



W.P.(MD)No.19394 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.10.2024

DELIVERED ON : 04.12.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.19394 of 2024

and

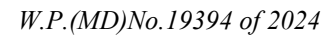
W.M.P.(MD)Nos.16437 and 16438 of 2024

1.T.P.Krishnamaraja
2.K.Vasanthi

... Petitioners

Vs.

- 1.The Inspector General of Police,
South Zone,
Madurai.
- 2.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.
- 3.The Deputy Superintendent of Police,
District Crime Branch,
Virudhunagar District.
- 4.The Deputy Superintendent of Police,
Rajapalayam Sub Division,
Virudhunagar District.



6. Rajesh,
S/o Gopalan,
Director,
Senthil Murugan Jewellers Private Limited,
106, 108, Therkavani Moola Veethi,
Madurai – 625 001. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the impugned summons dated 01.05.2024 and 13.07.2024 issued by the third respondent and quash the same as illegal.

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R.1 to R.5

: Mr.M.Ramasamy
for R.6



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ORDER

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The Writ Petition is directed against the summons issued under Section 160 r/w 91 Cr.P.C., dated 01.05.2024 and 13.07.2024 by the third respondent directing the petitioners to appear before him in connection with the re-investigation ordered by the second respondent in pursuance of the directions of the first respondent.

2. On the basis of the complaint lodged by the sixth respondent, F.I.R., came to be registered in Cr.No.12/2022, on the file of the fifth respondent for the alleged offences under Sections 120(b), 406, 420 I.P.C., against four persons including the petitioners.

3. The case of the prosecution is that the sixth respondent who is one of the Directors of M/s Senthil Murugan Jewellers, approached the first petitioner to start a new jewellery shop branch at Rajapalayam in the premises of the first petitioner situated at Tenkasi Main Road, Rajapalayam, Virudhunagar District, that the petitioner agreed to let out the premises for rent with certain conditions, that the first petitioner informed that he intends to construct a new building and the expenses for



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constructing a new building has to be borne by the sixth respondent and the construction work has to be carried out only through him, that the sixth respondent has to pay a sum of Rs.50,00,000/- as advance and the construction expenses borne by the defacto complainant would be deducted from 50% of the monthly rent to be paid, that the sixth respondent requested the first petitioner to execute a document for the above said terms and conditions, but the first petitioner promised to execute a document after completion of the construction, that the sixth respondent during the period between 23.10.2018 and 04.08.2020, paid a sum of Rs.1,30,00,000/- for the construction of the building, advance amount of Rs.50,00,000/- and another sum of Rs.5,00,000/- to the first petitioner, that the first petitioner did not complete the construction work as promised by him, that due to Covid-19 pandemic, the sixth respondent did not start a new branch, but in the meanwhile, the first petitioner executed a settlement deed dated 25.10.2019 to his wife and sons and that therefore, the sixth respondent was constrained to lodge a complaint dated 25.07.2021 to the second respondent and the same was forwarded to the fourth respondent, that the sixth respondent has also lodged another complaint dated 31.07.2021 to the second respondent and since



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the amount involved is more than Rs.1 Crore, the fourth respondent forwarded all the complaints to the third respondent, that since there was no action, the sixth respondent was forced to file a petition under Section 156(3) Cr.P.C., in CrI.M.P.No.222 of 2022 before the Judicial Magistrate No.II, Virudhunagar and that in pursuance of the directions of the learned Magistrate, F.I.R., came to be registered in Cr.No.12 of 2022 on 05.04.2022.

4. The case of the petitioners is that the sixth respondent approached the first petitioner to start a new jewellery shop in their premises at Rajapalayam, that the first petitioner agreed to let out the premises to the sixth respondent for the monthly rent of Rs.5,00,000/- and received advance amount of Rs.50,00,000/-, that the first petitioner demolished the old building and constructed a new building for the jewellery shop as per the requirement of the sixth respondent and handed over the shop to the sixth respondent in the month of December 2019, that warming ceremony had also been done, that the sixth respondent had done the partial interior works and erected material for jewellery shop, that the sixth respondent has paid the rent of Rs.5,00,000/- and thereafter



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he had not paid the rent, that when he was about to commence the interior work in a full-fledged manner, the Covid-19 lock down had intervened and thereafter due to economic crisis and the fluctuation in the jewelry business, he felt that new jewelry business will lead into huge loss, that the said decision was taken by the complainant due to the new opening of the very big jewelry shops in Rajapalayam, that he had not turned up to pay the rent or start his jewelry business, that when the first petitioner insisted to pay the further advance amount or the arrears in rent, the sixth respondent had taken all his materials and handed over the shop to the first petitioner and demanded to return the advance amount, that since the first petitioner demanded arrears in rent, the sixth respondent gave a complaint to the respondents 2 to 4, that the petitioners appeared for the entire enquiry and co-operated for investigation and after enquiry, since the dispute is of civil nature, the police officials advised the sixth respondent to settle the dispute amicably and that since the first petitioner is a senior citizen, apprehending the uncertainty in the life span, he had executed a settlement deed in favour of his wife and sons.



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5. It is the further case of the petitioners that since the sixth respondent disturbed the first petitioner's possession, he filed a suit in O.S.No.94 of 2021, on the file of the District Munsif Court, Rajapalayam for bare injunction restraining the sixth respondent and his men from disturbing his possession, that when the first petitioner had taken steps to let out the premises to third parties, on 23.12.2022, the sixth respondent sent goondas to the building and broke open the lock and stolen the CCTV camera and the hard disk, that they have also pasted their shop banner in the door as “Senthil Murugan Jewellers is coming soon”, that the petitioners' sons who are in abroad had also preferred a complaint dated 26.12.2022 to the second respondent to grant police protection and to take action against the sixth respondent and his men and the said complaint was taken on file in CSR No.946 of 2023 on 28.12.2023 and that the sixth respondent had filed a suit in O.S.No.170 of 2023, on the file of the District Court, Virudhunagar at Srivilliputhur for recovery of Rs.1,85,000/- and the same is pending.

6. It is not in dispute that the petitioners filed a petition in Crl.O.P. (MD)No.21680 of 2023 to quash the F.I.R., in Cr.No.12 of 2022, on the



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file of the fifth respondent, that since the case in Cr.No.12 of 2022 was transferred to the third respondent police as per the proceedings of the second respondent dated 01.04.2023, this Court vide order dated 01.12.2023 has suo motu impleaded the fourth respondent in the quash petition and that the fourth respondent after completing enquiry filed a final report as further action dropped on 07.02.2024 before the Court of the Judicial Magistrate No.II, Virudhunagar through e-filing.

7. The petitioners' main complaint is that after filing of the action dropped report before the jurisdictional Magistrate Court, they were surprised to receive the impugned summons dated 01.05.2024 and another summons dated 13.07.2024 directing the petitioners to appear for re-investigation and that therefore, they were constrained to file the present Writ Petition challenging the impugned summons.

8. The learned Counsel for the petitioners would submit that the Hon'ble Supreme Court has consistently in a catena of decisions held that the Investigating Agency as well as the trial Court has the power to conduct or order for further investigation in terms of Section 173(8) of the



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Code, which is in contradistinction to fresh / re-investigation, that the power to order re-investigation or fresh investigation falls exclusively in the domain of higher Courts and that too in exceptional cases, that the suit filed by the second petitioner in O.S.No.94 of 2021, on the file of the District Munsif Court, Rajapalayam and the suit filed by the sixth respondent in O.S.No.170 of 2023 on the file of the District Court, Virudhunagar are pending, that the dispute between the parties are of civil in nature, but the sixth respondent by alleging the criminal complaints, has been attempting to give the civil case a criminal colour.

9. The learned Counsel would further submit that neither the first respondent nor the second respondent is having any power to order for fresh or re-investigation in a case where final report already came to be filed before the jurisdictional Court, that the Investigating Officer, who has filed the final report, has not taken any steps to investigate the case further or to get permission for conducting further investigation from the jurisdictional Court and that since the very re-investigation ordered by the second respondent is illegal, the question of issuance of impugned summons does not arise and as such the same are liable to be quashed.



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10. The learned Counsel for the sixth respondent would submit that the petitioners wanted to close the case in one way or the other, that the petitioners have some how managed and made the fourth respondent to submit an action dropped final report before the jurisdictional Court, that the sixth respondent, after coming to know about the action dropped report, immediately submitted a petition before the first respondent to consider his case and also produced fresh documents, that though the final report was filed before the concerned Court, the jurisdictional Magistrate is yet to pass orders therein, that the Hon'ble Supreme Court has clarified the legal position that the trial Court has power to order for further investigation, that the third respondent had only undertaken the further investigation and not the re-investigation as claimed by the petitioners, that the third respondent in the impugned summons has mentioned wrongly in tamil as “மறு புலன் விசாரணை” , but it would only mean further investigation and that therefore, the writ petition is liable to be dismissed.



11. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others*** reported in **2013(5) SCC 762**, wherein the Hon'ble Apex Court has dealt with the powers of the Courts and the relevant passages are extracted hereunder:

“20. The power of the Court to pass an order for further investigation has been a matter of judicial concern for some time now. The courts have taken somewhat divergent but not diametrically opposite views in this regard. Such views can be reconciled and harmoniously applied without violation of the rule of precedence. In the case of [State of Punjab v. Central Bureau of Investigation](#) [(2011) 9 SCC 182], the Court noticed the distinction that exists between ‘reinvestigation’ and ‘further investigation’. The Court also noticed the settled principle that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under Section 482 of the Code and therefore, must exercise their jurisdiction within the four corners of the Code.

21. Referring to the provisions of Section 173 of the Code, the Court observed that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but also opined that even the Trial Court can direct further investigation in contradistinction to fresh investigation, even



where the report has been filed. It will be useful to refer to the following paragraphs of the judgment wherein the Court while referring to the case of *Mithabhai Pashabhai Patel v. State of Gujarat* (supra) held as under:

“13. It is, however, beyond any cavil that ‘further investigation’ and ‘reinvestigation’ stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under *Articles 226 and 32* of the Constitution of India could direct a ‘State’ to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. *Pasayat, J. in Ramachandran v. R. Udhayakumar* (2008) 5 SCC 513 opined as under: (SCC p. 415, para 7) ‘7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-

section (8), but not fresh investigation or reinvestigation.’

A distinction, therefore, exists between a reinvestigation and further investigation.



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15. *The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under [Section 482](#) of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.”*

22. *In the case of [Minu Kumari & Anr. v. State of Bihar & Ors.](#)[(2006) 4 SCC 359], this Court explained the powers that are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) and the kind of order that the Court can pass. The Court held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report.”*

12. The Hon'ble Supreme Court, after analysing the provisions of the Code and various judgments, has summarized their conclusions with regard to the power of a Magistrate in terms of Section 173(2) r/w 173(8)



and 156(3) of the Code and the same is extracted hereunder:

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- “1. The Magistrate has no power to direct ‘reinvestigation’ or ‘fresh investigation’ (de novo) in the case initiated on the basis of a police report.*
- 2. A Magistrate has the power to direct ‘further investigation’ after filing of a police report in terms of Section 173(6) of the Code.*
- 3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh’s case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.*
- 4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).*
- 5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that*



even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

13. A learned Judge of this Court in the case of ***V.Ramachandran Vs. The State by Director General of Police, Head of Police Force, Tamil Nadu, Chennai and others*** reported in **2023(2) CTC 181**, while considering a similar fact situation, has observed as follows:

"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.

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.



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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.”*

14. In the said decision case also, the newly appointed Investigating Officer has issued summons under Sections 91 and 160 Cr.P.c., and this court while holding that the summons is beyond jurisdiction of the concerned police authority, has observed as follows:

“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



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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.”

15. In the case on hand, the impugned summons came to be issued under Sections 160 and 91 Cr.P.C. In the first impugned summons dated 01.05.2024, the third respondent has stated that the fourth respondent after conducting investigation in respect of the case in Cr.No.12 of 2022, has filed a further action dropped report on 07.02.2024 before the Court of Judicial Magistrate No.II, Virudhunagar through e-filing, that the defacto complainant (6th respondent) has filed a petition before the first respondent to investigate the case again and that the second respondent, in pursuance of the directions of the first respondent, has issued a proceedings dated 12.03.2023 appointing the third respondent as the Investigating Officer and that the first petitioner was directed to appear for the re-investigation of the case along with the documents at the office of the second respondent, Virudhunagar. In the second impugned summons, dated 13.07.2024, the third respondent after observing the first



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petitioner's absence for enquiry as directed earlier, directed the first petitioner to appear on 16.07.2024 for giving specimen signature and to produce any registered document of the said period containing the admitted signatures of the first petitioner.

16. As rightly contended by the learned Counsel for the petitioners, the official respondents have not chosen to produce the orders passed by the respondents 1 and 2, which were referred in the impugned summons of the third respondent. Except showing that on the petition filed by the defacto complainant to conduct investigation again, they have not shown any other reason or ground on which, directions came to be issued by the first respondent directing the second respondent to order for re-investigation. The official respondents have also not whispered about the reasons or grounds, on which the second respondent has issued the proceedings dated 12.03.2024 appointing the third respondent as the Investigating Officer.

17. As already pointed out, it is pertinent to note that the fourth respondent after conducting investigation with regard to the case in



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Cr.No.12 of 2022, has filed final report as further action dropped before the jurisdictional Court through e-filing. No doubt, as per the settled legal position above referred, the fourth respondent is having necessary powers to approach the jurisdictional Court to get permission for conducting further investigation. But admittedly, the fourth respondent has neither sought for permission from the jurisdictional Court nor proceeded with the further investigation, But on the other hand, as per the orders of the respondents 1 and 2, the third respondent has taken up the case for the investigation. As rightly pointed out by the learned Counsel for the petitioners, a cursory perusal of the impugned summons would reveal that the third respondent has only be attempting to conduct re-investigation and not further investigation as claimed by the learned Counsel for the sixth respondent. It is settled law that neither the police officials nor the learned Judicial Magistrate is having any power to order for fresh investigation or re-investigation.

18. Considering the above, this Court has no hesitation to hold that since the proceedings of the second responding appointing the third respondent as Investigating Officer to proceed with the re-investigation,



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in pursuance of the directions of the first respondent, is illegal, the impugned summons issued by the third respondent cannot legally be sustained. Considering the above, this Court concludes that the impugned summons dated 01.05.2024 and 13.07.2024 are liable to be quashed and accordingly, the same are quashed. If the sixth respondent is having necessary materials, he is at liberty to file a private complaint, if he is so advised.

19. In the result, the Writ Petition is allowed and the impugned summons dated 01.05.2024 and 13.07.2024 issued by the third respondent is hereby quashed. Consequently, the connected Miscellaneous Petitions are closed. The sixth respondent is at liberty to file a private complaint if he is so advised.

04.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The Inspector General of Police,
South Zone,
Madurai.

2. The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

3. The Deputy Superintendent of Police,
District Crime Branch,
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4. The Deputy Superintendent of Police,
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5. The Inspector of Police,
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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY ORDER MADE IN

W.P.(MD)No.19394 of 2024

04.12.2024