

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.24042 of 2003

and

CRL.M.P.NO.6814 OF 2003

Dr.R.S.Gowri Sankar .. Petitioner

-Vs-

State rep. by

The Inspector of Police,

J-1 Police Station,

Saidapet, Chennai. .. Respondent

Criminal Original Petition under Section 482 of the Cr.P.C. as stated therein.

For Petitioner: : Mr.K.Sukumaran

For Respondent: : Mr.A.N.Thambidurai,  
Govt.Advocate (Crl.side)

:O R D E R

The above Criminal Original Petition has been filed under Section 48 2 of Cr.P.C. praying to call for the records in M.P.No.1162 of 2003 dated 6.5.2003 on the file of the Court of XIII Metropolitan Magistrate, Egmore, Chennai now pending in A.F.I.R.No.640 of 2003 on the file of the respondent and quash the same on grounds such as that the learned Magistrate ought not to have forwarded the complaint to the Deputy Commissioner of Police, T.Nagar Range, T.Nagar, Chennai, since such a direction is beyond the jurisdiction; that the learned Magistrate has been conferred upon the powers under Section 156(3) of Cr.P.C. only to direct as "Officer in-charge of the police station" to investigate any cognizable offence over which the Magistrate has jurisdiction; that the learned Magistrate has filed to see that the defacto complainant has no right to demand an order to direct the learned Magistrate to forward the complaint to the Deputy Commissioner of Police, under Section 156(3) of Cr.P.C. when the Crime Branch, Egmore is functioning in the adjacent premises and such filing of the complaint with a specific direction does amount to abuse of process of Court; that in fact the A.F.I.R.640/2003 in relation to Crime No.480/2003 is pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai does go to show that the learned XIII

Metropolitan Magistrate has no jurisdiction to entertain the complaint even to exercise the power under Section 156(3) of Cr.P.C.; that the learned Magistrate has exercised his powers under Section 156(3) Cr.P.C. in a mechanical manner by assumption of excessive jurisdiction and the said order made in M.P.1 162/2003 dated 6.5.2003 is liable to be set aside; that the complaint filed by the defacto complainant is bereft of any of the ingredients of the alleged offences under Sections 406, 420 and 506(ii) of I.P. C. and the said complaint ought not to have been forwarded under Section 156(3) of Cr.P.C. when the offences are alleged to have been committed beyond the jurisdiction of the learned XIII Metropolitan Magistrate, Egmore, Chennai.

2. Heard the learned counsel for the petitioners and the learned Government Advocate on the Criminal side.

3. During arguments, the learned counsel for the petitioner would submit that the learned Magistrate has been conferred upon the powers under Section 156(3) of Cr.P.C. only to direct as "Officer in-charge of the police station" to investigate any cognizable offence over which the Magistrate has jurisdiction and he ought not to have forwarded the complaint to the Deputy Commissioner of Police, T.Nagar Range, T.Nagar, Chennai, since such a direction is beyond the jurisdiction. To substantiate his contention the learned counsel would cite a judgment reported in Central Bureau of Investigation v. State of Rajasthan and another (2001)3 SUPREME COURT CASES 333) wherein it has been held:

" As the present discussion is restricted to the question whether a Magistrate can direct CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation."

Citing the above judgment, the learned counsel for the petitioner would pray to allow the above Criminal Original Petition.

4. Per contra the learned Government Advocate on the criminal side would submit that for want of jurisdiction the learned Magistrate has forwarded the complaint to the Deputy Commissioner of Police and the Deputy Commissioner in turn forwarded the same to the jurisdictional police, i.e. the Inspector of Police, Saidapet Police Station and in turn the Inspector of Police, Saidapet Police Station has registered the case in Crime No.480 of 2003 for the offence punishable under Sections 406, 420 and 506(ii) I.P.C. and therefore, he would pray to dismiss the above Criminal Original Petition.

5. In consideration of the facts pleaded, having regarding to the materials placed on record and upon hearing the learned counsel for both besides following the decision of the Apex Court reported in (2001)3 SUPREME COURT CASES 333) cited supra dealt with the powers of the Judicial Magistrate under Section 156(3), this Court is of the view that it is only desirable to

quash the order dated 6.5.2003 made in M. P.No.1162 of 2003 by the Court of XIII Metropolitan Magistrate, Egmore, Chennai, now pending in A.F.I.R.No.640/2003 on the file of the respondent and hence the following order:

In result,

- (i) the above Criminal Original Petition succeeds and the same is allowed;
- (ii) the order dated 6.5.2003 made in M.P.No.1162 of 2003 by the Court of XIII Metropolitan Magistrate, Egmore, Chennai is hereby set aside;
- (ii) consequently, Crl.M.P.NO.6814 of 2003 is closed.

Index:Yes

Internet:Yes

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To

1. The Inspector of Police, J-1 Police Station, Saidapet, Chennai.
2. The XIII Metropolitan Magistrate, Egmore, Chennai-8.
3. The Public Prosecutor, High Court, Madras.

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