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Crl.O.P.No.17422 and 23480 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.17422 and 23480 of 2017
and Crl.M.P.Nos.10658, 13641 and 15308 of 2017

Crl.O.P.No.17422 of 2017:-

Ranjitha Menon

... Petitioner

-Vs-

1. State represented by
The Deputy Superintendent of Police,
Organized Crime Unit II, Crime Branch CID,
Chennai.
2. The Superintendent of Police,
CB CID (North Zone), Chennai.
3. The Inspector General of Police,
CBCID(Crime), Chennai.
4. The Additional Director General of Police,
CB CID, Chennai.
5. The Director General of Police(Law and Order),
Tamil Nadu.
6. K.Lenin @ Sri Nithya Dharmananda
(R6 is impleaded as per the order dated 27.10.2017
made in Crl.M.P.No.11661 of 2017
in Crl.O.P.No.17422 of 2017)



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7. Aarthi Rao,

(R7 is impleaded as per the order dated 27.10.2017
made in Crl.M.P.No.11662 of 2017
in Crl.O.P.No.17422 of 2017)

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C praying to under Section 173(8) of Cr.P.C to issue direction to the investigator to further investigate into the matter in C.C.No.2068 of 2015 and submit such further report or reports in the case as to secure fair investigation and trial.

For Petitioner : Mr.J.Elayaraja

For R1 to R5 : Mr.A.Gopinath
Government Advocate (Crl.Side)

Crl.O.P.No.23480 of 2017:-

N.Mohanraj alias Sri Nithya Atmaprabhananda

...Petitioner

-Vs-

1.State represented by

The Deputy Superintendent of Police,
Organized Crime Unit II, Crime Branch CID, Chennai.

2.The Superintendent of Police,
CB CID(North Zone), Chennai.

3.The Inspector General of Police,
CBCID(Crime), Chennai.

4.The Additional Director General of Police,
CB CID, Chennai.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C praying to allow the petition and direct the first respondent to conduct the further investigation under Section 173(8) Cr.P.C.1973 in C.C.No.2068 of 2015



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pending on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.R.C.Paul Kanagaraj

For R1 to R4 : Mr.A.Gopinath
Government Advocate(Crl.Side)

COMMON ORDER

These Criminal Original Petitions have been filed to conduct further investigation as contemplated under Section 173(8) of Cr.P.C in C.C.No.2068 of 2015 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai.

2. Both the petitioners are defacto complainants and one of the eye witnesses. Both the petitions are filed for same prayer. Therefore, this Court is inclined to pass common order in both the petitions.

3. On the compliant lodged by the petitioners, the first respondent registered an FIR in Crime No.782 of 2011. After completion of the investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.2068 of 2015, on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. Pending trial, the petitioners filed these petitions for further investigation before this Court under Section 173(8) of Cr.P.C.



4. The Hon'ble Full Bench of this Court held in the case of

Chinnathambi @ Subramani Vs. State rep. By the Inspector of Police, Vellakovil Police Station, Tirupur District in 2017 (2) CTC 241 held as follows:

“44. We sum up 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 Section 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 Order or a Non-Judicial Order of the Magistrate.

(vi) For seeking permission for further investigation under Section 173(8) of Cr.P.C. by the Police, the earlier Order, either Judicial or Non-Judicial, passed by the Magistrate on the Report of the Police need not be challenged before the higher forum.

vii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. after cognizance has been taken on



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the Police Report can be exercised by the Magistrate only on a request made by the Investigating Agency and not, at the instance of anyone other than the Investigating Agency or even suo motu. (vide Judgment of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel V. Sumanbhai Kantibhai Patel, 2017 (2) SCALE 198].

(viii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. can be exercised by the Magistrate before accepting the Negative Police Report thereby acting on the Protest Petition by the victim or the de facto Complainant. [vide Kishan Lal V. Dharmendra Bafna and another, 2008 (2) MWN (Cr.) 58: 2009 (7) SCC 685]

(ix) We clarify that any one, who is aggrieved by any Order made by the Magistrate on a Police Report as aforesaid in subparagraphs (i) to (iv) herein above may approach the higher forum for remedy, if any.”

5. Accordingly, after taking cognizance by the trial Court, the aggrieved party has to file an application before the trial Court for further investigation as provided under Section 173(8) of the Cr.P.C. Therefore, if at all the petitioners have any grievance over the final report filed by the investigation agency, the petitioners are at liberty to file an appropriate petition before the trial Court in the manner known to law.



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6. In view of the above, these Criminal Original Petitions are disposed

of. Consequently, connected Miscellaneous Petitions are closed.

06.10.2023
(2/2)

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rjr/mn



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G.K.ILANTHIRAIYAN, J.

mn

To

- 1.The Deputy Superintendent of Police,
Organized Crime Unit II, Crime Branch CID,
Chennai.
- 2.The Superintendent of Police,
CB CID (North Zone), Chennai.
- 3.The Inspector General of Police,
CBCID (Crime), Chennai.
- 4.The Additional Director General of Police,
CB CID, Chennai
- 5.The Director General of Police(Law and Order),
Tamil Nadu.
- 6.The Public Prosecutor,
High Court, Madras.

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