

Mrs. Rameeja vs The State, Rep. By Deputy ... on 3 August, 2004

Equivalent citations: 2004(4)CTC438

Author: S. Ashok Kumar

Bench: S. Ashok Kumar

ORDER

S. Ashok Kumar, J.

1. This petition has been filed as against the order of the learned Special Judge for Essential Commodities Act and Narcotic Drugs and Psychotropic Substances Act, Madurai, passed in CrI. M.P. No: 1647 of 2004 in C.C. No: 1233 of 2003.

2. The contentions of the petitioner are as follows:-

The petitioner, is A-2 in C.C. No. 1233 of 2003, on the file of the Special Judge for Essential Commodities Act and Narcotic Drugs and Psychotropic Substances Act, Madurai, which is a case registered under Section 20(b)(ii)(c) and 25 of the NDPS Act. On 10.10.2003 along with the charge sheet a memo was also filed by the respondent on the same day under Section 173(8) Cr.P.C., for further investigation. The petitioner's bail petition filed before the said court was dismissed on 9.9.2003. Thereafter the petitioner along with A-1, filed a bail petition before this court. When counter statement was filed on behalf of the respondent before this Court, there was no whisper about the further investigation being conducted. During the course of argument in the bail petition before the High Court, the Learned Public Prosecutor disclosed about the Memo under Section 173(8) Cr.P.C., and based on the said Memo the learned Public Prosecutor objected to the grant of bail and stated that it was too early to decide about the prosecution case, which would only mean that the prosecution was seriously conducting further investigation. It was only in the proceedings before this Court and the Supreme Court the Investigation Officer for the first time filed the sworn counter statement. While passing Orders in CrI. O.P. No: 34232 of 2003, this court recorded the following submissions of the learned Public Prosecutor:-

"An Application Under Section 173(8) of Code of Criminal Procedure has been filed before the Lower Court seeking permission for further investigation."

3. In the counter filed on behalf of the respondent in SLP. (Crl). No: 5534 of 203 before the Supreme Court, it was clearly stated by the respondent as hereunder:-

"The investigating agency has obtained permission to carry out further investigation under Section 173(8) of Code of Criminal Procedure. Further investigation is in progress".

4. During the hearing of the above special leave petition in the Supreme Court on 26.3.2004 the Supreme Court wanted to know how much time would be taken for completing the further investigation. The Inspector of Police, Karuppayurani Police Station by name A. Ganesan, who was present in the supreme Court is aware of this. It is therefore clear that the respondents having filed a sworn statement before the Supreme Court that further investigation was in progress and that permission was also granted by the trial court to conduct further investigation are duty bound to disclose the truth about the further investigation conducted by them and also the result of the said further investigation.

5. According to the petitioner permission to conduct further investigation was obtained on 10.10.2003 and it is nearly six months since permission was obtained for further investigation. However, without disclosing the progress made in this respect, the respondents have misled the trial court by requesting the Trial Court to fix the date for examination of witnesses. While further investigation is in progress, there is absolutely no scope for fixing a date for examination of prosecution witnesses without knowing the outcome of the further investigation. The evidence collected in the further investigation by the investigating officer may be extricating the accused already challaned in which case the investigating officer has to submit a subsequent charge sheet mentioning those facts. When the investigating officer has clearly stated in a sworn statement before the Supreme Court that further investigation was in progress the said fact ought to have been disclosed by the investigating officer before the trial court. Inasmuch as the investigating officer failed to disclose this material fact before the trial court and the trial court also fixed 5.4.2004 for examination of prosecution witnesses without appreciating that further investigation was in progress. When further investigation was in progress the learned Special Judge, Madurai could have stayed the further proceeding till the receipt of report on further investigation and submission of the supplementary report to avoid any anomaly or inconsistency in the trial.

6. Mentioning all the above facts, the petitioner filed Crl. M.P. No: 1647 of 2004 before the Special Judge, Madurai. A counter statement was filed on behalf of the respondent which was not signed by the Investigating Officer, but only by the special Public Prosecutor, in which it was stated that the charge sheet is a complete one but the pendency of further investigation was again suppressed by the respondent. While the counter affidavit before the Supreme Court was filed by the Investigating Officer by name S. Raman, Deputy Superintendent of Police, Thruparankundram, the counter statement in Crl. M.P. No: 1647 of 2004 was filed by the Special Public Prosecutor. The practice of different persons filing different versions before different courts has caused prejudice to the petitioner. The facts stated above would clearly establish that the respondents are not consistent in their stand and are frequently shifting the stand to suit their convenience before the different courts. Once the investigation officer in a sworn statement submitted before the Supreme Court that the

further investigation was in progress it was not for the Special Public Prosecutor to suppress the said fact and mislead the trial court. Unless and until the result of further investigation is submitted to the Court in the form of a report, the commencement of the trial before the receipt of the said report would jeopardise the interest of the accused and such a procedure of conducting trial even while further investigation is in progress would be not only detrimental to the interest of the accused but also against the concept of fair trial.

7. Without appreciating the aforesaid facts, the learned Special Judge has relied on the statement of the Special Public Prosecutor that the present charge sheet is final and absolute and that the prosecution was not seeking any permission for further investigation pertaining to the said case and that the prosecution only requested permission to file documents or evidence pertaining to this case. The Learned Special Judge, erred in accepting the explanation offered by the Special Public Prosecutor in this regard. Having taken a stand before the Supreme Court and High Court that further investigation was in progress, it was not open to the respondent to deny the fact that further investigation was in progress.

8. Though there is a direction by the Supreme Court to the trial court for expeditious trial, but that does not mean that the trial should be expedited inspite of the respondent's failure to file the further report on further investigation conducted by them in the last over 6 months from 10.10.2003, which is prejudicial to the petitioner. The respondent wants to conduct the trial even while conducting further investigation. The progress of the said further investigation must be informed to the trial court before the trial starts and witnesses are examined. The petitioner prays to set aside the order in Crl.M.P. No. 1647 of 2004 in C.C. No. 1233 of 2003 and to direct the respondent to file a status report.

9. The respondent filed a counter submitting as follows:-

It is the admitted case of the petitioner that Application under Section 173(8) Cr.P.C., was filed before the trial court on 10.10.2003 along with the final report and permission was granted by the trial court to proceed with the further investigation. As per the ratio of the decision laid down by the Apex Court, no specific permission is required to conduct further investigation as contemplated under Sec. 173(8) Cr.P.C., The power to conduct further investigation is not exhausted with the filing of final report under Sec. 173(2) Cr.P.C., and further investigation can be conducted as and when necessary and even after the commencement of the trial in the case. The grievance of the petitioner before the trial court was that before filing the supplementary report, the trial should not commence, which argument is not maintainable in law. As on date the supplemental report along with the materials gathered during the investigation has been submitted before the trial court and copies thereof had been furnished to the accused on 16.4.2004. The trial has been adjourned to 21.4.2004 and as such the petitioner can have no grievance in the matter. The filing of the supplemental report together with the documents is in pursuance to the memo dated 10.10.2003, under Section 173(8) Cr.P.C., the present petition has at any rate become infructuous. Neither the respondent, nor the Public

Prosecutor has suppressed the facts of further investigation in this case. The counter filed by the special Public Prosecutor specifically refers to the memo filed under Section 173(8) Cr.P.C., while making a legal submission that there is no bar to the commencement of the trial in the case. The Supreme Court while granting bail to the accused directed that the trial must be conducted expeditiously. The petitioner is deliberately adopting dilatory tactics to hurdle the speedy trial of the case.

10. The points for consideration are:

(i) Whether permission of the learned Special Judge is necessary for conducting further investigation and whether further report was filed before summoning the witnesses for trial?

(ii) Whether the respondent has willfully misrepresented before the trial court or the High Court or the Supreme Court and thus committed contempt as defined under Section 2(c)(iii) of the Contempt of Courts Act?

11. POINTS:

Point (i) Whether permission of the learned Special Judge is necessary for conducting further investigation and whether further report was filed before summoning the witnesses for trial?

As regards the power of the Investigating Agency for further investigation, there is no dispute that under Section 173(8) Cr.P.C., they have sufficient power to further investigate the case even after filing of a final report if fresh facts come to light. But law requires that before conducting further investigation, the Investigating Officer must formally apply to the Magistrate/Special Judge and get his permission.

12. In Ram Lal Narang Vs. State (Delhi Administration), , the Supreme Court held as follows:-

"..The criticism that a further investigation by the Police would trench upon the proceedings before the court is really not of very great substance, since whatever the Police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the Police to make further investigation. We should not, however, be understood to say that the Police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the Police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

13. In Ramamurthy and Ors Vs. State etc., reported in 1999 (1) L.W. (Crl) 352, M. Karpagavinayagam, J., held as follows:-

"15. However, as clearly observed by the Apex Court in that though the Police is empowered to make further investigation even after sending the referred report, the police should inform the court and seek formal permission to make further investigation, when fresh fact comes to light."

14. In T.T. Antony Vs. State of Kerala, , the Supreme Court held as follows:-

"19. The scheme of Cr.P.C., is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C., on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C., as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes to into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports this is the import of sub Section (8) of Section 173 Cr.P.C.,"

15. In Prithwis Kumar Nag V. State of West Bengal, reported in 1998 Crl.L.J., 3502, the Calcutta High Court held as follows:-

"27. In my view, the learned Sub divisional Judicial Magistrate, after taking cognizance of the offence, cannot pass an order for further investigation under Section 173(8) Cr.P.C., unless the Police makes an application praying for formal sanction of the Court for further investigation.

16. In Hemant Dhasmana v. CBI, , the Apex Court held thus:-

"16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is

of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck."

17. From the judgments of the High Courts and Supreme Court referred to above, it is clear that though under Section 173(8) Cr.P.C., the Police have the power to further investigate in a matter in which they have already filed a final report, a petition should be filed before the concerned Magistrate and formal permission must be obtained from the concerned Magistrate.

18. As far as this case is concerned, the respondent-police have taken different stands at different stages. On 10.10.2003, the same date on which final report was filed, a memo was also filed before the Special Judge, in which the Investigating Officer did not seek any permission, nor did the Learned Special Judge granted any permission to further investigate. What all the Investigation Officer in the form of memo stated is that "if any additional evidence or document is available, the prosecution reserves its right to file it". When there was no formal permission granted by the Learned Special Judge and when the petitioner and other accused moved bail before this Court and also before the Supreme Court, the respondents have submitted that permission was obtained for further investigation and that further investigation was in progress. But when the accused wanted to postpone the trial/examination of witnesses until the report of the Further investigation is submitted by the respondent, the respondent denied of any further investigation. The following chart will disclose the different stands taken by the respondents before the various courts at various stages/times.

As per memo dated 10.10.03 (page 31 of paper book), the Prosecution reserves its right to file additional evidence or documents.

On 4.12.2003 the Learned Public Prosecutor of this High Court submitted that "an application U/s. 173(8) Cr.P.C., has been filed seeking permission for further investigation.

The affidavit dated 19.2.2004 filed by the I.O., before the Supreme Court (counter affidavit in SLP-page 75 of the paper book) reads as follows:

"The Investigating Agency has obtained permission to carry out further investigation U/s. 173(8) Cr.P.C. Further Investigation is in progress".

On 29.3.2004 the counter filed by Spl. Public Prosecutor, para 4, page 150 of typed set reads as follows:

"charge sheet is already filed and charges were framed against all the accused... the charge sheet is a complete one".

On 1.4.2004, the following order in Crl. M.P. 1647/2004 has been passed-(page 165 of the typed set) "The learned Special P.P., clarified the points contained in the Memo. He submitted that the present charge sheet is final and absolute. Further he has stated that the prosecution is not seeking any permission for further investigation pertaining to this case. The prosecution has only requested permission to file any document or evidence pertaining to this case if revealed at the later stage".

On 12.4.2004 Memo filed by Investigating Officer (Dy. S.P.) (Translated Version) "In the above referred case, after filing of charge sheet on 10.10.2003 with the permission of the court, further investigation was conducted."

19. The above chart would clearly indicate that when bail was moved by the accused before the High Court and Supreme Court, the Investigating Officer informed the High Court and Supreme Court that an application under Section 173(8) has been filed seeking for further investigation and that the Investigating Agency has obtained permission to carry out the further investigation and that further investigation is in progress. The above two submissions made before the High Court and the Supreme Court, are patently false. When a clarification was sought for from the concerned Special Judge, by his letter dated 15.7.2004, the learned Judge has categorically stated as follows:-

"I submit that a memo has been filed at the time of filing the charge sheet stating that the prosecution reserves its right to file additional evidence or documents if available u/s. 173(8) Cr.P.C., Since it was only an information with regard to the right of the prosecution without seeking any relief no order was passed on that memo.

I further submit that on 12.4.2004 the prosecution filed a petition u/s. 173(8) Cr.P.C., seeking permission to receive additional documents and to permit to file additional memo of evidence....."

20. The reply of the Learned Special Judge would reveal that no permission was sought for to conduct further investigation and only on 12.4.2004 the prosecution filed a petition under Section 173(8) Cr.P.C., seeking permission to receive additional documents and to permit to file additional memo of evidence. When the Investigating Officer told before the High Court on 4.12.2003 and before the Supreme Court on 19.2.2004 that permission has been obtained for further investigation and further investigation is in progress, on 29.3.2004 in the counter filed by the Special Public Prosecutor, in Crl. M.P. No: 1647 of 2003, it is stated that the charge sheet already filed is a complete one. In the said Criminal Miscellaneous Petition when arguments were heard, the learned Special Public Prosecutor has made a statement which has been incorporated in the order dated 1.4.2004, wherein it is mentioned that "Special Public Prosecutor clarified that the present charge sheet is final and absolute" and that he has also stated that the "prosecution is not seeking any permission for further investigation pertaining to this case".

21. Only when the case was posted for examination of witnesses on 5.4.2004, the accused have filed the Crl. M.P. No; 1647 of 2004 stating that "further investigation is still pending, if the witnesses have been examined, it will prejudice the petitioner to defend the case and prayed the court to stop examination of witnesses. Even on 1.4.2004, the stand of the prosecution is that no permission was

sought for further investigation and that the charge sheet already filed is a final one. This Court is at a loss to understand as to how within 12 days i.e., on 12.4.2004, the Investigation Agency has filed a petition stating that they have conducted further investigation with the permission of the court and produced some records and statement of witnesses which was sought to have been collected during the course of further investigation. The different stands which are contradictory to each other as mentioned above would clearly show that the respondent-police misused the powers of further investigation only for the purpose of thwarting the attempt of the accused from coming out on bail by falsely informing the High Court and the Supreme Court that they have "obtained permission to carry out further investigation under Section 173(8) Cr.P.C.," and that "further investigation is in progress".

22. While moving the bail applications before the High Court and Supreme Court, the accused have given some explanation accounting for the cash recovered from their possession at the time of the arrest. We can understand if during the further investigation, the persons from whom money was said to have been received by the accused are examined as witnesses and their statements are recorded and sent to court. The said statements of concerned persons will have a direct bearing on the case to confirm or repudiate the claim of the accused. If the further investigation was aimed at finding out the source of supply of huge quantity of "ganja" to the accused or the purchasers of "ganja" from the accused to the tune of more than a Crore of Rupees, then also, it will have a direct bearing on the charges framed against the accused. But the further investigation has not proceeded on these lines. But in the guise of further investigation, worthless materials which will have no bearing with the charges framed against the accused have been collected only to justify the contention that further investigation was conducted, that too with the permission of the court, which was never granted.

23. At least when Crl. M.P. No: 1647 of 2004 was filed praying the court to postpone the examination of witnesses in view of the stand taken by the Investigating Agency that further investigation is in progress, the Investigating Officer could have told the court that they are going to file an additional report under Section 173(8) Cr.P.C. On the other hand, the prosecution has taken a stand that the charge sheet already filed is a final one and that the prosecution is not seeking any permission for Further investigation. The Public Prosecutor who appeared for the prosecution has a duty to inform the court whether further investigation is being conducted by the investigating officer and inform the court that further report is going to be filed. On the other hand, the Public Prosecutor has shown interest in examination of witnesses by informing the court that no permission was sought for further investigation and no further investigation was conducted. The fact remains that further report in pursuance of the alleged further investigation was not filed before issuing summons to the witnesses. It is worthwhile to mention here the observations My Learned Brother M. KARPAGA VINAYAGAM, J., made in the decision of Meera Sahib Vs. State etc., reported in 2001 (2) L.W. (Crl.) 572:-

"21. It shall be the duty of the Assistant Public Prosecutor to inform all the facts to the Court. It shall be the duty of the court to appraise itself of the reasons which prompted the Assistant Public Prosecutor to withdraw the case from the prosecution. The Court as well as the Assistant Public Prosecutor have responsibility and stake in

the administration of criminal justice. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of Section 321 Cr.P.C.

22. The Prosecutor has to be fair in the presentation of the prosecution case. He should not suppress or keep back from the court the material which is relevant to the determination of the issue to be decided by court. He should present a complete picture and not one sided picture. He should not be partial to the prosecution or to the accused. He has to be fair to both sides in the presentation of the case. He should not consciously misstate the facts, nor knowingly conceal the truth.

23. The Public Prosecutor is, in a larger sense, an officer of the court. He is bound to assist the Courts with his fairly considered view. The court is entitled to have the benefit of the fair exercise of his function. A person appointed to this office must, in the interests of the public, have a high degree of efficiency, and knowledge of the law of crimes and criminal procedure. He must have character and integrity. He should be irreproachable and above suspicion. He must have a sense of his duty to the public and to the Court, as overriding considerations. If these requisites are lacking, the incumbent to such an office would gravely injure the administration of criminal justice.

24. The above requisite qualities of the Prosecutor have been referred to in the following decisions:-

- 1) Prabha Deyal v. State (1986 CrL. L.J. 383)
- 2) Raj Kishore v. State
- 3) State of Bihar v. Ram Naresh
- 4) Balwant Singh v. State of Bihar
- 5) Mohambaram Gounder v. Venkatachalam (1983 L.W. CrL. 1) xx xx xx xx xx

29. Before parting with this case, I shall once again point out that the conduct of the Assistant Public Prosecutor Grade II, Tenkasi in having given wrong opinion to the police and in concealing vital factors before the Court while seeking withdrawal of the case, and the conduct of the Inspector of Police recommending the withdrawal and sending a report to the Deputy Superintendent of Police, instead of filing a report under Section 173(8) Cr.P.C. before the Court after having obtained permission for re-investigation earlier from the court by giving an undertaking that he would file a report, are in my view, highly condemnable."

24. The observations of my Learned Brother M. KAPAGA VINAYAGAM, J., made in the case cited supra would squarely apply to the facts of this case also. Without filing the additional report for conducting further investigation, the Special Public Prosecutor has hastened and attempted to examine the witnesses in spite of objections on the part of the accused. The statements of witnesses and documents produced in furtherance of the alleged further investigation have no direct bearing to the charges framed against the accused. Such statements have been filed only to protect the skin of the Investigating Officer from the contention being raised by the accused during the course of arguments that false statements were made only to thwart their attempt to get bail at different stages and that the prosecution is taking different stands to obstruct or interfere with the administration of justice.

25. Point No:(ii) Whether the respondent has willfully misrepresented before the trial court or the High Court or the Supreme Court and thus committed contempt as defined under Section 2(c)(iii) of the Contempt of Courts Act?

Thiru K. Subramaniam, learned senior counsel for the petitioner would submit that the conduct of the Learned Public Prosecutor and the Investigation Officer amount to contempt of Court, in the sense that they have given false statements to the Trial Court, High Court and the Supreme Court. Before the trial court, the respondent has contended that no permission was sought for further investigation and the charge sheet already filed on 10.10.2013 is final. On the other hand, when bail was moved by the accused before the High Court and the Supreme Court, the Investigating Officer has submitted that Petition U/s. 173(8) Cr.P.C., for further investigation has been filed and permission has been granted by the court and that further investigation is in progress and thus has committed criminal contempt.

26. Section 2(c) of the Contempt of Courts Act defines Criminal Contempt as follows:-

"(c) 'Criminal Contempt' means the publication (whether by words, spoken or written, or any signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which--

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner"

27. As per Section 2(c) of Contempt of Courts Act, if any person interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, he is said to have committed a criminal contempt and thus according to the learned Senior Counsel appearing for the petitioner, the Investigating Officer has committed criminal contempt as defined under

Section 2(c)(iii) of the Contempt of Courts Act.

28. In the Book V.G. Ramachandran's "Contempt of Court", at page 257, it has been mentioned as follows:-

"The Investigating Officer mentioned in the case diary again and again whenever it had been called by the Public Prosecutor that in case the accused is granted bail, it will bring bad name to the police and the courts in the society and the accused would be protected. Writing this sort of language in the Diary sent for by the court is to influence the courts in one way or the other against the person either to be apprehended and this an intolerance in the administration of justice. (Ref: Ramniwas Vs. State of Rajasthan 1988 (2) Raj LR. 205)"

29. In (Chandra Shashi Vs. Anil Kumar Verma), the Supreme Court held as follows:-

"To enable the courts to ward off unjustified interference in their working those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. The word 'interfere' means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty. Obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. If recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do".

30. In (Dhananjay Sharma Vs. State of Haryana and others) the Supreme Court reiterating the observations of the earlier case, held as follows:= "Any conduct which has a the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any Court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statements on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to

shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. The action of respondents 3 to 5 in filing false affidavits and denying that the detenu and the taxi driver had been whisked away and detained illegally in their custody for two days is not only reprehensible and condemnable but also requires to be dealt with rather sternly. The belated apologies offered by them, though still maintaining that the detenu and the driver had not been detained by them, even in the face of the evidence recorded by the CBI, as Commissioner of the Supreme Court, and its report are not apologies of a truly repentant person but made obviously with a view to escape punishment....

It is a matter of concern that even senior Police officials of the status of SSP and DSP should not realise their obligations to the courts and indulge in blatant falsehood with a view to mislead the court. They had not only chosen to wrong path for themselves contrary to the principles of the institution to which they belong, but they also tried to detract the taxi driver from divulging the truth to mislead the supreme Court which was concerned with the liberty of a citizen. They went on to reiterate their false stand till after the CBI enquiry report was received and wisdom dawned upon them to tender apology only when they found themselves in a tight corner and had no way out to escape. In such circumstances, it cannot be said to be a real repentance of what they have done. By indulging in such disruptionary manner respondents 3 to 5 acted in a most irresponsible manner giving an impression that they were not the defenders of truth and protectors of the citizens but violators of the law and justice and thereby defaced the name of the force of which they belong. They acted with gross impropriety and intentionally committed serious and grievous wrong of a clearly unredeeming nature, while it was expected from the seniors of the rank of SSP and Addl. SP that they at least would observe the high standards in maintaining impartiality and promote public confidence in the force. The court expects candour and frankness from the parties to the litigation before it. Court proceedings cannot be allowed to be trifled with....

In recent times our administrative system is passing through a most critical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy."

31. In , (Advocate General, State of Bihar Vs. Madhya Pradesh Khair Industries), a case in which the contemnor, party to a suit filed successive applications before the High Court and thus abused the court's process was held to have committed criminal contempt and the Apex Court observed as follows:= "7.....While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the provisions of Order 6 Rule 16

or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and effects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.(per Judge Curtis-Raleish quoted in *Jennison V. Baker* (1972 1 All ER 997))"

8. In HALSBURY'S Laws of England (4th Edn., Vol. 9, para 38), there is a brief discussion of when abuse of the process of the court may be a punishable contempt. It is said:

38. Abuse of process is in general-- The court has power to punish as contempt any misuse of the court's process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court or the court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt."

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court, by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt."

32. As far as this case is concerned, as already mentioned in paragraph 18 of this order, the Investigating Officer has misled the High Court, Supreme Court and the Trial Court by taking different stands and furnishing false information to the courts. The Investigating Officer informed the High Court and the Supreme Court that they obtained permission for conducting further investigation and that the further investigation is in progress. This is a false statement. Further,, before this Court also in the counter statement, the Investigating Officer has stated that "it is the admitted case of the accused that Application under Section 173(8) Cr.P.C., was filed before the trial court on 10.10.2003 along with the final report filed in the case and permission was granted by the trial court to proceed with further investigation." If such is the statement made by the accused that permission was obtained by the Investigation Officer, it could be only on the basis of the

submissions made before this Court and the Supreme Court, when the accused moved bail. It does not amount to an admission of fact because in fact no permission was obtained from the court for further investigation and that was the stand taken by the respondent and the Public Prosecutor before the trial court in the counter filed in CrI. M.P. No. 1647 of 2004 and on 1.4.2004 during the course of argument of the said Petition. On 12.4.2004, while filing the further report, the Investigating Officer has stated that further investigation was conducted after obtaining permission from the court which is also a false statement.

33. In (Bineet Kumar Singh, In Re), the Supreme Court held thus:-

"Nothing is more incumbent upon the courts of justice than to preserve their proceedings from being misrepresented, nor is there anything more pernicious when the order of the court is forged and produced to gain undue advantage. Criminal contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and willfully made by a party to the proceedings to obtain a favourable order would undoubtedly tantamount to interference with the due course of judicial proceedings."

34. Only on 1.4.2004 the respondent-police contended that earlier charge sheet filed on 10.10.2003 is final and no permission is sought for further investigation. But on 12.4.2004, while filing the report during the pendency of this Criminal Original Petition, the Investigating Officer has stated that as per the permission granted for further investigation, he has conducted investigation and collected materials and produced before the court. This statement before the Trial Court that permission was obtained from the Learned Special Judge for conducting further investigation as mentioned in the additional report dated 12.4.2004 is patently false.

35. Under Section 15(2) of the Contempt of Courts Act, the High Court can act on the basis of information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate General, the High Court can take cognizance of the contempt of court, on its own motion.

36. In 1981 (1) SCC 118 (S.K. Sarkar Vs. Vinaychandra Misra), the Supreme Court held as follows:-

"Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate General, the High Court, has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in

that petition. If the petitioner is a responsible member of the legal profession, it may act suo motu, more so, if the petitioner-advocate, as in the instant case, prays that the court should act suo motu. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act suo motu and commence the proceedings against the contemner."

37. From the judgement cited earlier, it is clear that when the High Court comes across information derived from its own sources, such as from a perusal of the records of a Subordinate Court, without there being any reference by the Subordinate Court or the Advocate General, it can take cognizance of contempt on its own motion. As far as the Investigation Officer is concerned, he has made false statements before the Trial Court, before the High Court and the Supreme Court as mentioned earlier and therefore he is liable to be punished for an offence under section 2(c)(iii) of the Contempt of Courts Act. The Registry is directed to issue notice to Mr. Raman, Investigation Officer/Dy. Superintendent of Police, Thiruparankundaram Sub Division, Madurai District to appear in person before this court on 14.9.2004 and submit an explanation, if any, for the offence committed Under Section 2(c)(iii) of the Contempt of Courts Act.

38. As far as the prayer in this Criminal Original Petition is concerned, it is only to set aside the order passed in Crl. M.P. No: 1647 of 2004 in C.C. No. 1233 of 2003 i.e., an application to postpone the examination of witnesses on 5.4.2004. Now that, the period has already been over and further report has also been filed and therefore the prayer sought for has become infructuous and hence no further order is necessary. Consequently, connected Crl. M.P., is closed.