



WEB COPY



Crl.O.P.(MD)Nos.19731 & 19953 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.11.2024
PRONOUNCED ON : 20.12.2024
CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)Nos.19731 & 19953 of 2024

A.R.Gokulakrishnan

.. Petitioner / Sole Accused
in both Crl.O.P.s

Vs.

1.State Represened by
The Inspector of Police
Thandikodi Police Station,
Dindigul District.
(Crime No.492 of 2022)

... Respondent / Complainant
in both Crl.O.P.s

2.Manicka Krishnamoorthy
(Then Tahsildar)
Kodaikanal Taluk Office,
Kodaikanal – 624 101,
Dindigul District.

.. 2nd Respondent / Defacto
Complainant in Crl.19953/2024

PRAYER Crl.O.P.(MD)Nos.19731 of 2024: Criminal Original
Petition filed under Section 482 of Cr.P.C., to call for the records
relating to the Docket order passed by the learned Judicial
Magistrate No.I, Kodaikanal in Cr.M.P.No. Unnumbered of 2024 in
STC NO.141 of 2022, dated 31.10.2023 and set aside the same as
illegal further directing the learned Judicial Magistrate No.I,
Kodaikanal, to number the application filed by the petitioner under
Section 173(8) of Cr.P.C., and enquire the same in accordance with
Section 173(8) of Cr.P.C.



PRAYER Crl.O.P.(MD)Nos.19953 of 2024: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records relating to the Docket order passed by the learned Judicial Magistrate, Kodaikanal in Cr.M.P.No. Unnumbered of 2024 in STC No.71 of 2014, dated 31.10.2023 and set aside the same as illegal further directing the learned Judicial Magistrate, Kodaikanal, to number the application filed by the petitioner under Section 173(8) of Cr.P.C., and enquire the same in accordance with Section 173(8) of Cr.P.C.

For Petitioner : Mr.R.Maheswaran

For Respondent-1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

Since the prayer sought in both the petitions are one and the same, the petitioner and the respondent are common, both the Criminal Original Petitions are taken up together and disposed of by a common order.

2. Crl.O.P.(MD)No.19953 of 2024 is filed against the rejection of the petitioner's petition, dated 10.10.2024, seeking re-investigation in Crime No.93 of 2013 in C.C.No.71 of 2014 and for further investigation under Sections 182 and 188 of BNSS.



WEB COPY

3. Crl.O.P.(MD)No.19731 of 2024 is filed against the rejection of the petitioner's petition seeking further investigation under Section 173 Cr.P.C., in S.T.C.No.141/2022, dated 31.10.2023.

4. Mr.R.Maheswaran, the learned counsel appearing for the petitioner would submit that in Crl.O.P.(MD)No.19953 of 2024, the petitioner / sole accused in C.C.No.71 of 2014 filed a petition seeking further investigation on the ground that the Government property to an extent of 1.85 Acres in S.No.671/2, to an extent of 0.53 Hectares of Forest Land in Poolathur Village, Kodaikanal, was taken away by one R.Ambalavanan IA & AS, official by impersonation using his Benami. On coming to know the same, the petitioner filed W.P.No.34431 of 2012. This Court disposed the Pro bona Writ Petition to restore the said property to the Forest Department by removing the encroachment. The said Ambalavanan along with then Tahsildar of Kodaikanal, Collector of Dindigul District and other officials were instrumental in lodging false complaint against the petitioner and the respondent police without ensuring, registered case in Crime No.172 of 2012, Crime No.29 of 2013 and other cases.



WEB COPY

5. The learned counsel further submitted that during cross-examination of one of the witness in C.C.No.42 of 2013 it come to light that Senthil Murugan, benami of R.Ambalavanan during charge sheet of proceedings in C.C.No.42 of 2013 (Crime No.173 of 2012) admits that he does not own any land at Poovathur Village and he leading his life as daily wager, which would prove that the said Ambalavanan is the land grabber, using benamies has committed the offence. Further submitted that the Tahsildar passed order that one N.K.V.Subban Chetty is occupying the property, when the said N.K.V.Subban Chetty died as early as in the year 1970. Likewise, his son N.K.V.S.Gopalakrishnan passed away on on 13.06.2012, but the Revenue records continued to be in their name. The Tahsildar Manikakrishnamoorthy to circumvent the issue of encroachment in Sy.No.671/2, filed a false report before the High Court in W.P.34431 of 2012. These facts are the new facts which has been exposed now. Further, the then Chief Secretary Dr.Girija Vaidyanathan, when she was in Commissioner of Land Administration in her Lr.No.T1/13161/13, dated 11.08.2014 given a report against the encroachment committed by R.Ambalavanan in Sy.No.671/2 in Poolathur Village. The High Court in order dated 31.07.2013 in the Writ proceedings directed the Collector, to cancel B Memo and remove the encroachment. The above facts should prove that Crime



No.93 of 2013 charge sheeted in C.C.No.74 of 2014 which is pending before the Judicial Magistrate, Kodaikanal for offence under Sections 294(B), 341 and 506(ii) of IPC., has been filed without conducting fair investigation and hence, the case needs reinvestigation or further investigation and file a fresh charge sheet. With these facts, the petitioner has filed the petition, but the same was returned for the reason the averments mentioned in the affidavit and the petitions are totally different to each other and in the trial Court P.W.1 to P.W.13 examined and hence, the petition is not maintainable at this junction, is not proper, when the petitioner has clearly given details about the fresh facts and it is the duty of the trial Court finding the merits of the petitioner's contention ought to have directed for fresh investigation and rejecting the petitioner's plea on technical ground is not proper.

6. The learned counsel with regard to Crl.O.P.No.19731 of 2024 submitted that he filed PIL in W.P.No.34431 of 2012 before this Court against R.Ambalavanan IA & As Officer. It is projected that during the hearing of the writ petition, the Forest officials visited the spot on 24.12.2005, informed the revenue official that enquiry is to be conducted with regard to encroachment of Forest Land. At that time, one Pandian, a henchman, employed by Ambalavanan, giving a false complaint against the petitioner and a



WEB COPY

case in Crime No.172 of 2005 for the offence under Section 294(b) and 506(ii) IPC registered to prevent the petitioner from attending the enquiry. On 26.12.2012, when the Forest Officials enquired about the encroachment, the petitioner's Uncle S.Shanmugam was present and he disclosed the fact of encroachment. The petitioner's uncle was arrested on false complaint and was in custody for more than 12 days for the reason that he complained to the Forest Officials during the enquiry. The District Collector who was acting in tandem with Ambalavanan to ensure that the petitioner's wife, who was Primary School Teacher in the Village, was transferred to a faraway place on flimsy ground. Further, a case in Crime No.29 of 2013 was registered against the petitioner on the complaint of one Malarvizhi, the wife of the henchman S.Pandian. To avenge the petitioner for filing complaint against Ambalavanan, District Collector and other officials the erection of fence to save the crop of the petitioner land was destroyed giving access to wild and domestic animals and thereby causing damages to the petitioner's crop and obstructing his agricultural activities. The Inspector of Police, Thandikudi acting in a lightning speed whenever a complaint was received against the petitioner, registering the case and also filing final report. The petitioner filed quash application before this Court and obtained favourable orders in most of the cases.



WEB COPY

7. This being so, suppressing the real facts, a case was registered in Crime No.243 of 2015, against the petitioner and the same has been charge sheeted in S.T.C.No.141 of 2022 without conducting fair investigation. Hence, the petitioner has filed the above petition seeking for further investigation under Section 173 Cr.P.C., giving details annexed with documents, but the lower Court not entertained the petition and returned for the reason to be filed through proper channel, on 31.10.2022. Against which the present petitions.

8. The contention of the petitioner is that though he is an accused in both the cases, he relied upon the Judgment of the Apex Court in ***Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and Another*** reported in (2019 17 SCC 1) and the Judgment of Supreme Court in ***K.Vadivel Vs. K.Shanthi & Ors.*** reported in ***2024 DGLS (SC) 957***, wherein the Apex Court held that the power of Magistrate ordering further investigation would not cease out even after taking the cognizance and complaint on file. The Magistrate has empower to order further investigation, if new facts come into light and to see that the innocent is not punished and at the same time, the offenders are not let off. This basic principles has not been considered by the Court below. Hence, the above petitions.



WEB COPY

9. Mr.A.Thiruvadi Kumar, the learned Additional Public Prosecutor would submit that that the petitioner has been filing one petition or other. His primary contention is that he filed W.P.No. 34431 of 2012, against the officials holding high posts and hence, the petitioner has been targeted. The submission of the petitioner that this Court entertained the petitioner's writ petition and ordered removal of encroachment to prove that the petitioner was only fighting for rightful cause and hence, no case has been registered against him is not proper. This Court, after passing the order in the said Writ Petition, the encroachments were removed, but the petitioner himself created obstruction and abused the public servant and also private persons. The petitioner filing a PIL will not give a licence him to commit criminal offence. The respondent police, on the complaint of the victims, registered FIR and after investigation, recording the statement of witnesses, filed the charge sheet in both the cases. The case is now at the penultimate stage. Already P.W.1 to P.W.13 examined, the petitioner as accused cannot file a petition under Section 173(8) Cr.P.C., when a trial is in progress. It is for the defacto complainant till the stage of taking cognizance and examining witnesses and the Investigation Officer, who can file a petition under Section 173(8) Cr.P.C., even after cognizance and during trial. But, the petitioner being an accused has no such right to file petition for further investigation or reinvestigation.



WEB COPY

10. It is further submitted that the petitioner being an accused ought to have appeared before the Investigation Officer give the details or ought to have challenged the cases by filing quash application well before filing of the charge sheet. The petitioner failed to do and now projects as though new facts now come into light. In this case, the petitioner's contention earlier considered by the Investigation Officer. The petitioner during cross-examination of witnesses getting some favourable answer would not take a character of new fact and will not give a right to the petitioner / accused to file such petition. The trial Court has rightly rejected both petitions and the rejection is proper.

11. I have heard the learned counsels appearing on either side and perused the materials available on record.

12. It is not in dispute that the petitioner is an accused in C.C.No.71 of 2015. As on 10.10.2024, the witnesses P.W.1 to P.W13 examined. At that stage, the petitioner cannot file a petition seeking for reinvestigation / further investigation. Likewise, in C.C.No.141 of 2022, the petitioner is an accused again he filed a petition for reinvestigation or fuhrer investigation. The petitioner, being an accused, cannot seek such prayer. The petitioner pointing out that



WEB COPY

now new facts have come out, is not proper, during cross-examination of witnesses some stray answers obtained, but the same cannot be taken as new fact, justifying of petition for further investigation, that too, by an accused in the case. The Judgments referred by the petitioner would not be applicable to the facts of the case. As regards **Vinubhai Haribhai Malaviya** Case, (cited supra) the stress is on the point that at post cognizance stage, the Magistrate has got power to order further investigation. As regards **K.Vadivel's case**, stress is on the point that when fresh material come to light, which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that is person already accused of an offence has a good alibi, it may be in the duty of the investigating agency to investigate the genuineness of the same and submit a report to the Court. However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet. Hence, the Judgment relied on by the petitioner no way improve or advances the case of the petitioner.

13. In sum and substance, the petitioner being an accused, at a belated stage in one case and after filing of the charge sheet in another case cannot file a petition for reinvestigation or further investigation and the trial Court rightly rejected both the



Crl.O.P.(MD)Nos.19731 & 19953 of 2024

applications filed by the petitioner and this Court finds no reason to entertain the petitions. Accordingly, the Criminal Original Petitions are dismissed.

WEB COPY

20.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
smn2/mpk

To

- 1.The Judicial Magistrate No.I,
Kodaikanal
2. The Inspector of Police
Thandikodi Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)Nos.19731 & 19953 of 2024

M.NIRMAL KUMAR,J.

smn2

Pre-Delivery Order made in
Crl.O.P.(MD)Nos.19731 & 19953 of 2024

20.12.2024