the High Court. That would only mean that there cannot be any further investigation, since the prayer for further investigation was denied.

28. The second respondent has chosen to issue summons under



WEB COPY

Section 91 and 160 Cr.P.C. which is beyond the jurisdiction of the second respondent. The administrative supremacy of first respondent / Chief Police Officer on the state police unit has been wrongly understood without making reference to the stage of the case and that should be avoided. The Magistrate Courts, at no point of time, can function under the orders of any Agency other than the power conferred on it through statute or on the directions of the superior Courts. By assigning a new FIR number by the second respondent for the pending Calendar Case in C.C. No.509 of 2021 on the file of Judicial Magistrate VII (FAC), Coimbatore which originated from Cr. No.36 of 2020 of the third respondent would amount to give a go-by to the earlier case in Cr. No.36 of 2020. The action of respondents 1 and 3 would amount to causing a reinvestigation or a new investigation of a case in which charge sheet has already been laid and the Court had taken cognizance of the same.

29. In the guise of exercising the power of appointing a Special Police Officer for investigating a case, a case cannot be subjected to reinvestigation or fresh investigation without the orders of the constitutional Courts. Since the impugned order of the first respondent has only resulted in a kind of reinvestigation by assigning a new case number in Cr. No.1 of 2021 by a different agency, no doubt the above proceedings are erroneous and not in



accordance with law.

30. Thus, the impugned proceedings in Rc.No.1180794/Crime 3(1)/2021 dated 23.06.2021 and the FIR in Crime No.1 of 2021 dated 07.07.2021 registered by the second respondent is held to be defective for the reasons summed up under:

- i) Once the final report is taken cognizance by the court, the investigation Agency is seized off its investigative power over the case. In the instant case, the Chief Police Officer has exercised his power post cognizance.
- ii) The impugned order dated 23.06.2021 has been issued for further investigation of a case pending before the Court in C.C. No.509 of 2021 without getting permission for further investigation in accordance with the procedure contemplated under Section 173 (8) Cr.P.C.
- iii) A direction given by the first respondent to collect the C.D. File and connected records from the concerned officer, by some other nominated Investigation Officer without the approval of the Court which had taken cognizance and before whom the case is pending.
- iv) By way of transferring the case to Crime Branch, CID, for



WEB COPY



further investigation, the first respondent has exceeded his power and passed an order which the constitutional Courts would normally pass while ordering reinvestigation or *de nova* investigation.

v) The above order of the first respondent would result in transferring the proceedings pending in one Court to another Court and that cannot be done through an police order. Because the Courts derive power only from the statute or the orders or directions given by the superior Courts.

vi) The third respondent who has registered the case in Cr. No.1 of 2021 had started to re-investigate the case and that is not possible without an order of the constitutional Court.

vii) The request for further investigation was not made by competent officer who had laid the charge sheet and who is representing the State in the case in C.C. No.509 of 2021 before the Judicial Magistrate VII (FAC), Coimbatore.

viii) Though the Court had rightly rejected the permission because the request was not made by the competent authority, the third respondent had proceeded to assign a new Crime Number on 07.07.2021 even without waiting for the order of the Court (dated 08.07.2021).



WEB COPY

ix) Despite the Judicial Magistrate VII (FAC), Coimbatore had denied permission for further investigation by virtue of a judicial order dated 08.07.2021, that was not challenged.

Without challenging the said order, the second respondent had issued summons under Section 91 and 160 Cr.P.C. by taking up the investigation in the case in Cr. No.1 of 2021. The fact remains that the original case in Cr. No.36 of 2020 which has been taken cognizance by the Court pending in C.C. No.509 of 2021 was not quashed by the High Court at any point of time and so the case in C.C. No.509 of 2021 is very much alive.

In view of the above stated reasons, this Writ Petition is allowed and impugned proceedings of the first respondent bearing Rc. No.1180794/Crime 3(1)/2021 dated 23.06.2021 and the FIR in Crime No.1 of 2021 dated 07.07.2021 registered by the second respondent is hereby quashed. Consequently connected miscellaneous petition is closed.

27.10.2022

Index: Yes/No

Speaking order / Non-speaking order

bkn



To:

1. The Director General of Police,
Head of Police Force,
Tamil Nadu, Chennai – 600 004.
2. Inspector of Police,
CBCID, Coimbatore.
3. Inspector of Police,
CCB Central Crime Branch,
Coimbatore.
4. The Public Prosecutor, High Court of Madras.



WEB COPY



R.N.MANJULA, J.,

bkn

W.P. No. 15601 of 2021

27.10.2022