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**(2005) 11 MAD CK 0042**

**In the Madras High Court**

**Case No :** Writ Petition No. 14961 of 2005 and W.P.M.P. No's. 16277 and 30063 of 2005

P. Santhanarajan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 23-11-2005

**Acts Referred:**

**Citation :** (2005) 11 MAD CK 0042

**Hon'ble Judges :** P.D. Dinakaran, J

**Bench :** Single Bench

**Advocate :** V. Selvaraj, for the Appellant; A.L. Somayaji, A.A.G., assisted by S. Venkatesh and Vijay Narayan, S.C. for R. Parthiban, R-5, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

P.D. Dinakaran, J.—This writ petition is filed seeking to issue a writ of mandamus directing the transfer of investigation in Crime No. 1 of 2005 on the file of the 3rd respondent to the CBI.

2. It is stated in the affidavit that the petitioner is one of the accused in Crime No. 917 of 1997 on the file of the 4th respondent. The said case is now pending as S.C.No.25 of 1998 on the file of the Principal District and Sessions Judge, Kanyakumari Division at Nagercoil.

2.1 Several writ petitions were filed against 5th and 6th respondents and the same were disposed of directing the CBCID to launch prosecution against respondents 5 and 6. The writ appeals filed against the order passed in the writ petition were also disposed of and against which, Special Leave petitions were filed before the Supreme Court and the same were dismissed, which order was brought before the Division Bench and the Division Bench also dismissed the appeals.

2.2 On the basis of the above Division Bench order, Crime No. 1 of 2004 was registered on the file of Deputy Superintendent of Police CBCID, Tirunelveli and

subsequently, the same was transferred to the file of the Deputy Superintendent of Police, Madurai, the third respondent herein, wherein also it was found that respondents 5, 6 and other police officers were to be prosecuted.

2.3. Even after so many directions to prosecute fifth and sixth respondents, the State Government did not accord sanction to prosecute respondents 5, 6 and others.

2.4 Initially the 5th respondent, who was working as Sub-Inspector of Police, Vadipatti Police Station, was suspended from service on several allegations and thereafter, with the help of powers, he was selected as Deputy Superintendent of Police, which was challenged by one Nallakaman by filing a writ petition, wherein it was found that the appointment was only temporary and the same shall be subject to the result of the criminal proceedings.

2.5. Now as per the directions of the Government, the 3rd respondent served a notice dated 28.3.2005 stating that the case is proposed to be referred as "mistake of fact".

2.6 The Fast Track Court-I passed judgment in S.C.No.87 of 2003, holding that the real accused is protected by the police and that A-12 is deliberately planted in the place of the real accused. Likewise in so many cases, no action has been initiated against respondents 5 and 6, against whom several allegations were made. Hence, this writ petition with the prayer as stated above.

3. De hors the averments made in the affidavit, which are, in my considered opinion, not relevant, the petitioner, being an accused, cannot have a say in who should investigate the offences he is charged with. The decision to investigate or the decision on the agency which should investigate does not attract principles of natural justice - vide - C.B.I. v. Rajesh Gandhi, 1997 CrI.L.J. 63. Moreover, it is to be stated that a decision to direct the transfer of investigation by the CBI can only be done only if the Court, after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency and the same cannot be done, as a matter of routine, or merely because a party makes some allegations.

4. Hence, finding no merits in the writ petition, the same is dismissed. No costs. Consequently, connected W.P.M.Ps are closed.