

M. MAHENDAR KUMAR

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v.

M. MANI & ORS.

(Criminal Appeal No.461 of 2015)

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MARCH 17, 2015

**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]**

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Code of Criminal Procedure, 1973 – s. 482 – Inherent jurisdiction of High Court – Petition u/s.482 by de facto complainant-respondent no. 1 – Transfer of investigation of a case from DSP, Crime Branch to CBCID, Chennai sought – Petition allowed by the High Court – On appeal, held: Appellant and other accused persons were not made parties to the case – Petition was allowed by simply believing the statement made by respondent no. 1 which created the impression that the matter was still pending before the police authority when in fact chargesheet had already been submitted long back and accused persons had been summoned – Perusal of the petition reveals that respondent no. 1 omitted to disclose that his prayer u/s. 173(8) Cr.P.C. for further investigation by CBCID was turned down by the Magistrate; and the said order was upheld by the High Court and this Court – Single Judge of the High Court was not properly assisted in the matter – Order was passed on account of non-application of mind to such relevant fact – Thus, since the order was passed on account of suppression of material facts and under a wrong impression that case was still pending before the police authorities at the investigation stage, order passed by the High Court set

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A *aside.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 461 of 2015.

B From the Judgment and Order dated 10.01.2014 of the High Court of Judicature at Madras in Crl. O.P. No. 707 of 2014.

V. Krishnamurthy, T. Harish Kumar, M. Vivekanandan, for the Appellant.

C S. Deva Kumar, G. Ananda Selvam, G. Rajendran, Sakthi Ranjan V., Rajavel, R. V. Kameshwaran, M. Yogesh Kanna, S. Janani, A. Santha Kumaran for the Respondents.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Heard learned counsel for the parties. Leave granted.

D 2. The appellant is an accused in a complaint case bearing Crime No.147 of 2009 pending in the file of learned Judicial Magistrate at Gingee, Tamil Nadu. He is aggrieved by impugned order dated 10.01.2014 passed by the High Court of Judicature at Madras in a petition under Section 482 of the Code of Criminal Procedure (for brevity, 'Cr.P.C.') bearing Crl.O.P.No.707 of 2014 preferred by the de facto complainant, respondent no.1 herein, whereby the Crime No.147 of 2009 has been treated as pending before the Deputy Superintendent of Police, Villupuram District, Tamil Nadu and as such transferred to the file of CBCID, Chennai for investigation.

F 3. The facts relevant for deciding this appeal may be noted in brief as follows. The first respondent, Mr. Mani, an assistant of Thiru Kadambapathy Thiru Madam/Mutt lodged a complaint with the Sathyamangalam Police Station alleging that unknown persons had stolen jewels of the Mutt. His complaint led to F.I.R. No.147 of 2009 registered against unknown persons for offences under Sections 457, 380 and 394 of Indian Penal Code (IPC). The de facto complainant/respondent no.1 subsequently moved the High Court of Judicature at Madras for transfer of investigation to CBCID, Chennai but such petition bearing Crl.O.P.No.21269 of 2010

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was rejected by the High Court on 22.02.2011. In the A
meantime, the investigation had been transferred to
Inspector of Police, Valathi Police Station and again it was
transferred by the DIG, Villupuram to Deputy Superintendent
of Police, District Crime Branch Villupuram who completed B
the investigation and filed a chargesheet on 26.01.2012
against 11 persons. The appellant is accused no:9 in
P.R.C.No.4 of 2012 on the file of learned Judicial Magistrate,
Gingee, Tamil Nadu. According to appellant, the allegation C
against him is of being a receiver of stolen goods attracting
Section 412 of the IPC. The learned Magistrate issued
process in said P.R.C. No.4 of 2012 on 02.03.2012. The
de facto complainant, respondent no.1 moved a petition
under Section 173(8) of Cr.P.C. before the learned
Magistrate bearing CrI.M.P.No.3602 of 2012 and prayed for D
allowing further investigation into the case by CBCID. The
said petition was rejected by the learned Judicial Magistrate
on 29.06.2012 by holding that the de facto complainant was
not competent to maintain such an application for further
investigation. Against that order respondent no.1 preferred E
CrI. Revision Petition bearing CrI.R.C. No.1283 of 2012
before the High Court of Madras which came to be
dismissed on 07.11.2012. Respondent no.1 then preferred
S.L.P.(CrI.)No.2156 of 2013 against the order of the High
Court dated 07.11.2012 and the same was also dismissed F
on 08.04.2013.

4. Respondent no.1 made allegations against the first
Investigating Officer of the case Mr. N. Gajendran, Inspector
of Police, Sathyamangalam Police Station before the
learned Chief Judicial Magistrate, Villupuram that he had G
committed malpractice and illegality during investigation of
Crime No.147 of 2009. Dissatisfied by inaction on the part
of Magistrate, respondent no.1 filed CrI.O.P.No.18904 of
2012 before Madras High Court in which order was passed H

A on 13.08.2012 and the High Court directed the Superintendent of Police, Villupuram to register a case against the former Investigating Officer named above. This led to registering of FIR in Sathyamangalam Police Station on 18.09.2012 as Crime No.180 of 2012 under Sections B 196, 206, 218, 219, 221 and 471 of the IPC against Mr. N. Gajendran. Respondent no.1 filed another CrI.O.P.No.28305 of 2012 before the High Court of Madras which was allowed on 10.12.2012 and the High Court directed the CBCID, C Chennai to investigate that case.

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5. In the aforesaid facts and circumstances respondent no.1, after about 8 months of dismissal of Special Leave Petition on 08.04.2013, in the month of January 2014 filed the case at hand being CrI.O.P.No.707 of 2014 before the D High Court again seeking transfer of investigation of Crime No.147 of 2009 from DSP, Crime Branch, to CBCID, Chennai so that such investigation may go along with investigation in Crime No.180 of 2012 pending against the former Investigating Officer.

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6. The appellant or other accused persons were not made parties to this case and it was allowed by the impugned order dated 10.01.2014 by simply believing the statement made by respondent no.1 which created the impression that the matter was still pending before the police authority when in fact chargesheet had already been submitted long back and the accused persons had also been summoned. A copy of the CrI.O.P.No.707 of 2014 is available on record and a perusal thereof reveals that F G respondent no.1 omitted to disclose that his prayer under Section 173(8) of the Cr.P.C. for further investigation by CBCID had been turned down by the concerned Magistrate; that order was affirmed by the High Court and his S.L.P. against the same had also been dismissed by H

this Court.

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7. In the aforesaid facts and circumstances, learned counsel for the appellant has submitted that the impugned order has been obtained by suppression of relevant facts and the High Court also erred in allowing such an application under Section 482, Cr.P.C. because in absence of the accused persons nobody pointed out that there was specific provision available under Section 173(8) of the Cr.P.C. for ordering further investigation and hence the High Court ought not to have exercised extraordinary inherent jurisdiction in view of specific provision in the Cr.P.C. being available for the purpose.

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8. On the other hand, learned counsel for the respondent no.1 submitted that the impugned order would advance the cause of justice and therefore requires no interference by this Court. However, he could not meet the allegation and the submission that respondent no.1 did not disclose material facts which could have revealed that his earlier application for further investigation by CBCID had been rejected at all stages and the S.L.P. had also been dismissed by this Court. The impugned order further discloses that the learned Single Judge was not properly assisted in the matter and he could not notice that Crime No.147 of 2009 was no longer pending in the file of Dy.S.P. of Police or any other police authority because investigation had been completed and chargesheet was submitted long back. It was clearly on account of non application of mind to such relevant fact that the impugned order came to be passed at the initial stage of admission without noticing any counter affidavit or reply and/or its absence.

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9. In the aforesaid facts and circumstances, we are constrained to and hereby set aside the impugned order as it has been passed on account of suppression of material

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A facts and under a wrong impression that Crime No.147 of 2009 was still pending before the police authorities at the investigation stage. Accordingly, the appeal stands allowed.

Nidhi Jain

Appeal allowed.