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Crl.O.P.No.28178 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.28178 of 2022

and

Crl.M.P.No.17343 of 2022

1.Junaith

2.Peer Mohamed

...

Petitioner

-VS-

1.The State represented by
The Inspector of Police,
Virinjupuram Police Station,
Vellore District.

2.Badrunissa Begam

[R2 impleaded as per order
dated 19.01.2023

in Crl.M.P.No.681 of 2023 in
Crl.O.P.No.28178 of 2022]

...

Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records pertaining to the proceedings in Crl.M.P.No.13616 of 2022 in C.C.No.653 of 2014 on the file of learned Judicial Magistrate No.V, Vellore and quash the same as illegal, abuse of the process of law and barred by doctrine 'Issue Estoppel' and thus render justice.



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For Petitioner ... Mr.P.Rajkumar
For R-1 ... Mr.S.Santhosh
Government Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings in Crl.M.P.No.13616 of 2022 in C.C.No.653 of 2014 on the file of learned Judicial Magistrate No.V, Vellore and quash the same as illegal, abuse of the process of law and barred by doctrine 'Issue Estoppel' and thus render justice.

2. Learned counsel for the petitioner submitted that, 1st respondent had filed a petition before the trial Court under Section 173 (5) of Cr.P.C. for reception of certain additional documents in C.M.P.No.322 of 2015. Learned trial Judge, after considering the petition and counter filed by the respondent, dismissed the petition stating the reasons that,

- (i) The provision quoted for reception of documents under Section 173(5) Cr.P.C is not maintainable.
- (ii) The petition was filed after a lapse of 8 years.
- (iii) The delay is not properly explained.



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(iv) The prosecution tried to fillup the lacuna at a belated stage.

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For all these reasons, that petition was dismissed.

3. Challenging the dismissal of the petition, the 2nd respondent/defacto complainant filed Crl.R.C.SR.No.15847 of 2022 along with Crl.M.P.No.4970 of 2022 for condonation of delay. However, the delay condonation was dismissed by this Court.

4. It is the submission of the learned counsel for the petitioner that, when the revision is not entertained, the order of learned Judicial Magistrate passed in Crl.M.P.No.322 of 2015 has become final. That being the case, 1st respondent has again filed a petition under Section 242(2) Cr.P.C for reception of additional documents, mostly documents referred in Crl.M.P.No.322 of 2015. Once the petition filed for reception of documents was dismissed and order has become final and filing of this petition is against the law and abuse of process of Court. Therefore, he prays for quashing the proceedings in Crl.M.P.No.13616 of 2022 in C.C.No.653 of



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2014 on the file of learned Judicial Magistrate No.V, Vellore.

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5. In support of this submission, he produced Judgment reported in **[2013 9 SCC 235]** in the case of ***Ravinder Singh Vs. Sukhbir Singh and others*** for proposition that

“the rule of “issue estoppel” prevents re-litigation as to an issue already determined in a criminal trial between the parties concerned.”

6. In response, learned Government Advocate (Criminal side) submitted that, learned Judicial Magistrate No.V, Vellore has not disposed Crl.M.P.No.13616 of 2022 and it is pending. Earlier petition filed under Section 173(5) Cr.P.C in Crl.M.P.No.322 of 2015 was dismissed on technical ground, for the reason that, provision was misquoted and there was a delay. Mere misquoting of provision is not a ground for rejection of documents, if the documents would help the Court in arriving a right decision in the case. He further submitted that, it is for the learned trial Judge to consider all the points raised by the petitioner and take a decision.

7. Learned counsel for 2nd respondent submitted that 2nd respondent is the defacto complainant in this case. 1st respondent has failed to collect



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the material documents, which would help in establishing his case. He was cheated by the accused to the tune of Rs.3 crores worth property. For the fault of the Investigating Officer namely the 1st respondent, he cannot be made to suffer. He has the right to establish his case by producing all necessary and material documents.

8. Considered the rival submissions and perused the records.

9. This Court, without going into the merits of the rival contentions, is of the view that, this matter must be examined thoroughly by the learned Judicial Magistrate No.V, Vellore, by considering the points raised by both the parties. In such view of the matter, this Court is not inclined to entertain this petition.

10. Accordingly, this Criminal Original Petition is disposed of, giving direction to the learned Judicial Magistrate No.V, Vellore to give opportunity to the petitioner, respondents including the defacto complaint



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in Crl.M.P.No.13616 of 2022 in C.C.No.653 of 2014 and pass orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this Order. Consequently, the connected Miscellaneous Petition is closed.

02.02.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non speaking order

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G.CHANDRASEKHARAN, J.

gd

To

- 1.The Judicial Magistrate No.V,
Vellore.
- 2.The Inspector of Police,
Virinjupuram Police Station,
Vellore District.
- 3.The Public Prosecutor,
High Court, Madras.

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