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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**CRL.OP.No.13887 of 2024  
and  
CRL.MP.No.8455 of 2024**

1.M.Shanmugasundaram  
2.K. Prakash

... Petitioners

1. The State Rep by  
The Inspector of Police  
Ammapetai, Salem District – 636003  
Cr.No.116 of 2019

2.The Asisstant Commissioner of Police  
Ammapet Range Salem City,  
Salem District

3. R.Prakash

... Respondents

**Prayer:** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in FIR bearing Cr.No.116 of 2019 dated 13.04.2019 pending on the file of the 1<sup>st</sup> respondent Police for offences under Sections 468, 471, 406, 448, 380 and 506(1) IPC and TNPCET Act, 2003 and quash the same.

For Petitioners : Mr.GViswanathan

For Respondents : Mr.K.M.D.Muhilan for R1 & R2  
Government Advocate (Crl.Side)



## **ORDER**

**WEB COPY** This petition is filed to quash the FIR in Cr.No.116 of 2019 dated 13.04.2019 pending on the file of the first respondent police for offence under Sections 468, 471, 406, 448, 380 and 506(i) of IPC and TNPCT Act, 2003.

2. The contention of the learned counsel for the petitioner is that the said FIR came to be registered on the complaint given by one K.Prakash claiming that for the very same set of facts, earlier complaint was closed as mistake of fact and final report was filed on 20.09.2019 Judicial Magistrate-V, Salem. The Deputy Commissioner of Police has no power to nominate the Subordinate namely Mr.Saravanankumaran, Assistant Commissioner of Police as Investigation Officer to re-investigate and enquire the matter on the request of the Deputy Commissioner of Police, more so, when the Deputy Commissioner of Police has already filed the protest petition before the Judicial Magistrate, challenging the closure report.

3. Learned Government Advocate (Crl.Side) appearing for the respondents 1 and 2 would submit that the Assistant Commissioner of



Police, on receipt of the representation given by 3<sup>rd</sup> respondent/defacto complainant, pointing out perfection and lopsided investigation conducted by the erstwhile Investigation Officer administratively found that the matter has to be probed properly and therefore, had nominated Assistant Commissioner of Police as Investigation Officer to probe into the matter and thus Cr.No.116 of 2019 came to be registered.

4. As far as the protest petition is concerned, the 3<sup>rd</sup> respondent had withdrawn from the file of the Judicial Magistrate-V, Salem, in view of the direction of the Deputy Commissioner choosing the Assistant Commissioner of Police to probe into the matter. Therefore, the petitioner herein, cannot take advantage of the withdrawal of the protest petition and the perfectionary investigation leading to closure of the complaint as mistake of fact.

5. Learned counsel appearing for the petitioner relying upon the judgment of the Hon'ble Supreme Court rendered in **Ramachandran Vs. R.Udayakumar and Others** reported in **2008 (5) SCC 413** submitted that there cannot be a fresh investigation in a complaint suo-mottu by police officials after filing of closure report. At the most, there can be



further investigation if required under Section 173 (8) of Cr.P.C., that too, with the leave of the court which considers the closure report.

6. The provisions of the Code of Criminal Procedure which deals with the further investigation and re-investigation as well as inherent power of High Court in Section 482 of Cr.P.C., is discussed at length in the above said judgment. There is no doubt that there cannot be re-investigation of crime without leave of the court and the Investigation Officer has to make out the case with sufficient reasons why the crime has to be re-investigated. However, from the records of this case, this court finds that the closure report not accepted by the Magistrate and even before that, a protest petition was filed by the aggrieved defacto complainant. At that juncture, the superior officer having found that there is an error in the investigation, has ordered re-investigation. In true sense, it is a further investigation of the crime since the closure report filed does not reveal the entire facts involved in the crime. Even otherwise, the order passed by the Deputy Commissioner to re-investigation when brought to the notice of the Judicial Magistrate, before him closure report was subject to scrutiny by way of protest petition. The Judicial Magistrate has applied his mind and allowed the protest petition



to been withdrawn in view of re-investigation ordered by the Deputy Commissioner of Police. The District Munsif-cum- Judicial Magistrate has thus explicitly permitted the Investigating Agency to re-investigate the matter. Therefore, there is no error in taking up Cr.No.116 of 2019 for investigation. Hence, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

**26.06.2024**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation

gv

To

1. The State Rep by  
The Inspector of Police  
Ammapetai, Salem District – 636003  
Cr.No.116 of 2019
2. The Asisstant Commissioner of Police  
Ammapet Range Salem City,  
Salem District
3. The Public Prosecutor,  
High Court of Madras,  
Chennai.



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**Dr.G.JAYACHANDRAN,J.**

gv

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