



Crl.O.P.(MD) No.3236 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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Reserved on : 21.06.2023

Pronounced on : 10.07.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN**

**Crl.O.P.(MD) No.3236 of 2021**

Baskaran

...Petitioner/Defacto Complainant

Vs.

1.The Superintendent of Police,  
Office of the Superintendent of Police,  
Madurai District.

2.The Deputy Superintendent of Police,  
CB-CID,  
Madurai Range, Madurai.

3.The Deputy Superintendent of Police,  
Karuppayoorani Police Station Limit,  
Umachikulam Sub Division,  
Madurai District.

...Respondents

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C.,  
to transfer the investigation in Crime No.1212 of 2020 on the file of the  
third respondent to the second respondent and to direct some other  
agency for further investigation and proceed with the same as per law



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within a time frame fixed by this Court.

For Petitioner : Mr.G.Karuppasamy Pandian  
for Mr.K.Subburam

For Respondents : Mr.E.Antony Sahaya Prabhakar  
Additional Public Prosecutor

### **ORDER**

The petitioner, who is the de-facto complainant in Crime No.1212 of 2020 on the file of the third respondent police, has filed this petition seeking to transfer the investigation in Crime No.1212 of 2020 to the second respondent for conducting further investigation, within a time frame fixed by this Court.

2. The petitioner's brother namely, Krishnarajan and his friend Munisamy, were alleged to have been murdered by one Veeramani @ Palpandi, Thirupathi and their henchmen on 11.10.2020 and hence, he preferred a complaint before the Karuppayoorani Police Station and the same was registered in Crime No.1212 of 2020 for the offences punishable under Sections 302 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act,



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2015 [hereinafter called as “the Act, 2015”] and the investigation was continued by the third respondent.

3. Being dissatisfied with the progress of investigation conducted by the third respondent, the petitioner has preferred this criminal original petition to transfer the investigation to the second respondent.

4. The petitioner, in the affidavit, has alleged that his brother namely, Krishnarajan (Deceased) was elected unanimously to the post of President of Kunnathur Village Panchayat in the local body election. The deceased used to supervise the Kunnathur Malai Kovil every day at 8.00 p.m, in order to prevent any illegal activities. On 11.10.2020 at about 8.00 p.m, the deceased was standing outside the house and when the de-facto complainant questioned the deceased, he replied that he was waiting for one Mr.Munisamy (the other deceased-belonging to the Schedule Caste Community) who would accompany him for supervising the above said temple. After the arrival of the said Munisamy, both of them went to the above said temple in their vehicles, ie., Krishnarajan rode his motorcycle bearing Reg.No.TN59CF4793 and the deceased



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Munisamy went in his bicycle. On the next day, at about 6.00 a.m, one Kandhasamy, son of Alagarsamy belonging to Varichiyur Village, informed the de-facto complainant that his brother Krishnarajan and Munisamy were murdered and their bodies were found at Kunnathur Agastheeswarar Malaikovil. He immediately rushed to the occurrence place with one Ganesan and Malaikallan and found his brother Krishnarajan and Munisamy lying dead in a pool of blood with multiple cuts on their body. The deceased Krishnarajan's bike and Munisamy's cycle were found near the road.

5.The petitioner has further alleged that one Veeranan @ Palpandi, son of Periyakaruppan Ambalam belonging to Kallar caste worked as a Secretary of the Sakkimangalam Village Panchayat, and was also holding the additional charge of the post of Secretary of the Kunnathur Village Panchayat. The post of Secretary of Kunnathur Village Panchayat had been allotted to the SC/ST community and interview for the said post was also proposed to be held on 21.10.2020. The said Veeranan @ Palpandi had insisted the deceased Krishnarajan to retain him as the permanent Secretary of Kunnathur Panchayat. The



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deceased informed Veeranan @ Palpandi that he would not act against the Government Orders and the caste reservation. Due to the above said reason, Veeranan @ Palpandi had developed enmity and vengeance against the deceased Krishnarajan and had also caused hindrance to the deceased Krishnarajan in discharging his duty as a President of Kunnathur Village Panchayat in many ways by colluding with one Thirupathi, former Kunnathur Panchayat President.

6. Therefore, the petitioner had lodged a complaint against the said Veeranan @ Palpandi and Thirupathi on 12.10.2020 before the Karuppayoorani Police Station and FIR was registered in Crime No. 1212 of 2020 against the above said Veeranan, Thirupathi and their henchmen for the offence punishable under Section 302 IPC and Section 3(2)(v) of the Act, 2015. After registering the above case, the third respondent, as the jurisdictional Deputy Superintendent of Police, commenced the investigation and arrested Senthil and Balaguru. The third respondent without arresting Veeranan and Thirupathi, conducted the investigation in biased and unfair manner and has also taken steps to file the final report, deleting the names of the said Veeranan and



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Thirupathi. So, the petitioner, not being satisfied with the course of investigation conducted by the third respondent, has filed this transfer petition, making serious allegations against the conduct of the third respondent.

7. On 06.04.2023, after considering the submissions of parties and upon perusal of the records, this Court passed the following order:-

*“This Court perused the CD file and also enquired with the learned Additional Public Prosecutor regarding the stage of investigation. From the records, it is seen that the accused in the above case obtained the statutory bail on 25.01.2021. As per the Act, an investigation must be completed within 60 days from the date of the offence. If he is not able to complete the investigation, he should file the explanation in writing as to why he is not able to complete the investigation. As per the Rule 7, the investigation officer filed explanation petition on 22.12.2020. He also filed another explanation petition on 25.01.2021. In both explanation petitions, he has not cited the reason why he is not able to secure the Accused No.4.*

*2. When this Court enquired about the antecedent of A4, the investigation officer submitted that number of*



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*cases pending against him in Virudhunagar District. In the said situation, this Court does not satisfy with the reply given by the investigation officer that he is unable to secure the accused. So, this Court directed the investigation officer to file the affidavit regarding the steps taken for arresting the accused No.4. The investigation officer is further directed to furnish the procedure adopted in the department to secure the absconding the accused. It is further directed to the investigation officer to give what are the steps taken to comply the procedure for arresting the absconding accused as per the circular issued by the Director General of Police of Tamilnadu, with regard to the arrest of the absconding accused and also execution of NBWs pending against the accused, who are facing trial.*

***Post the matter on 19.04.2023.”***

8. On 19.04.2023, in compliance with the said direction, the Investigating Officer appeared in-person and filed the counter with explanation and the relevant paragraph No.7 reads as follows:-

*“Accused No.4 is absconding. So a Special team was formed and went to Virudhunagar to trace the 4<sup>th</sup> accused namely Senthilkumar S/o.Ponram on 17.11.2020, but*



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*the 4<sup>th</sup> accused could not be found. Again on 27.11.2020, 10.12.2020, 05.01.2021, 08.01.2021, 12.01.2021 and 19.02.2021 Special team went to Virudhunagar. But the 4<sup>th</sup> accused could not be secured and his whereabouts were not known. I humbly submit as far as this case was concerned there is no NBW pending against the Accused No.4, meanwhile the wife of the 4<sup>th</sup> accused namely Mrs.Murugalakshmi had given a complaint before the Virudhunagar East Police Station stating that her husband Senthilkumar S/o.Ponram, the 4<sup>th</sup> accused, is missing from 08.01.2021 and that her husband lastly spoke to her on 11.02.2021 and after that her husband's phone was switched off. The Inspector, Virudhunagar East Police Station registered a case in Crime No.41 of 2021 as "Man Missing". The Inspector could not trace about the whereabouts of the 4<sup>th</sup> accused namely Senthilkumar S/o.Ponram".*

9.1. The explanation furnished by the Investigation Officer is not satisfactory. The Investigation Officer has not conducted



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investigation in a fair manner. This Court perused the CD file and final report and found that he committed number of material illegalities in the course of the investigation and filed the deletion report in an improper manner. Further, he has not collected number of materials and also he conducted investigation in unfair manner. So, this Court on 19.04.2023 passed a detailed order with the following direction to the Inspector General of Police, South Zone, Madurai, Tamilnadu:

*“9.2. The Inspector General of Police, South Zone, Madurai, Tamil Nadu, shall conduct enquiry regarding the manner of investigation conducted by Mr.M.Vijayakumar, Assistant Commissioner of Police, Sellur, Madurai, in Crime No.1212 of 2020 on the file of Karuppayoorani Police Station after affording an opportunity to him and submit a report before this Court and he is further directed to appoint some other Officer to secure the fourth accused namely, Senthil Kumar, son of Ponram, Virudhunagar and produce him before the trial Court on or before*



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*20.06.2023 and report before this Court on  
21.06.2023.*

*9.3. Since the above direction is given to the  
Inspector General of Police, South Zone,  
Madurai, Tamil Nadu, this Court desists from  
giving any specific finding on the intentional  
lapse committed by the investigation officer.  
This Court also expresses its hope that truth  
would be earthed out.*

***Post the matter on 21.06.2023.”***

**10. In compliance with the above order, Thiru.Asra Garg, the  
Inspector General of Police, South Zone, Madurai, Tamilnadu,  
appeared in person and produced a report in a sealed cover.**

**10.1 The contents of the report as follows:-**



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Now, the Hon'ble High Court, Madurai Bench while hearing this CrI.OP.(MD). No.3236 of 2021, examined the investigation conducted, perused the CD file and other related documents in detail and being dissatisfied with the investigation of the case issued the following directions:-

*'The Inspector General of Police, South Zone, Madurai shall conduct enquiry regarding the manner of investigation conducted by Mr.M.Vijayakumar, Asst. Commissioner of Police, Sellur, Madurai in Cr.No.1212 of 2020 on the file of Karuppayurani Police Station after affording an opportunity to him and submit a report before this Court and he is further directed to appoint some other Officer to secure the fourth accused namely Senthil Kumar, Son of Ponram, Virudhunagar and produce him before the trial Court on or before 20.06.2023 and report before this Court on 21.06.2023.'*

Hence, two directions were issued as follows:-

- i. To enquire into the manner of investigation conducted by the then DSP Oomachikulam Sub Division Tr.M.Vijayakumar, Asst. Commissioner of Police, Sellur, Madurai.
- ii. To secure the 4<sup>th</sup> absconding accused i.e. Thiru.P.Senthil Kumar S/o. Ponram, Virudhunagar

  
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South Zone, Madurai.



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Accordingly, two Special Teams were constituted consisting of the below mentioned officers vide proceedings 1) C.No.25-174/Special Watch/SB/IGP-SZ/2023, dated: 28.05.2023 and 2) C.No.25-174(1)/Special Watch/SB/IGP-SZ/2023, dated: 28.05.2023.

1) Team constituted vide proceedings in C.No.25-174/Special Watch/SB/IGP-SZ/2023, dated: 28.05.2023 for assisting to enquire into the manner of investigation in Karuppayurani PS Cr.No.1212/2020 u/s 302 IPC and 3(2)(v) of SC/ST (POA) Amendment Act 2015.

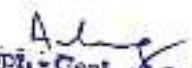
- i. Tr. R. Shiva Prasad, IPS, Superintendent of Police, Madurai District
- ii. Tr. M. Sudheer, DSP, Sankarankovil Sub Division, Tenkasi district
- iii. Tr. M. Muthu, Inspector, Special Branch, Madurai district
- iv. Tr. G. Palraju, Inspector, Oomachiluram Circle, Madurai district
- v. Tr. P. Mohan, Inspector, Silaiman Circle, Madurai district

2) Team constituted vide proceedings in C.No.25-174(1)/Special Watch/SB/IGP-SZ/2023, dated: 28.05.2023 to secure the fourth absconding accused Thiru P.Senthil kumar, s/o Ponnam, Virudhunagar.

- i. Tr. Karun Uddhavrao Garad, IPS, ASP, Aruppukottai SD, Virudhunagar district
- ii. Tr. T.Salamurugan, Inspector, Aruppukottai Town PS, Virudhunagar district.
- iii. Tr. R.Selvakumar, SI, Special Branch, Virudhunagar district.
- iv. Tr. M.Nagaraja Prabhu, SI, Aruppukottai Town PS, Virudhunagar district.
- v. Tr. P.Kanahik, SI, Virudhunagar East PS, Virudhunagar district.
- vi. Tr. R.Anbazhagan, IIC 1770, Aruppukottai Town PS, Virudhunagar district.
- vii. Tr. R.Suresh Kannan Gr.I 3712, Aruppukottai Town PS, Virudhunagar district.
- viii. Tr. S.Raja@marisankar Gr.I 3734, Aruppukottai Town PS, Virudhunagar.

- I. We have carefully perused the CD file of Karuppayurani PS Cr.No.1212/2020 u/s 302 IPC and 3(2)(v) of SC/ST (POA) Amendment Act 2015, visited the scene of crime, collected discreet information, conducted enquiry with some witnesses both cited in the chargesheet and others. Further, as directed by the Hon'ble High Court, an opportunity was also granted to Thiru.M.Vijayakumar, Asst. Commissioner of Police, Sellur, Madurai (investigation officer of the case) with detailed questionnaire on 31.05.2023 in order to ensure that a reasonable opportunity was given to him and subsequently another opportunity was also given on 19.06.2023.

First stage of enquiry conducted regarding the manner of investigation reveals prima facie the following serious lapses / misconduct on the part of the Investigation Officer.

  
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1. Two important witnesses 1) Thiru. Nallakumar, S/o. Vellaisamy Servai  
2) Thiru. Ganesan, S/o. Pandi Servai had been cited having purportedly seen the  
chargesheeted A1 Thiru. K. Senthil S/o. Karupiah servai and A2 Thiru. P. Balaguru,  
S/o. Periyakaruppan who were moving on a two wheeler towards the scene of crime  
on the day of occurrence at around 20.15 hrs.

Further, two more important witnesses 1) Thiru. Poovanathan, S/o.  
Muniyandi, 2) Thiru. Ravi, S/o. Mollayan had been cited having purportedly seen the  
chargesheeted A1 Thiru. K. Senthil S/o. Karupiah servai and A2 Thiru. P. Balaguru,  
S/o. Periyakaruppan, who were coming out from the scene of crime on the day of  
occurrence at around 22.30 hrs.

It is pertinent to mention here that the statements as mentioned above were  
recorded on 20.10.2020 by the then Investigation Officer Thiru. Vijayakumar and A1  
Thiru. K. Senthil S/o. Karupiah Servai and A2 Thiru. P. Balaguru S/o.  
Periyakaruppan were arraigned as accused for the first time in the CD file by the  
investigation officer on the same day i.e. on 20.10.2020 and also the names of the  
FIR named accused were deleted without any substantial reasons and without citing  
any material evidence / witnesses in their favor.

During the course of enquiry into the manner of investigation, the above  
mentioned four witnesses 1) Thiru. Nallakumar, S/o. Vellaisamy Servai,  
2) Thiru. Ganesan, S/o. Pandi Servai, 3) Thiru. Poovanathan, S/o. Muniyandi,  
4) Thiru. Ravi, S/o. Mollayan were duly examined on 16.05.2023. During the enquiry,  
it was found that all the four witnesses who had purportedly seen the accused  
Thiru. K. Senthil and Thiru. P. Balaguru on the above mentioned date and time, have  
categorically stated that they had never been examined by the investigation officer.  
The statements of the above witnesses recorded during the course of enquiry are  
submitted for the kind perusal of the Hon'ble High Court. Further, audio-videograph  
of the statements of the above witnesses which were made during the enquiry are  
also submitted in the pen drive for kind perusal of the Hon'ble High Court. (File  
Names: Audio Video Statement of Nallakumar, Audio Video Statement of Ganesan,  
Audio Video Statement of Poovanathan, Audio Video Statement of Ravi).

*[Signature]*  
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South Zone, Madurai



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2. On perusal of the CD file, chargesheet filed by the investigation officer as well as the alteration report which also mentions about the deletion of named accused of FIR, it is revealed that CDRs of neither the named accused nor the chargesheeted accused are brought on record and neither have they been filed along with the chargesheet or deletion report.

On the contrary, during enquiry conducted with Thiru.M.Vijayakumar, Asst. Commissioner of Police, Sellur, Madurai, he has contended that he had deleted FIR named accused A1 Thiru.Veeranan @ Palpandi and A2 Thiru.Thirupathi based on the CDR analysis which however, is not the case in actuality as seen above. Not only this, the investigation officer Thiru.M.Vijayakumar, Asst. Commissioner of Police, Sellur, Madurai has nowhere mentioned even a single line about the reasons for deleting the accused A1 Thiru.Veeranan @ Palpandi and A2 Thiru.Thirupathi in this case who were named as accused in the CD file till 19.10.2020 after which 20.10.2020 the other two accused suddenly came up as accused in the CD file.

During the course of enquiry, it is found that 9485533476 number was used by FIR named accused A1 Thiru.Veeranan @ Palpandi and 9486373610 was one of the numbers used by another FIR named accused A2 Thiru.Thirupathi and CDR of both these numbers revealed the tower location at the relevant time of occurrence at Uranganpatti and Karuppayurani respectively.

During the course of enquiry, when his explanation was sought about the failure to duly mention the reason for deciding upon the non-involvement of A1 Thiru.Veeranan @ Palpandi and A2 Thiru.Thirupathi, he has replied that both Uranganpatti and Karuppayurani are 6 kms and 11 kms away from the scene of occurrence respectively. He had decided based on the same that these 2 accused A1 Thiru.Veeranan @ Palpandi and A2 Thiru.Thirupathi were not involved in the said murder. However, nowhere in the deletion report / CD file / chargesheet this claim of CDR of named accused A1 Thiru.Veeranan @ Palpandi and A2 Thiru.Thirupathi having been taken into account to prove their purported non-presence at the scene of crime has been mentioned by the investigation officer.

*[Signature]*  
Asst. Commr. of Police  
South Zone, Madurai



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Hence, this explanation is nothing but an afterthought and cannot be accepted. Moreover, even if this afterthought and delayed logic is accepted at face value, the CDRs cannot be said to be a deciding factor in arriving at the decision of involvement / non-involvement of suspects / accused in murder cases.

3. In the CD file dated: 02.11.2020, the investigation officer Thiru.M.Vijayakumar, the then DSP Oomachikulam Sub Division has stated that a team had been sent to secure accused A3 Thiru.S.Karthikeyan @ Kuttai Karthi and in the same CD dated:02/11/2020, he has arraigned Thiru.S.Karthikeyan @ Kuttai Karthi and Thiru.P.Senthil Kumar as A3 and A4 respectively.

It is pertinent to mention here that before the 02.11.2020 diary, there is no material on record available to indicate the involvement / even suspicion of the role / involvement of Thiru.S.Karthikeyan @ Kuttai Karthi and Thiru.P.Senthil Kumar of Virudhunagar.

During the course of enquiry in the manner of investigation, it has been revealed that Thiru.K. Senthil and Thiru.P.Balaguru were taken on police custody on 06.11.2020 and during the custody both the accused had confessed about the involvement of A3 accused Thiru.S.Karthikeyan @ Kuttai Karthi on 06.11.2020 and also another accused whose name was not mentioned. If that be the case, investigation officer Thiru.M.Vijayakumar, the then DSP Oomachikulam Sub Division should not have added the names of Thiru.S.Karthikeyan @ Kuttai Karthi and Thiru.P.Senthil Kumar on 02.11.2020 itself. It is also found during the enquiry that A3 Thiru.S.Karthikeyan @ Kuttai Karthi was arrested on 16.11.2020 and during his confession he mentioned the name of Thiru.P.Senthil Kumar S/o. Ponram, Virudhunagar. However, the investigation officer Thiru.M.Vijayakumar had already mentioned him as A4 in the CD file dated: 02.11.2020.

4. Enquiry further reveals that during the confession taken during the police custody on 06.11.2020, two confession witnesses were cited 1) Thiru.Viji S/o.Kajendran and 2) Thiru.N.Mahendran S/o. Natarajan. During the course of enquiry, the whereabouts of Thiru.Viji could not be located so far whereas on Thiru.N.Mahendran on being interrogated categorically stated that the confession

*A. Senthil*  
Asst. - Genl. of Police  
South Zone, Madurai



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was never recorded in his presence. Infact Thiru.N.Mahendran has stated that on coming to know his signature has been recorded in a murder case wherein Varichiyur Senthil (A1) is an accused, he has shifted his base to Paramakudi, due to fear over his life. The audio / video statement of Thiru.N.Mahendran was also recorded which is enclosed in the pendrive for kind perusal (File Name: Audio Video Statement of Mahendran).

5. During the course of enquiry, one Thiru.Karthaisamy, a relative of deceased Thiru.A.Munichamy, was identified who has now stated that he had seen chargesheeted accused A2 Thiru.P.Balaguru on the day of occurrence while coming with a blood stained shirt at the relevant time. His statement was duly recorded and also audio-videographed on 31.05.2023.(File Name: Audio Video Statement of Karthaisamy).

Perusal of the CID file and relevant documents reveals that he was not cited as a witness despite being a very key witness. On being asked about the reasons to Thiru.M.Vijayakumar, he has stated that Thiru.Karthaisamy did not provide any useful / new information in favor of the case because of which his statement was not recorded.

During the course of enquiry, Thiru.Karthaisamy categorically revealed that he had met the investigation officer there in person during the course of investigation and had duly narrated having seen the chargesheeted accused A2 Thiru.P.Balaguru in blood stained shirt on the night of occurrence at the relevant time.

To sum-up, the following submissions are made before the Hon'ble High Court after this first stage of ongoing enquiry:-

Since several lacunae and grave misconduct have been revealed on the part of the investigation officer Thiru.M.Vijayakumar, the case may be investigated further and fresh investigation may be allowed to be conducted in order fix the involvement / non-involvement of named FIR accused / chargesheeted / or any other additional accused in this double murder case.

*A. J.*  
Asst. - Genl. of Police,  
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- II. The Hon'ble High Court has also directed to appoint some other officer to secure the fourth accused namely Thiru.P. Senthil Kumar, Son of Ponram, Virudhunagar and produce him before the trial Court on or before 20.05.2023.

Accordingly, proceedings vide C.No.25-174(1)/Special Watch/SB/IGP-SZ/2023, dated: 28.05.2023 and C.No.25-174(2)/Special Watch/SB/IGP-SZ/2023, dated: 01.06.2023 were issued wherein Tr. Karun Uddhavrao Garad, IPS, ASP, Aruppukottai Sub Division, Virudhunagar district was nominated as investigation officer of the Virudhunagar East PS Cr.No.41/2021 u/s Man Missing. Further, DIG Madurai Range and Superintendent of Police, Madurai District were asked to supervise the case closely.

Accordingly, a team consisting of 1) Tr. Karun Uddhavrao Garad, IPS, ASP, Aruppukottai SD, Virudhunagar district 2) Tr. T.Balamurugan, Inspector, Aruppukottai Town PS, Virudhunagar district. 3) Tr.R.Selvakumar, SI, Special Branch, Virudhunagar district. 4) Tr. M.Nagaraja Prabhu, SI, Aruppukottai Town PS, Virudhunagar district. 5) Tr. P.Karthik, SI, Virudhunagar East PS, Virudhunagar district. 6) Tr.R.Anbazhagan, HC 177D, Aruppukottai Town PS, Virudhunagar district. 7) Tr.R.Suresh Kannan Gr.I 3712, Aruppukottai Town PS, Virudhunagar district. 8) Tr.S.Raja@marisankar Gr.I 3734, Aruppukottai Town PS, Virudhunagar district started working to locate the whereabouts of the missing person Tr.P. Senthil Kumar, S/o. Ponram, Virudhunagar.

1. During the course of investigation, the investigation team examined Tmt.Murugalakshmi W/o. P.Senthil Kumar and she has stated the following:-

She had last seen her husband on 08.01.2021 when he left for Chennai at the behest of one Thiru. Selvam @ Varichiyur Selvam s/o Karuppiyah Servai (their elder brother of chargesheeted accused A1 Thiru.K. Senthil). When she, her husband, and two sons met Thiru. Selvam @ Varichiyur Selvam s/o Karuppiyah Servai near Sakthi Garden at Aavalsuranpatti, Virudhunagar. Two more persons Thiru.Veluprabhakaran, S/o Mohan and his sister Tmt.Mahalingeshwari, w/o Subblah also accompanied the family of Tmt.Murugalakshmi W/o. P.Senthil Kumar while they met Thiru. Selvam @ Varichiyur Selvam s/o Karuppiyah Servai at Virudhunagar.

*Anspr.*  
Anspr. - Genl. of Police,  
South Zone, Madurai



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She has also stated that the reason for meeting Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai was that her husband Thiru.P.Senthil Kumar s/o Ponram wanted to confront Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai for roping his name in the double murder case of Varichiyur. She further stated that Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai advised her husband to leave for Chennai after which her husband left for Chennai.

She has further stated that she had last seen her husband in a video call made by her husband from Chennai on 10.01.2021. She also suspected Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai of having done something to her husband.

2. During the course of investigation, it has been revealed that an HCP application HCP.(MD)No.326/2021 was filed by Tmt.Murugalakshmi w/o P.Senthilkumar in the Hon'ble High Court. After filing this HCP wherein prayer was made before the Hon'ble High Court to produce Thiru.P.Senthil Kumar s/o Ponram, Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai had called Thiru.Veluprabhakaran s/o Mohan and threatened him not to pursue the HCP further.
3. The statements of Tmt.Murugalakshmi w/o. P.Senthilkumar, Thiru.Veluprabhakaran, S/o. Mohan have also been audio-videographed. (File name: Audio Video Statement of Murugalakshmi and Audio Video Statement of Veluprabhakaran). Further, the statements of Tmt.Murugalakshmi, w/o. P.Senthilkumar, Thiru.Veluprabhakaran, S/o. Mohan and his sister Tmt.Mahalingeswari, w/o. Subbiah were also duly recorded under 164 CrPC before Ld JM No. II, Virudhunagar on 09.08.2023, wherein they had corroborated the above said version.
4. During the course of investigation, since the needle of suspicion pointed towards Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai, the investigation team enquired / interrogated him on 13.06.2023 wherein he has confessed to have assisted in the disposal of dead body after the murder committed by his associates on 10.01.2021 near Kovalam beach, ECR Chennai. Further, Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Servai claimed that the dead

*Asst. Insp. of Police*  
*South Zone, Madurai*



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body was cut into pieces and transported by using a Jeep Compass vehicle bearing registration number TN 09 CK 0033 to Madurai where he accompanied his associates and disposed off the dismembered body in Thamirabarani river at Thoothukudi.

5. During the course of investigation, Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Serval also revealed that one Thiru.Shankumar (44/23), s/o Murugan, 257, Gangaimankovil Street, Ranganathapuram, Thiruvanniyur, Chennai-600041 is aware of the murder as he had witnessed the same.

Hence, the special investigation team examined Thiru.Shankumar (44/23), S/o. Murugan on 16.06.2023. He has narrated the occurrence wherein Thiru.P.Senthil Kumar s/o Ponram was murdered by Thiru.Krishna, Thiru.Teju S/o Subash Chandra Bose, Thiru.Logesh, Thiru.Thadi Sathish S/o. Pachaiyappan and two others on 10.01.2021 around 22.30 hrs near Kovalam beach, ECR Chennai.

He has also stated that the dead body of Thiru.P.Senthil Kumar s/o Ponram was seen by Thiru.Selvam @ Varichiyur Selvam s/o Karuppiiah Serval over a video call made by the accused Thiru.Teju S/o. Subash Chandra Bose. He has also stated that the dead body was dismembered into pieces after which it was packed with bed cover and put in the above mentioned vehicle and transported from Chennai to Thoothukudi.

The special investigation team headed by Tr. Karun Uddhavrao Garad, IPS, ASP, Aruppukottai Sub Division, Virudhunagar district working under the close supervision of DIG Madurai Range and SP Madurai district have taken extensive efforts to locate and verify / corroborate the movements of said the vehicle through Thirumandurai Toll Plaza (Perambalur), Samayapuram Toll Plaza, Velaiyankulam Toll Plaza (Madurai), Salaipudur Toll Plaza (Kayathar) on the next day of the occurrence i.e. 11.01.2021. Also, during the course of investigation, because of extensive efforts taken by the team, the vehicle bearing registration no. TN 09 CK 0033 was seized on 19.06.2023.

  
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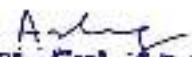
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6. Further, the statement of Thiru.Shanmukumar s/o Murugan has also been recorded under 154 CrPC before Ld JM J Aruppukkottai in charge of JM No. II, Virudhunagar on 19.06.2023, wherein he has also corroborated the same.

Based on the above mentioned factual & circumstantial matrix, the case registered in Virudhunagar East PS Cr.No.41/21 u/s Man missing was altered to Cr.No.41/21 u/s Man missing @ 147,146,354,302/404,201 IPC r/w 149,120B IPC and 25(1A) and 25(1B)(h) of Arms Act 1959 on 19.06.2023 and the accused Thiru.Selvam @ Varichiyur Selvam, s/o. Karupiah Selvai has also been arrested on 20.06.2023. Further investigation is in progress.

This is submitted for favor of kind perusal and orders as this Hon'ble Madras High Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Madurai on  
this 21st day of June 2023 and  
signed his name in my presence.

  
Asst. - Genl. of Police,  
South Zone, Madurai

10.2. It is clear from the above report that the Inspector of General of South Zone, Madurai, Tamilnadu, after receipt of the order copy, constituted two Special Teams headed by Two IPS Officers and the Inspector General of South Zone, Madurai, Tamilnadu, himself supervised the said progress of the said teams and disclosed the following findings:



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10.(2).(i) The Investigation Officer Thiru.M.Vijayakumar, the Assistant Commissioner of Police, Sellur, Madurai District in Crime No. 1212 of 2020 under Section 302 IPC, 32(v) of SC/ST (POA) Act, 2015, has committed several lacuna and grave misconduct in filing the final report.

10.(2).(ii) The alleged absconding accused Thiru.P.Senthilkumar was murdered on 10.01.2021 by another group of accused and hence, the Man Missing case pending in Virudhunagar East Police Station in Crime No.41 of 2021 was altered into offences under Sections 147, 148, 364, 302, 404, 201 IPC r/w 149, 120(B) IPC and 25(1A) and 25(1B)(b) of Arms Act, 1959.

**11.1.** Apart from the lapse found by this Court in the order dated 19.04.2023, the Investigation Officer Thiru.M.Vijayakumar, presently Assistant Commissioner of Police, Sellur, Madurai District, according to the report submitted by the Inspector General of Police South Zone, Madurai, Tamilnadu, has committed the following lapses:-

11.1(a). He has not examined 4 important material witnesses.

11.1(b). He has deleted FIR named accused No.1 and 2 on



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20.10.2020 itself without any substantial reasons and without citing any material evidence/witnesses in their favour.

11.1(c). He has furnished afterthought explanation that he deleted the accused No.1 and 2 on the basis of the tower location of cell phone of A1 and A2 which at the relevant point of time, showed a different place . The said explanation is without any material and as held earlier, he had not obtained any CDR report.

11.1(d). He falsely stated that one Mr.N.Mahendran and one Mr.Viji are shown as confession and mahazar witnesses. On enquiry, it is revealed that the whereabouts of the Viji could not be located and Mahendran on being interrogated categorically stated that the confession of the accused was never recorded in his presence and on knowing the above facts, under mortal fear, he shifted his residence to Paramakudi.

11.1(e). He has not examined one Karthigaisamy who had seen the charge sheeted accused A2 at the relevant point of time coming with blood stain shirt on the date of the occurrence in the occurrence place for which the said Investigation Officer stated that he did not provide



any useful information. So, he has not recorded his statement.

**12.** Through the report, the Inspector General of Police, South Zone, Madurai, Tamilnadu, after finding above illegalities in the course of the investigation, requested for fresh investigation in order to fix the real accused in this double murder case.

**13.** The defacto complainant filed this Criminal Original Petition under Section 482 Cr.P.C to transfer the investigation from the said Thiru.Vijayakumar, then Deputy Superintendent of Police, Omechikulam, Madurai District, to some other Agency on 22.02.2021 and the same came for admission on 02.03.2021. On that day, the case was posted for hearing on 22.04.2021. Thereafter, it was adjourned to 27.04.2021. On 27.04.2021, this case was adjourned to 11.06.2021 for filing counter. Thereafter, the said Thiru.Vijayakumar, then Deputy Superintendent of Police, Omechikulam, Madurai District, filed the final report on 28.04.2021 and the same was taken on file in Special S.C.No. 34 of 2021 on the file of III Additional District Court (PCR) Madurai. The above events happened during the pendency of the above Criminal



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Original Petition. From the above sequence of events, it is clear that the Investigation Officer to save his skin, filed the final report without conducting proper investigation, pending the above Criminal Original Petition.

**14.** It is seen that even though final report with all illegalities has been filed by the said Investigation Officer, the same was taken on file in Spl.S.C.No.34 of 2021 on the file of III Additional District Court (PCR) Madurai, and till date charge has not been framed and the same is pending for adjudication. Further, the deletion report is not accepted and the same is pending consideration before the Special Court.

**14.1.** Now, the following questions arise for consideration;

14.1.(a). whether this Court has power to order '*denovo investigation*' at this stage of taking cognizance in Spl.S.C.No.34 of 2021 under Section 482 Cr.P.C inherent jurisdiction?

14.1.(b). What action to be initiated against the erring official?



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**15. Whether this Court has power to order 'denovo investigation' at this stage of taking cognizance in Spl.S.C.No.34 of 2021 under Section 482 Cr.P.C inherent jurisdiction?**

15.1. The Hon'ble Supreme Court in **Vinay Tyagi Vs. Irshad Ali @ Deepak and others** reported in **2013 5 SCC 762** answered the above question in affirmatively in the following terms:-

*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 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”.***

***24. In Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] (SCC p. 80, para 199), the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report.***

***28. The next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct “further investigation” or “fresh investigation”. As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct “fresh” or “de novo” investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is filed to wipe out the report and its effects in law. Reference in this regard can be made to K.***



*Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291] , Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413 : (2008) 2 SCC (Cri) 631] , Nirmal Singh Kahlon v. State of Punjab [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] , Mithabhai Pashabhai Patel v. State of Gujarat [Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047] and Babubhai v. State of Gujarat [(2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] .*

*43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.*

*44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised*



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**48.** *What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a*



*fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.*

**15.2. Amar Nath Chaubey v. Union of India, (2021) 11 SCC 804**

*9. We are constrained to record that the investigation and the closure report are extremely casual and perfunctory in nature. The investigation and closure report do not contain any material with regard to the nature of investigation against the other accused including Respondent 5 for conspiracy to arrive at the conclusion for insufficiency of evidence against them. The closure report is based on the ipse dixit of the investigating officer. The supervision note of the Senior Superintendent of Police (Rural), in the circumstances leaves much to be desired. The investigation appears to be a sham, designed to conceal more than to investigate.*

*10. The police has the primary duty to investigate on receiving report of the commission of a cognizable offence. This is a statutory duty under the Code of Criminal Procedure, 1973 apart from being a constitutional obligation to ensure that peace is maintained in the society and the rule of law is upheld and applied. To say that further investigation was not possible as the informant had not supplied adequate materials to investigate, to our mind, is a preposterous statement, coming from the police.*

*11. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea*



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*that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.*

12. In *Manohar Lal Sharma v. Union of India* [*Manohar Lal Sharma v. Union of India*, (2014) 2 SCC 532 : (2014) 4 SCC (Cri) 1], this Court observed as follows : (SCC pp. 552-53 & 556, paras 24-26 & 39)

“24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. Lord Denning [*The Due Process of Law*, First Indian Reprint 1993, p. 102] has described the role of the police thus:

‘In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust : and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.’



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*26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.*

*39. ... In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference."*

*13. The trial is stated to have commenced against the charge-sheeted accused, and the informant summoned to give evidence. In the facts of the case, we direct that further trial shall remain stayed. The closure reports dated 2-9-2018, 17-12-2018 culminating in the report dated 30-1-2019 are partly set aside insofar as the non-charge-sheeted accused are concerned only. Those already charge-sheeted, calls for no interference.*

#### **16. Reason for the denovo investigation :-**

16.1. The Investigation Officer has not examined the material witnesses.

16.2. The Investigation Officer without any valid, legal reason submitted deletion report containing the deletion of the FIR named accused No.1 and 2 .

16.3. The Investigation Officer without recording the statement of the witnesses falsely fabricated the statement of number of witnesses in order to suit his deletion report.

16.4. The Investigation Officer intentionally arrayed false accused in the above case in order to help the arrayed accused to get acquittal judgment in this case.



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16.5.The Investigation Officer committed the offence under Section4 of the SC/ST (POA) Amended Act, by his act of recording false statement of witnesses.

16.6.The Investigation Officer without any basic material arrayed the accused No.3 and 4 in the above crime number and deleted the FIR named accused 1 and 2 even before the arrest of charge sheeted accused No.1 and 2.

16.7. The report of the Inspector General of Police, South Zone, Madurai, Tamilnadu, as stated supra, clearly indicates that lapses were committed by the said Investigation Officer and hence, he made a request for conducting fresh investigation.

17. Apart from that, the Hon'ble Supreme Court after considering the relevant provision of the Criminal Procedure Code laid down the principle that even in the case of the final report filed and cognizance taken cases, further investigation could be ordered in the interest of the justice. The relevant portion of the judgment the Hon'ble Supreme Court in **State Through Central Bureau of Investigation Vs.**



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**Hemendhra Reddy and Another** reported in **2023 SCC OnLine SC**

**515.**

*83. We may summarise our final conclusion as under:*

*(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.*

*(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.*

*(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.*

*(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.*

**17.1.Vinubhai Haribhai Malaviya v. State of Gujarat**

reported in **(2019) 17 SCC 1.**

*“42. There is no good reason given by the*



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*Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with*



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*Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”*

**18.** So, in all aspects, considering that double murder has been



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committed and the Investigation Officer has conducted a biased, unfair investigation which resulted in miscarriage of justice. The victim's right of fair investigation also is thwarted. So, this Court to meet the ends of justice invokes the inherent power under Section 482 of Cr.P.C., to scrap the final report dated 28.04.2021 filed by the Investigation Officer in Crime No.1212 of 2020 on the file of Karuppayoorani Police Station, Madurai District, and the cognizance taken in Spl.S.C.No.34 of 2021 on the file of III Additional District Judge (PCR) Madurai, and directs the Inspector General of Police, South Zone, Madurai, Tamilnadu, to constitute a special investigation team to conduct the investigation in Crime No.1212 of 2020.

**19. What action to be initiated against the erring official?**

**19.1.** From the report of the Inspector General of Police, South Zone, dated 21.06.2023 and finding of this Court, it is clear that Mr.M.Vijayakumar, Assistant Commissioner of Police, Sellur, Madurai, not only committed intentional lapse, he has also fabricated the false 161 Cr.P.C statement and also did not record the statement of material witnesses under Section 164 Cr.P.C., in this type of double murder case



that too, when one of the deceased belonged to the Schedule Caste Community.

**20.** Section 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended 2016 (*herein after call Amended Act 2016*) is as follows:-

***“4. Punishment for neglect of duties.--(1)***

*Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.*

*(2) The duties of public servant referred to in sub-section (1) shall include--*

*(a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;*

*(b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;*

*(c) to furnish a copy of the information so recorded forthwith to the informant;*

*(d) to record the statement of the victims or witnesses;*

*(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in*



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*writing;*

*(f) to correctly prepare, frame and translate any document or electronic record;*

*(g) to perform any other duty specified in this Act or the rules made thereunder:*

*Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.*

*(3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant."*

**21.** Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995, demands appointment of the investigation to the Officer above the rank of Deputy Superintendent of Police after taking in to account his past experience, sense of ability and justice to perceive the implication of the case and investigate it along the correct lines within the shortest possible time.

**22.** So, huge responsibility is fixed upon the Investigation Officer. From the above provisions, it is clear that the Investigation



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Officer must have been conduct investigation in a fair manner without any fabrication of the records as well as the evidence. To avoid such fabrication of the records as well as the evidence, the Act itself provides for recording 161 Cr.P.C statement, course of the inquest etc., by video graph. Apart from that, the Hon'ble Supreme Court in **2018 13 SCC 741** specifically directed to record the statement of the eye witnesses under Section 164 Cr.P.C through the Audio-Video electronic means. That apart, the amendment to 161 Cr.P.C required to record 161 Cr.P.C statement through the Audio-Video electronic means. The above requirement is intended to record the true version of the witnesses and avoid the hostility. When the legislature is intended to achieve these two objects, the failure on the part of the Investigation Officer demands suitable departmental action apart from the initiation of the criminal proceedings under Section 4 of the Act 2016.

**23.** The high level Officer constituted a team consisting of the Additional Superintendent of Police and submitted the above stated report mentioning the intentional omission on the part of the Investigation Officer namely, Mr.M.Vijayakumar, Assistant



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Commissioner of Police, Sellur, Madurai, in the above crime number and also the fact that he fabricated the false evidence and he has not filed the final report within the specified period and he has also not collected any electronic records which is material in this case as observed by this Court in the earlier order. So, this Court directs the Inspector General of Police, South Zone, Madurai, Tamilnadu, to instruct the competent officer to register a case under Section 4 of the Amended Act, 2016 for his intentional neglect of his duties as stated in the report and also further directs the Home Secretary, Government of Tamilnadu, St.George Fort, Chennai – 600 009 to initiate the departmental proceedings for his intentional omission as well as lapse committed in the course of the investigation conducted in Crime No. 1212 of 2020 on the file of Karuppayoorani Police Station, Madurai District, as parallelly as per the Hon'ble Supreme Court judgment noted here under :-

**23.1. *State of Gujarat v. Kishanbhai*, (2014) 5 SCC 108:**

*“23..... Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or*



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*temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.*

*24.A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the Home Secretaries concerned, shall ensure compliance with the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.”*

**23.2. In *Bharati Tamang v. Union of India*, (2013) 15 SCC 578:**

*“When deficiency in investigation or prosecution is visible or can be perceived by lifting the veil that hereby tried to hide the realities, the Court should deal with the same with the iron hand appropriately within the framework of law.”*

**(3) *Dayal Singh v. State of Uttaranchal*,**



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**(2012) 8 SCC 263:** “47.5. We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the courts would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such officer, expert or employee witness, is in service or has since retired.”

24. In this case, the Investigation Officer has not filed deletion report along with final report and he falsely disclosed that he had filed the deletion report 28.04.2021. To verify the same, this Court called a report from the learned Trial Judge. As per the report, it is seen that he has filed deletion report only on 21.12.2022. The said deletion report is pending consideration before the learned Trial Judge. In the said circumstances, notice of hearing to the accused does not arise. Further, the Hon'ble Supreme Court in the above cited judgment in **State**



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**Through Central Bureau of Investigation Vs. Hemendhra Reddy and Another** reported in **2023 SCC OnLine SC 515** has held that it is not necessary to hear the accused before ordering either further investigation or fresh investigation.

**25.** This court is duty bound to render its appreciation to the efforts taken by Thiru.Asra Garg, Inspector General of Police, South Zone, Madurai, Tamilnadu, and his team members, to submit the detailed report in the above gruesome murder in a dispassionate manner. This Court also records its appreciation for the steps taken by the Inspector General of Police, South Zone, Madurai, Tamilnadu, to implement recording of statement under Section 161 Cr.P.C in video – audio electronic means in compliance with the amended provisions of the Section 161 Cr.P.C. This Court also expresses its hope that the Inspector General of Police, South Zone, Madurai, Tamilnadu, will suitably instruct all Investigation Officers to comply the direction of the Hon'ble Supreme Court, reported in **2018 13 SCC 741**.



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**26.** In the result, this Criminal Original Petition is allowed with following directions:-

**26.1.** This Court scrapes the final report filed by the Investigation Officer, dated 28.04.2021, in Crime No.1212 of 2020 on the file of Karuppayoorani Police Station, Madurai District, and set aside the cognizance taken in Spl.S.C.No.34 of 2021 on the file of III Additional District Judge (PCR) Madurai, and direct the Inspector General of Police, South Zone, Madurai, Tamilnadu, to constitute Special Investigation Team to conduct the “*denovo investigation*” in Crime No.1212 of 2020. The said investigation shall be completed within a period of two months from the date of receipt of a copy of this order.

**26.2.** He is further directed to appoint a competent officer to register a case under Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amended Act, 2016 and all other relevant penal provisions of various acts holding field against the investigation Officer namely, Thiru.Vijayakumar, Assistant Commissioner of Police, Sellur, Madurai District, for his intentional neglect of his duties as stated in the report.



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**26.3.** This Court also directs the Home Secretary, Government of Tamilnadu, St.George Fort, Chennai – 600 009, to initiate departmental proceedings against Thiru.Vijayakumar, Assistant Commissioner of Police, Sellur, Madurai District, for his intentional omission as well as lapse committed in the course of the investigation conducted in Crime No.1212 of 2020 on the file of Karuppayoorani Police Station, Madurai District, as parallel proceedings, dehors the criminal prosecution under SC/ST (POA) Amended Act, 2016.

**10.07.2023**

NCC : Yes / No

Index : Yes / No

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**Note : Issue order copy on 13.07.2023**

To:

- 1.The Inspector General of Police,  
South Zone, Madurai,  
Tamilnadu.
- 2.Home Secretary,  
Government of Tamilnadu,  
St.George Fort, Chennai – 600 009.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN,J.**

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Predelivery order made in  
**Crl.O.P.(MD)No.3236 of 2021**

**10.07.2023**