



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.08.2025

Pronounced on: 21.08. 2025

CORAM

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

Crl.R.C.No.2304 of 2024 and

Crl.M.P.Nos.17839 and 17840 of 2024

1. A. Chidambaram
2. S. Muthuraman

... Petitioners

Vs.

The State of Tamilnadu,
Rep by the Inspector of Police,
Team IV, EDF II, Crime Branch,
Egmore, Chennai 600 008.

... Respondent

Prayer: Criminal Original Petition filed under Section 438 r/w 442 of BNSS Cr.P.C., praying to call for the records and set aside the order dated 22.11.2024 passed in Crl.M.P.No.9789 of 2023 in C.C.No.1163 of 2023 on the file of the learned XI Metropolitan Magistrate Court, Saidapet, Chennai and allow the Revision Petition and pass order.

For Petitioner : Mr. B. Kumar, senior counsel
for Mr. R.Sagadevan

For Intervenor : Mr.P.L.Narayanan, senior
counsel for Mr.E.Hariharan

For Respondent : Mr.Gopinath, GA



WEB COPY

ORDER

This Revision petition has been filed by the petitioners against the order dated 22.11.2024 in Crl.M.P.No.9789 of 2023 in C.C.No.1163 of 2023 on file of the learned Metropolitan Magistrate Court, Saidapet, Chennai, where by dismissing the petition to discharge them.

2. Brief facts necessary for the disposal of the case is as follows:

2.1.The petitioners herein are arrayed as A1 and A2. The complaint was lodged by the defacto complainant alleging that the defacto complainant and his wife had been living in U.K for the past 30 years and they wanted to invest money in a property in and around Chennai. The first petitioner who is being a real estate broker instructed the defacto complainant to buy lands for him and his wife. Therefore, they handed over his and his wife's signature in blank papers to the said first petitioner from the year 2001 to 2008 and invested a sum of Rs.4 crores approximately. Later the first petitioner colluded with the other accused persons and misappropriated the money given by the



WEB COPY complainant and cheated him by not registering any land in his favour.

Hence, the defacto complainant lodged a complaint before the Commissioner of Police, Egmore, Chennai on 02.06.2008 and subsequently a case was registered against the petitioners herein in Cr.No.355 of 2008 under Sections 406,420 and 120(B) of I.P.C. While pending investigation on 14.06.2008 the first petitioner and the defacto complainant had entered into a Memorandum of Understanding and settled the issue amicably, thereby the defacto complainant received a sum of Rs. 5 crores by way a Demand Draft as full and final settlement. As per the MOU the three suits which were already filed by the first petitioner as against the defacto complainant in O.S.No.89 of 2008, O.S.Nos.90 and 91 of 2008 and also the another complaint lodged before the Inspector of Police IX Team, Central Crime Branch, Egmore in Crime No.113 of 2008 under sections 420,506(i) and Section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act,2003 have to be withdrawn.

2.2. Thereafter, another complaint was lodged by the defacto



WEB COPY

complainant on 08.10.2009 suppressing the first complaint and also the Memorandum of understanding entered between the first petitioner and the defacto complainant. On receipt of the said complaint the Inspector of Police III Team Central Crime Branch, Chennai registered a F.I.R in Crime No.496 of 2009 for the offences under Sections 419,420,465 r/w 471 of I.P.C for the very same set of allegations. Thereafter, the first petitioner filed a quash petition before this Court in Crl.O.P.Nos.24979,25193 and 25044 of 2009. Insofar as Crl.O.P.No.25193 of 2009 pertaining to Crime No.496 of 2009 is concerned, it was quashed by an order dated 12.03.2010. With regard to Crime No.355 of 2008 it was confirmed and the quash petition was dismissed in Crl.O.P.Nos.24979 and 25044 of 2009.

2.3. This Court further directed the respondent to complete the investigation and file a final report. During the investigation once again the petitioners and the defacto complainant entered into an agreement for settlement. Accordingly the respondent filed a closure report before the



WEB COPY

Trial Court in Cr.No.355 of 2008 stating that all the allegations are civil in nature. Once again the defacto complainant filed another complaint dated 11.11.2011 before the D.C.P and also filed a direction petition in CrI.O.P.No.2750 of 2012 before this Court and prayed for re-investigation. On 09.02.2012 this Court passed an order in CrI.O.P.No.2750 of 2012 and closed the said petition for the reason that the F.I.R itself was closed for the reason that the allegations were civil in nature. However, the defacto complainant was given liberty to file a protest petition as against the closure report.

2.4. The protest petition filed by the defacto complainant was also dismissed for default by an order dated 22.02.2012 by observing that already F.I.R was closed on 05.08.2011 itself. The respondent completed the investigation and filed a final report. The same was taken cognizance in C.C.No.1163 of 2023 for the offences under sections 120(b),406,420,465,468,471 r/w 34 of I.P.C. Thereafter, the petitioners filed a discharge petition and the same was dismissed. Aggrieved by the same, the petitioner has come up with the present petition.



WEB COPY

3. The learned senior counsel Mr. B. Kumar, appearing for the petitioners submitted that there is absolutely no prima facie materials as against the petitioners to frame any charges. None of the witnesses has spoken against the petitioners about cheating and there is no documents or evidence to connect the petitioners with the charges. While pending investigation on 14.06.2008 there was an amicable settlement by paying a sum of Rs.5 crores and as per the Memorandum of Understanding, the defacto complainant duly agreed to withdraw all the criminal complaints and the civil suits filed against the petitioners. Thereafter, the F.I.R itself was closed. After a period of several years another complaint was registered for the very same set of allegations and the respondent has filed a final report. In order to harass the petitioners with a malafide intention and to extract more money, the defacto complainant keeps on lodging complaints one after another. In support of his contention he relied on the the following Judgments of the Supreme Court:



WEB COPY

1. Judgment reported *in 2011(10) SCC 420 in the case of Cauvery Coffee Traders Vs. Honor Resources* and the relevant portion is extracted hereunder:

21. The stand of the respondent throughout had been that under clause 5 of the purchase contract dated 24.06.2008 in respect of the iron ore, the buyers had a right to reject the whole consignment in case the iron contents were less than 63% as has been in the instant case. However, considering other factors that goods had already reached the port of discharge in China, the buyers accepted the delivery thereof and therefore, the buyers made a proposal for adjustment of price. Negotiations starts as is evident from the e-mail messages dated 08.09.2008, 25.09.2008 and 07.10.2008 as referred to hereinabove, and it was in pursuance of their instructions, the banker vide e-mail dated 08.10.2009 accepted the proposal and agreed to receive a sum of US \$1,500,000.00 full and final settlement for consignment in issue. The payment made was accepted by the applicants and it was after 3 months thereafter that they served a legal notice dated 14.11.2008 for making a



WEB COPY

reference to the arbitrator.

2. Judgment reported *in 2023 SCC Online SC 1378 Mumtaz*

Yarud Dowla Wakf Vs Badam Balakrishna Hotel Pvt Ltd. and the relevant portion is extracted hereunder:

16. *The conduct of a party assumes significance. If a party is likely to have and undue advantage, despite the availability of an opportunity to raise a plea of lack of jurisdiction at an earlier point of time. It should not be permitted to do so during the execution proceedings. In other words, a plaintiff shall not be made to suffer by the passive act of the defendant in submitting to the jurisdiction. One has to see the consequence while taking note of the huge pendency of the cases before various Courts in the Country. There is no gainsaying that but for ventured to raise such a plea. It is clearly a case of an afterthought to suit his convenience. He cannot be allowed to **approbate or reprobate**. Though we are conscious about the earlier precedents dealing with the bridge in terms of the ground reality. Union of India Vs N. Murugesan, (2022) 2 SCC 25*

27. *We would like to quote the following Judgments for better appreciation and understanding of the said principle:*

27. *Nagubai Ammal vs. B. Shama ao (Nagubai Ammal V.B.Shama Rao, 1956 SCR 451 ; AIR 1956 SC 5931 ; AIR pp. 601-*



02, para 23)

27.1 But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in O.S.No.92 of 1938-39 are relied on the baring the plea that the decree and sale in OS.No.100 of 1919-20 are not collusive, not on the ground of res judicata or estoppel but on the principle that a person cannot both approbate and reprobate. It is immaterial that the present appellants were not parties, thereto, and the decision in *Verchures Creameries Ltd., Vs Hull & Netherlands steamship Co. Ltd.*, [1921] 2. K.B. 608 (CA)], and in particular, the observations of Scruton. LJ, at p.611 were quoted in support of this positions. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.

3. Judgment reported in **2013(5) SCC 762 Vinay Tyagi Vs.**

Irshad Ali and the relevant portion is extracted hereunder:

1.1. *Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short “the code”) the trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect? And*

1.2 *Whether the Central Bureau of*



WEB COPY

Investigation (for short “CBI”) is empowered to conduct “ fresh”/ reinvestigation” when the cognizance has already been taken by the Court of competent jurisdiction on the basis of a police report under Section 173 of the code??

42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exists grounds to presume that the accused has committed the offence. If the answer is in the negative on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section 227 of the code.

43. At this stage, we may also state another well-settled cannon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code of even Article 226 of the Constitution of India to direct “ further investigation”, “fresh” or “de” novo” are synonymous expressions and their result in law would be 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 Court very sparingly and with great circumspection.

4. Judgment reported in 2024(11) SCC 733 Mariam



WEB COPY ***Fasihuddin and another Vs State by Adugodi Police Station and***

another and the relevant portion is extracted hereunder:

38. It is a matter of record that in the course of “further investigation” no new material was unearthed by the investigating agency. Instead, the supplementary charge-sheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent 2, which was already available when the original charge-sheet was filed. The term “further investigation” stipulated in Section 173(8) Cr.P.C obligates the officer-in-charge of the police station concerned to “obtain further evidence, oral or documentary” and only then forward a supplementary report regarding such evidence, in the prescribed form.

39. The provision for submitting a supplementary report infers that fresh, oral or documentary evidence should be obtained rather than evaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the charge-sheet under section 173(2) Cr.P.C. In the absence of any new evidence found to substantiate the conclusions drawn by the



WEB COPY

investigating officer in found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigating rigour and fails to satisfy the requisites of Section 173(8) Cr.P.C. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the trial Magistrate's order dated 24.06.2015.

4. Per contra Mr.P.L.Narayanan, learned senior counsel appearing for the respondent submitted that there are incriminating materials available on record as against the petitioners to frame the charges for the offences punishable under sections 120(b),406,420,465,468,471 r/w 34 of I.P.C. Totally there are three accused in this case and the 3rd accused was discharged and the petitioners herein are arrayed as A1 and A2. He has also produced encumbrance certificate in respect of the subject property, wherein it reveals that the petitioners had sold out the subject property to 3rd party by



WEB COPY

using the power of attorney. Therefore, the grounds raised by the petitioners can be determined by way of a trial and cannot be considered during the framing of charges as against the petitioners. At the stage of framing of charges the Trial Court has to form a reasoned opinion to the existence of the charges constituting the offences alleged and it is not expected to go in deep with the materials available on record and to check whether the materials on record will certainly lead to conclusion of trial. Therefore, the Trial Court rightly dismissed the discharge petition and it does not warrant any interference of this Court.

5. Heard both sides and perused the materials available on record

6. Both the petitioners are arrayed as A1 and A2 and charges for the offences are proved. The crux of the complaint is that the defacto complainant, in order to invest money in properties in and around Chennai, approached the first respondent herein and invested nearly a sum of Rs.4 crores on several occasions. At this juncture the defacto



WEB COPY

complainant entrusted signatures in blank papers from the first petitioner and his wife. These papers were misused by the petitioners and thereby they had cheated the defacto complainant. The defacto complainant also further alleged that from the money entrusted with the petitioners, they have purchased several properties in their names and subsequently sold the same to third parties.

7. On receipt of the said complaint initially the F.I.R was registered in Crime No.355 of 2008. While pending investigation on 14.06.2008 the first petitioner and the defacto complainant had entered into a Memorandum of Understanding. On a perusal of the Memorandum of Understanding, it reveals that originally the first petitioner lodged a complaint against the defacto complainant before the Inspector of Police IX Team, Central Crime Branch in Crime No.113 of 2008 under sections 420,506(i) and Section 4 of Tamilnadu Prohibition of Charging Exorbitant Interest Act,2003 for the same set of allegations. With regard to disputes arose between both the parties in respect of managing the properties, the defacto complainant filed a complaint as against the first



WEB COPY

petitioner alleging irregularity in managing the property and the same was culminated in lodging the F.I.R in Cr.No.355 of 2008. Subsequently the first petitioner herein filed a suit in District Munsif Court Chengalpet in O.S.Nos.89,90 and 91 of 2008 as against the defacto complainant on the file of the District Munsif Chengalpattu with regard to properties situated in Karugazhiplkam, Alathar Village admeasuring 3 acres and 3.5 grounds.

8.In view of the above disputes, the first petitioner agreed to settle a sum of Rs.5 crores as full and final settlement for the above said allegations in favour of the defacto complainant. The first petitioner herein has paid a sum of Rs.5 crore by way of DD drawn on IOB Bank Kodambakkam Branch, Chennai and the defacto complainant also received the said sum as full and final settlement. On receipt of the said DD and Cheque, both of them have signed the MOU. The terms and conditions of MOU is as follows:

- 1. The second part has agreed to settle a sum of Rs.5,00,00,000/- (Rupees five crores only) as a full and final settlement for the above transactions.*
- 2. The second part is now issuing a cheque No.968221*



WEB COPY



- dated 14.06.2008 drawn on Indian Overseas Bank, Kodambakkam Branch Chennai 600 024 for a sum of Rs. 5,00,00,000/- (Rupees five crores only) as a bonafide gesture in the light of above compromise.*
- 3. The Second part has agreed to issue a Demand Draft for the above said amount of Rs.5,00,00,000/- (Rupees five crores only) drawn in a Nationalized Bank on 16.06.2008 in lieu of the Cheque No. 968221 dated 14.06.2008 drawn on Indian Overseas Bank, Kodambakkam Banch, Chenai 600 024 and promise to take back the above cheque which he has issued today.*
 - 4. The first part has agreed not to deposit the above cheque issued by the Second Part in No. 968221 dated 14.06.2008 drawn on Indian Overseas Bank, Kodambakkam Banch, Chenai 600 024 as it is issued in lieu of above Demand Draft.*
 - 5. The Second part has agreed to withdraw the cases pending before the District Munsif Court Chengalpet in O.S.Nos.89,90 and 91 of 2008 lodged against the First Part which is now pending.*
 - 6. Both the parties have agreed to withdraw the Criminal cases foisted against each other and which were pending before the IX Team CCB, Egmore,*



WEB COPY



*Chennai in Crime No.113/2008 and III Team CCB
gmore, Chennai-8 in Crime No.355 of 2008.*

- 7. Both the parties have agreed to restrain themselves from lodging any cases either civil or criminal on the above aspect in future. The Second part also promise that apart from the above mentioned proceedings in the MOU, there is no proceeding pending against the First part as on date.*
- 8. The Second part promised that he does not posses any papers signed by the First part and also promise that he will not use the same in future if it is with him and also promised to return at the time of production of Demand Draft on 16.06.2008.*
- 9. The Second part has agreed that he will not make any disturbance to the existing properties of the First part apart from the above disputes and also not to disturb the First part taking advantage of Power of attorney or the above alleged papers in possession of the second part in future. He also promised that he will not indulge in any activities disturbing the peacefulness of the First Part either in any activities disturbing the peacefulness of the First part either to his property or person. The First part also agreed the above conditions.*



WEB COPY

10. The first part also agreed that they will not cause any disturbance to the second part in mere future. The First part ascertains that they have not received any power from second part and in case is there is any such power. The first part will not use it in future.

11. Both the parties that they act to the spirit of the above understanding in future.

9. Thus, it is clear that a sum of Rs.5 crores was duly received by the defacto complainant and he had agreed to withdraw the complaints lodged against the first petitioner as well as the defacto complainant. Further they agreed to restrain themselves from lodging any cases either civil or criminal for the very allegations in the future. However, the defacto complainant lodged another complaint suppressing the FIR registered in Cr.No.355 of 2008 and also the Memorandum of Understanding dated 14.06.2008 for the very same set of allegations and the same is lodged in Cr.No.496 of 2009.

10. This Court in Crl.O.P.No.25193 of 2009 quashed the F.I.R 496 of 2009 and directed the first respondent to file a final report in



WEB COPY

Cr.No.355 of 2008. On the basis of Memorandum of Understanding the first respondent after completion of investigation closed the F.I.R stating that as all the allegations are civil in nature. Once again the defacto complainant filed a protest petition and the same was also dismissed for default and the closure report was already accepted on 05.08.2020. Once again the defacto complainant filed a protest petition suppressing the MOU dated 14.06.2008 in CrI.M.P.No.7091 of 2013 as against the closure report in Cr.No.355 of 2008 and sought for re-investigation in Cr.No.355 of 2008. It was kept pending for 5 years and by an order dated 02.03.2018 the Trial Court allowed the protest petition and ordered for further investigation under section 156(3) of Cr.P.C in Cr.No.355 of 2008. Thereafter, it was challenged before this Court in CrI R.C.No.441 of 2008 and the same was also dismissed by this Court on 28.03.2019. Thereafter, the respondent completed the investigation and filed a final report. While filing the Final report the first respondent herein failed to consider the MOU entered between the first petitioner and the defacto complainant dated 14.06.2008, whereby the first petitioner had settled the entire amount by way of amicable settlement and both the parties agreed



WEB COPY to withdraw the criminal complainants as well as agreed not to prefer any other complaints for the very same issues in the future.

11. Therefore, the defacto complainant cannot be permitted to blow hot and cold or approbate or reprobate, when the defacto complainant accepted the benefits of the contract by way of Memorandum of Understanding, he is estopped to deny the validity or binding effect of the MOU. Further the power of the learned Judge to direct further investigation is a significant power, which has to be exercised sparingly in exceptional cases to meet the ends of justice. To provide fair and proper investigation is the obligation of all the investigation agency and the Court in its supervisory capacity is required to ensure the same.

12. In the case on hand as stated supra, the respondent had already conducted a detailed investigation and closed the case for the reasons that the allegations are civil in nature. In fact it was also accepted by the Trial Court and thereafter the defacto complainant filed the protest petition. In fact the first protest petition was dismissed for default and the



WEB COPY

defacto complainant did not take any steps to restore the same. The Trial Court ought to have seen that the earlier closure report and the subsequent report conjointly and it is the cumulative effect of the report and the documents annexed thereto, to which the Court would accept to appraise its mind to determine whether there exists grounds to presume that the accused has committed the offence. If the answer is in the negative on the basis of this report the Courts have discharged the accused as held **in the case of *Vinay Tyagi Vs. Irshad Ali* reported in [2013(5) SCC 762]** and the relevant portion is extracted hereunder:

1.1. Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short “the code”) the trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect? And

1.2 Whether the Central Bureau of Investigation (for short “CBI”) is empowered to conduct “fresh”/ reinvestigation” when the cognizance has already been taken by the Court of competent jurisdiction on the basis of a police report under Section 173 of the code??

42. Both these reports have to be read conjointly and it is the cumulative effect of the

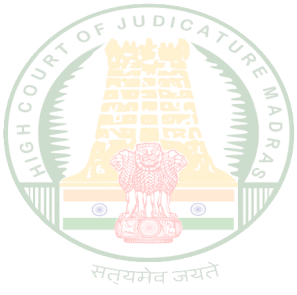


WEB COPY

reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exists grounds to presume that the accused has committed the offence. If the answer is in the negative on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section 227 of the code.

43. At this stage, we may also state another well-settled cannon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code of even Article 226 of the Constitution of India to direct “ further investigation”, “fresh” or “de” novo” are synonymous expressions and their result in law would be 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 Court very sparingly and with great circumspection.

13. In the case on hand a detailed closure report was filed by the first respondent and subsequently another report was filed, as if there is a prima facie case made out for the very same documents. Unfortunately the Trial Court without applying its mind, mechanically had taken cognizance on the final report filed by the first respondent.



WEB COPY

14. In view of the above, the order dated 22.11.2024 passed by the learned XI Metropolitan Magistrate Court, Saidapet, Chennai in CrI.M.P.No.9789 of 2023 in C.C.No.1163 of 2023 is set aside and this Criminal Revision petition is allowed. Consequently the connected miscellaneous petitions are closed.

21.08.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
smn

G.K.ILANTHIRAIYAN, J
smn

To.

To

1. The Inspector of Police,
Team IV, EDF II, Crime Branch,

Page 23 of 24



WEB COM Egmore, Chennai 600 008.

2. The XI Metropolitan Magistrate Court, Saidapet, Chennai

3. The Public Prosecutor,
Madras High Court, Chennai.

Crl.R.C.No.2304 of 2024 and
Crl.M.P.Nos.17839 and 17840 of 2024

21.08.2025