

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**

**V.R. Chelladurai Vs. T. Rajasekar, Manager, Sun College of Engineering and Technology and ors.**

**V.R. Chelladurai Vs. T. Rajasekar, Manager, Sun College of Engineering and Technology and ors.**

**SooperKanoon Citation : [sooperkanoon.com/839888](http://sooperkanoon.com/839888)**

**Court : Chennai**

**Decided On : Jul-12-2006**

**Reported in : 2006CriLJ4130; 2006(3)CTC785**

**Judge : Elipe Dharma Rao, J.**

**Acts : Code of Criminal Procedure (CrPC) - Sections 36, 156(3), 173, 173(2) and 173(8); Indian Penal Code (IPC) - Sections 109, 379, 403, 411, 467, 468 and 471**

**Appeal No. : W.P. No. 36291 of 2005 and W.P.M.P. No. 39154 of 2005**

**Appellant : V.R. Chelladurai**

**Respondent : T. Rajasekar, Manager, Sun College of Engineering and Technology and ors.**

**Advocate for Def. : R. Subramanian, Sr. Counsel for ;Hemlatha, Adv. (for R1) and ;R. Chandrasekaran, Government Adv. (for R2 to R5)**

**Advocate for Pet/Ap. : AR.L. Sundaresan, Sr. Counsel for ;Rajnish Pathiyil, Adv.**

**Disposition : Petition allowed**

**Judgement :**

**ORDER**

## **Elipe Dharma Rao, J.**

1. Aggrieved by the order dated 14-7-2005 passed by the Director General of Police, Tamil Nadu, Chennai, third respondent herein, directing the transfer of investigation in PS Cr. No. 597/2004 on the file of the Bhoothapandy Police Station, the petitioner herein has filed the above writ petition.

2. Facts, in brief, which are necessary for the disposal of the writ petition are:

Petitioner claims that in the course of business transaction with the first respondent, the first respondent owes certain amount due and payable to the petitioner and with an ulterior motive of avoiding the repayment of the said amount and to defraud and cheat the petitioner, he came out a story of theft of blank cheque leaves and title deeds from the side-box of his motor-cycle and also lodged a complaint in that regard with the jurisdictional police. The first respondent also approached the jurisdictional Judicial Magistrate with a complaint seeking to forward the complaint under Section 156(3) of the Code of Criminal Procedure, which was followed to the Inspector of Police of the jurisdictional police station, based on which a complaint was registered in Crime No. 597/2004 for the alleged offences under Sections 379, 109 read with Sections 403, 411, 467, 468 and 471 IPC.

It is the case of the petitioner that the first respondent not being satisfied with the investigation done by the jurisdictional police, sent a representation dated 5-4-2005 to respondents 2 to 4 herein, seeking transfer of investigation. The first respondent had also filed a writ petition, W.P. No. 14781 of 2005, seeking a Writ of Mandamus for transfer of investigation to the file of the fourth respondent herein. The said writ petition was disposed of by this Court, directing the third respondent herein to consider the representation dated 5 -4-2005 and pass appropriate orders within a period of twelve weeks. The third respondent, in compliance of the said order, considered the representation given by the first respondent and passed the impugned order.

3. Learned senior counsel for the petitioner argued that the first respondent had suppressed certain necessary and vital facts in his representation dated 5-4-2005

as also in the writ petition filed before this Court. Learned senior counsel submitted that after investigation, the Inspector of Police of the jurisdictional police station has referred the complaint as false and closed the case as 'mistake of fact' as early as on 26-2-2005 and a report to that effect was also filed before the Judicial Magistrate, with a copy to the first respondent. The first respondent had conveniently suppressed these facts in his representation as well as in the writ petition filed by him.

4. Learned senior counsel further submitted that under Section 173 of CrI.P.C. any further investigation can be done only with the concurrence and permission of the Judicial Magistrate by seeking permission under Section 173(8) of CrI.P.C. The third respondent without going into the facts and without ascertaining as to whether the report has been filed, has mechanically passed the impugned order and thus, a complaint which has already been investigated into by a competent authority and closed as mistake of fact, has been reopened. Learned senior counsel further submitted that the impugned order is a non-speaking order and passed in violation of principles of natural justice as no notice was issued to the petitioner before passing of the impugned order. The impugned order is illegal as the third respondent usurped the powers of the jurisdictional Judicial Magistrate. The impugned order is, therefore, liable to be set aside.

5. Learned senior counsel appearing for the first respondent submitted that the first respondent on coming to know that the side-box of his motor-cycle, which contained the cheque leaves and title deeds, was found missing, he tried to trace the same for two days, but in vain. The first respondent thereafter lodged a complaint with the Boothapandy Police Station on 16-9-2004 and also informed the bank concerned not to make any payment in respect of the cheques which were found missing, if such cheques are presented for payment. The first respondent received a information that one Mr. Aden, Mr. Allen and the petitioner herein delivered the cheques in question. The first respondent again gave a police complaint on 23-10-2004. Since no action was taken by the police, he preferred a complaint before the Judicial Magistrate, Boothapandy on 3-11-2004 against Mr. Allen, Mr. Aden and the petitioner herein. The first respondent was directed to lodge a complaint before the Superintendent of Police, Nagercail. The first

respondent again on 16-11-2004 gave another complaint under Section 156(3) of Cr.P.C. before the Judicial Magistrate, which was forwarded by the Judicial Magistrate to register a case. A case was registered in Crime No. 597 of 2004 on 18-11-2004 and the investigation in the crime was taken up by the Inspector of Police. Since the first respondent felt that the Inspector of Police did not conduct the investigation in proper and fair manner, he sent a representation dated 5-4-2005 to respondents 2 to 4 seeking transfer of investigation and finding that his representation did not receive due consideration, he filed a writ petition before this Court. This Court, by order dated 29-4-2005, directed the third respondent herein to consider the representation dated 5-4-2005 and pass appropriate orders in accordance with law within a period of twelve weeks from the date of receipt of the order, pursuant to which the third respondent has passed the impugned order directing the Additional Superintendent of Police (Crime), Kanyakumari District, to conduct investigation in Crime No. 597/2004 and the Superintendent of Police, Kanyakumari District was also directed to issue suitable directions for immediate transfer of the case diary and other connected records pertaining to the case. Since the post of Additional Superintendent of Police (Crime), Kanyakumari District at Nagercoil is vacant, the fifth respondent was directed to investigate the case and the case is now being investigated by the fifth respondent.

6. Learned senior counsel further submitted that the Inspector of Police, who was at the fag end of his retirement from service, has deliberately and with an ulterior motive failed to conduct the investigation in a fair manner and according to law. The first respondent was not aware of the fact that the case was referred as 'mistake of fact' and no intimation in that behalf was sent to the first respondent. The report said to have been filed by the Inspector of Police did not reach finality. Learned senior counsel further submitted that the primary responsibility for conducting investigation into offences in cognizable cases vests with the police authorities. Section 156(3) of the Cr.P.C. empowers the Judicial Magistrate to direct an officer in charge of the police station to investigate any cognizable cases over which such Judicial Magistrate has jurisdiction. Any other police officer, who is superior in rank to the officer in charge of a police station exercises the same powers of the officer in charge of a police station and when he so exercises his powers he would do it in his capacity as officer in charge of the police station.

When the Judicial Magistrate orders investigation under Section 156(3) of CrI.P.C. he can only direct the officer in charge of a police station to take such investigation and not a superior police officer though such police officer can exercise such powers by virtue of Section 36 of CrI.P.C. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the directions of the superior officer or even that of the Government. Such power of authorisation by the Government or any superior police officer to entrust the investigation being done only in exercise of executive powers, no notice need be issued to any party. The petitioner, being an accused in the complaint, therefore cannot dictate that he ought to have been heard before the passing of the impugned order. Learned senior counsel finally submitted that there is no illegality or infirmity in passing the impugned order and, therefore, no interference is called for.

7. Learned Government Advocate appearing for respondents 2 to 5 adopted the arguments of the learned senior counsel for the first respondent and justified the legality of the impugned order. Learned counsel further submitted that in Crime No. 597/2004 even though final report was filed by the jurisdictional Inspector of Police, it was not given any effect since the service of R.C. Notice was not properly done and the case is still kept as under investigation in the court. Learned counsel further submitted it is not doubt true that when a criminal case is referred and closed after investigation by the police, it can be reopened for fresh investigation only with the permission of the jurisdictional Magistrate. In the present case, the case was not closed, the final report was not given effect to and the R.C. Notice was not properly served. The fifth respondent after obtaining the orders of investigation had intimated the concerned court and then only proceeded on with the investigation in the case. There is no illegality or irregularity in the fifth respondent taking up investigation in the case. The third respondent passed the impugned order in compliance of the directions given by this Court. The third respondent had called for the entire records of the case and only after applying his mind to the materials available on record, passed the impugned order. Since the post of Additional Superintendent of Police (Crime) Kanyakumari District is vacant at Nagercoil, the fifth respondent was directed to take up the investigation in the matter. The petitioner, with a view to escape from the clutches of law, is resorting

to the filing of writ petitions of this nature one after the other.

8. Heard the learned senior counsel appearing for the parties and the learned Government Advocate.

9. On the basis of the above stated facts and circumstances of the case, the point for consideration is whether once the Magistrate has taken on file the complaint given by the de-facto complainant/first respondent, entrusted the matter for investigation by the police having jurisdiction to enquire into the matter and that the police after investigating into the matter submitted a report to the Magistrate closing the case as mistake of fact and on receipt of the report, the Magistrate has taken a decision to accept the said report and close the complaint and accordingly issued a notice in Form 95 to the first respondent to appear before the court and that the first respondent refused to receive the above said notice, but made representations subsequent to the filing of the final report to transfer the investigation in the said criminal case and thereafter filed a writ petition before this Court and obtained an order without making the writ petitions and two others as party respondents against whom the complaint was made for the alleged theft and presentation of cheques for withdrawal which were alleged to be blank cheques signed by the Chairman of the Trust and, as directed by this Court, the third respondent passed the impugned order directing the fifth respondent to re-investigate the matter is correct or not.

10. Heard the learned Counsel for the parties and gone through the entire material placed on record. There is a delay of two days in filing the complaint with regard to the alleged theft of blank cheque leaves and title deeds. The said complaint was made on 16-9-2004 in respect of the alleged incident happened on 14-9-2004. The learned Magistrate forwarded the complaint to the jurisdictional police for investigation. Based on the said complaint, the police have registered the case, investigated the case and filed a final report on 25-2-2005 closing the case as mistake of fact. The investigating officer retired on 28-2-2005. Taking advantage of the retirement of the investigating officer, the first respondent/complainant filed repeated complaints and representations to the higher police officials to order for reinvestigation and to transfer the case to some other police officer. On the final

report submitted by the jurisdictional police, the learned Magistrate issued notice to the first respondent before passing orders on his petition, but the first respondent refused to receive the notice. The learned Magistrate however proceeded to pass orders on the petition. In such circumstances, as against the order passed by the learned Magistrate, the only course open to the first respondent/complainant is to file a revision or an appeal before the superior court assailing the correctness of the order passed by the Magistrate.

11. The only contention raised on behalf of the first respondent/ complaint is that he had no knowledge of the filing of the final report filed by the jurisdictional police before the learned Magistrate and that the Magistrate ought to have issued notice to him before passing orders on his petition. Placing reliance on the decision in *Bhagwant Singh v. Commissioner of Police and Anr. : 1985 CriLJ1521* wherein it was held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) decides not to take cognizance of the offence and to drop the proceedings or take the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report, learned Counsel for the first respondent submitted that here also the learned Magistrate had failed to issue notice to the first respondent/complainant at the time of consideration of the final report.

12. On the other hand, learned Counsel for the petitioner submitted that it is incorrect to state that no notice was issued to the first respondent/complainant at the time of consideration of the final report filed by the police. In fact, the learned Magistrate had issued a notice in Form 95, but the first respondent/complainant refused to receive it and, therefore, it is presumed that the first respondent/complainant had knowledge about the filing of the final report before the Magistrate. If for any reason, the first respondent/complainant is aggrieved by the order passed by the Magistrate, he ought to have either filed a revision or an appeal against the said order. He did not do so. Instead, he sent several complaints/representations dated 16-10-2004, 23-10-2004, 16-11-2004 and 3-11-2004 to the police higher officials and other authorities seeking reinvestigation of

the case and also transfer of the case. He had also filed a writ petition, W. P. No. 14781 of 2005 before this Court seeking transfer of investigation. In the said writ petition, the first respondent/complaint did not make the petitioner as party respondent. This Court, by order dated 29-4-2005, directed the Secretary to Government, Home Department and the Director General of Police, Chennai to consider the representation dated 5-4-2005 submitted by the first respondent and pass appropriate orders within a time-frame of twelve weeks. The writ appeal filed against the order passed by the learned single Judge was dismissed by the Division Bench of this Court, observing that the order passed by the learned single Judge was only a direction to the authorities concerned to consider the representation seeking for transfer of investigation. The third respondent, in strict compliance of the order passed by this Court, considered the representation of the first respondent and passed the impugned order.

13. In the facts and circumstances of the case, I am of the considered view that the impugned order passed by the third respondent is illegal and unsustainable. As already stated, it is clear from the materials placed on record that notice in Form 95 was issued to the first respondent/complaint by the learned Magistrate before passing orders on his petition based on the final report filed by the police, but the first respondent refused to receive the said notice. Under the circumstances, I am unable to believe the version of the first respondent that he had no knowledge of the filing of the final report by the police before the learned Magistrate. Further, if the first respondent is aggrieved by the order passed by the learned Magistrate, he ought to have filed either a revision or an appeal before the superior court as contemplated in the Code of Criminal Procedure. Instead, the first respondent chose to send repeated complaints/representations to the police higher officials and to the other authorities attributing certain allegations and mala fides against the jurisdictional investigating officer and sought for reinvestigation of the matter by some other police officer. The first respondent thereafter filed a writ petition, that too without impleading the petitioner herein as party respondent, and obtained an order from this Court for consideration of his representation by the authority concerned. Thus, the third respondent, in strict compliance of the order passed by this Court, passed the impugned order. When the Code of Criminal Procedure itself provides hierarchy of superior courts for assailing the correctness

or legality of the order passed by the trial court, the proper course open to the first respondent is to approach such superior courts to seek redressal of his grievance. The first respondent, to nullify the order passed by the learned Magistrate, has adopted the ingenuous way of sending representations seeking reinvestigation of the matter and transfer of investigation, filing a writ petition before this Court, obtaining order from this Court directing the authorities concerned to consider and pass orders on his representation and obtained orders from the third respondent. Therefore, considering the facts and circumstances of the case, I am of the considered view that the impugned order is unsustainable in law and it is liable to be set aside. Accordingly, it is set aside.

14. In the result, the writ petition is allowed. No costs. Connected W.P.M.P. is closed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**