

Crl.O.P.(MD) No.19944 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.04.2025

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THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. OP(MD). No.19944 of 2024

M.Ganesan

... Petitioner

Vs.

1. The Superintendent of Police
Thoothukudi District

2. The Inspector of Police
Tiruchendur Temple Town Police Station
Thoothukudi District

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS to direct the first respondent to reopen the investigation in Crime No.143 of 2021 on the file of the second respondent police and transfer the same to any other impartial investigation agency.

For Petitioner : Mr.R.Rajamohan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



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ORDER

This petition has filed by the petitioner to direct the first respondent to re-open the investigation in Crime No.143 of 2021 on the file of the second respondent police and transfer the same to any other impartial investigation agency.

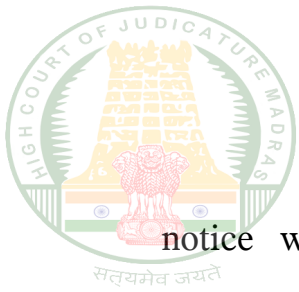
2. The learned counsel appearing for the petitioner would submit that the petitioner is the defacto complainant in this case. On 05.12.2021 the petitioner along with his family members went to Tiruchendur Murugan temple and at that time he took 36 sovereigns of gold jewels and Rs.40,000/-. Thereafter he booked room at Venkateswara Lodge and on the next day on 06.12.2021 at about 7.00a.m., he went to the temple for dharshan along with his family members by carrying jewels and cash in his bags. While so after having dharshan when he reached Kodimaram he found the jewels and cash were stolen by some one from his bag. Then he immediately lodged a complaint before the second respondent on the same day and they also monitored CCTV footages of the cameras installed around the Sannithanam and found that some unknown persons had put blade on the petitioner's bag and stolen the jewels. Thereby the second respondent registered a case and thereafter they conducted



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investigation and closed the case as undetected. The second respondent also served notice to the petitioner and not filed final report before the learned Magistrate. Therefore the act of the second respondent by closing the case as undetected is against law and the Hon'ble Full Bench of this Court in ***Chinnathambi @ Subramani .vs. The Inspector of Police, Vellakovil Police Station, Tirupur District*** has held that if once the investigation is completed, then only a report could be filed under [Section 173\(2\)Cr.P.C](#) A report of this kind where the Police Officer states that the crime is undetectable, does not terminate the investigation and thus, the investigation is construed to be in progress. It is like an interim report not falling within the scope of [Section 173\(2\)Cr.P.C](#). Therefore closure of complaint as undetectable is liable to be set aside and the investigation has to be transferred to some other investigation agency.

3. The learned Government Advocate(Crl.Side) appearing for the respondents would submit that the petitioner lodged a complaint before the second respondent for theft of 36 sovereigns of jewels and Rs.40,000/- for which they registered a case in crime No.143 of 2021 for the offence under Section 379 of IPC. Thereafter they conducted detailed investigation and unable to detect the accused, therefore the case was closed as undetected and



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notice was also served to the petitioner. Whenever they receive any information about the crime they will reopen the case and will investigate the case, thereby the petition is liable to be dismissed.

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

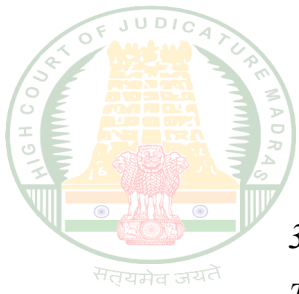
5. The defacto complainant lost his jewels and cash, thereby he lodged a complaint before the second respondent and the second respondent registered a case in Crime No.143 of 2021 for the offence under Section 379 of IPC. Thereafter the second respondent conducted investigation and they are unable to identify the accused and closed the case as undetectable thereby they served notice to the petitioner. According to the petitioner the second respondent cannot close the case as undetected and they have to keep the case pending and they have to conduct proper investigation. Therefore the closure of complaint as undetected is challenged through this petition. As per Section 173(2) of Cr.P.C., after completion of investigation they have to file final report before the jurisdictional magistrate but in this the case has been closed as undetectable. So far the respondent police have not filed final report before the concerned Court. The petitioner also filed copy application and the learned Magistrate also returned the same as charge sheet not filed. The second



respondent also admitted that charge sheet was not filed before the concerned Court but they closed the case as undetectable. Since the second respondent is unable to identify the accused and closed the same as undetectable it is not in consonance with Section 173 (2) of Cr.P.C.,

6. The learned counsel appearing for the petitioner also relied on the judgement passed by the the Hon'ble Full Bench of this Court in ***Chinnathambi @ Subramani .vs. The Inspector of Police, Vellakovil Police Station, Tirupur District reported in (2017)MLJ(Crl.)641(FB)***, wherein it is held as follows:

“32. Thirdly, if the Investigating Officer, despite the earnest efforts taken, is unable to detect the crime, he will submit a report to the Magistrate stating that the crime is "undetectable". In such a case, it cannot be construed that the investigation has been completed. If once the investigation is completed, then only a report could be filed under [Section 173\(2\)Cr.P.C.](#) A report of this kind where the Police Officer states that the crime is undetectable, does not terminate the investigation and thus, the investigation is construed to be in progress. It is like an interim report not falling within the scope of [Section 173\(2\)Cr.P.C.](#) On receipt of such a report, the learned Magistrate does not pass a judicial order but, instead, he simply receives and records the same. There is absolutely no element of any adjudication. This order of the learned Magistrate is undoubtedly not a judicial order.



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33. *Section 173(8)Cr.P.C., empowers the Police to further investigate. Though the said provision does not explicitly say that the Investigating Officer should get prior permission from the jurisdictional Magistrate before whom earlier a report was submitted by him, the Courts have held the view that in order to maintain procedural propriety, the Investigating Officer is required to seek a formal permission from the Court to do further investigation if the conditions of Section 173(8)Cr.P.C., are satisfied. This power of the learned Magistrate under Section 173(8)Cr.P.C., is not a power to review, revise, vary or cancel the earlier judicial order passed by the learned Magistrate accepting the final report under Section 173 (2)Cr.P.C. Notwithstanding the fact whether the order of the learned Magistrate is either a judicial order or a mere ministerial order, the power of the learned Magistrate under Section 173(8)Cr.P.C., is an independent judicial power to grant permission because, statutorily the Investigating Officer has been empowered to do further investigation provided the conditions of the said provisions are satisfied.*

7. On careful perusal of the above said judgment it is clear that after completion of investigation a report could be filed before the learned Magistrate under Section 173(2) of Cr.P.C., and the report of this kind where the Police Officer states that the crime is undetectable, does not terminate the investigation. In the case on hand also the second respondent has not filed any report before the learned Magistrate they only closed the investigation as undetected and the same is not permissible in law and they have to keep on



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pending investigation the and they ought to have conducted investigation, therefore the closure of above report as undetectable is set aside.

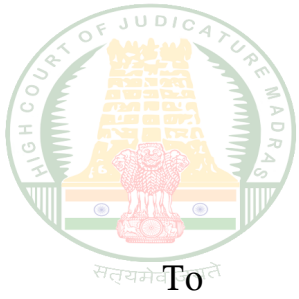
8. Since the case is pending from the year 2021 and the second respondent is also unable to detect the real accused and also closed the case as undetected, it is appropriate to transfer the case from the file of the second respondent to some other investigation agency.

9. In view of the same, this Court directs the first respondent to transfer the investigation of the case in crime No.143 of 2021 from the file of the second respondent to some other effective investigation agency of his choice within a period of one month from the date of receipt of a copy of this order. After receipt of case records the new investigation agency has to take effective steps to investigate this case in a proper manner without any delay.

10. The Criminal Original Petition stands allowed.

24.04.2025

Internet :Yes
Index :Yes/No
NCC :Yes/No
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- To
1. The Superintendent of Police
Thoothukudi District
 2. The Inspector of Police
Tiruchendur Temple Town Police Station
Thoothukudi District
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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