



Crl.R.C.(MD).No.851 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.851 of 2023

P.Rajagopal

... Revision Petitioner/Petitioner/
De-facto Complainant

Vs.

1.State Represented by:
The Inspector of Police,
District Crime Branch,
Theni, Theni District.
(in Cr.No.43 of 2009)

... Respondent/Respondent/Complainant

2.Ayyadurai

... Respondent

(R2 is impleaded as per order of the court dated 30.08.2023 in Crl.M.P.
(MD)No.12539 of 2023 in Crl.R.C.(MD)No.851 of 2023 by K.K.R.K.J.)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to admit this Revision on file to call for the records and set aside the orders in Cr.M.P.No.7075 of 2019 dated 03.05.2023 in C.C.No.68 of 2012 on the file of the learned Judicial Magistrate, Theni, Theni District, as illegal.

For Petitioner : Mr.A.Prasanna Rajadurai

For R1 : Mr.R.Sivakumar,
Government Advocate(Crl.Side)

For R2 : Mr.C.Ramesh Murali



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for the offences punishable under Sections 419, 467, 468, 420, 120(b) and 506(i) of IPC. Hence, the duty of the Investigation Officer is to obtain hand writing expert opinion to prove the case of the prosecution. The same was not done by the Investigation Officer. So, he filed a petition in Crl.MP.No.7075 of 2019 under Section 173 (8) Cr.P.C before the learned Judicial Magistrate, Theni, and the same was returned as 'not maintainable'. Hence, he filed Crl.OP(MD)No.350 of 2020 before this Court. By the order dated 09.01.2020, this Court passed the following order:-

“5. In the opinion of this Court, having numbered the petition, the learned Judicial Magistrate ought to have heard the petitioner and pass the judicial order. The order returning the petition is improper.

6. In view of the same, the order of the learned Judicial Magistrate returning Crl.M.P.No.7075 of 2019 is set aside. The learned Judicial Magistrate, Theni, is directed to hear the petitioner on merits and pass judicial order in accordance with law .”

4. Thereafter, the petitioner appeared before the Court below on 13.03.2020 and the case was posted to 20.03.2020.

“13.03.2020 - Petitioner counter petition filed. Enquiry heard. For reply all on 20.03.2020.”



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5. Now, the learned trial Judge passed the impugned order as if the petitioner does not appear and make his submission.

6. It is clear that the petitioner already made a submission on 13.03.2020 as per the direction of this Court dated 09.01.2020. In such circumstances, the order of the learned trial Judge is apparently not in correct.

7. Accordingly, the learned Judicial Magistrate, Theni, is directed to submit explanation on what basis she rendered the following finding:-

“மேற்படி குவிமுசு பிரிவு 173(3)ன் படி 06.12.2019 தேதியில் மேற்படி மனு தாக்கல் செய்யப்பட்டதில் இருந்து மனுதாரர் தரப்பில் மனுதாரர் ஆஜராகாமல் மனுதாரர் தரப்பு வாதங்களை எடுத்து உரைக்காமல், தொடர்ந்து இதுவரை 3 வருடங்களுக்கு மேலாக நிறுவனையில் இருந்து வருவதால், மனுதாரரின் ஆஜரின்மை காரணமாக தாவா மனு தள்ளுபடி செய்து உத்தரவிடப்படுகிறது.”

8. In the mean time, the learned Government Advocate (Crl.Side) is directed to instruct the Investigation Officer to appear before this Court along with counter on 21.08.2023.

9. Post this matter on 21.08.2023.”

3. In view of the above earlier order, the narration of facts is not necessary.

When the matter is taken up for hearing, both the parties are present.



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4. This Court perused the report submitted by the learned Judicial Magistrate, Theni, Theni District, dated 18.08.2023. The operative portion of the report is as follows:-

“I am further submitting that the said criminal case is an old case pending more than 10 years. Only on that aspect. I was decide the said petition, without observing previous diary dated 13.03.2020 and 20.03.2020 and I have mistakenly issued the above said order.”

5. In view of the facts and circumstances, the learned Judicial Magistrate dismissed the petition without giving opportunity to the petitioner. Hence, this Court is inclined to allow this revision in the following terms:-

i) The order passed by the learned Judicial Magistrate, Theni, Theni District, in Crl.MP.No.7075 of 2019 dated 03.05.2023, is hereby set aside and remit back to the learned Judicial Magistrate, Theni, to pass order on merits.

ii) The learned Judicial Magistrate, Theni, Theni District, is directed to give an opportunity to the petitioner and the respondent namely, the proposed accused and dispose the same in accordance with law.

iii) It is open to the learned Judicial Magistrate, Theni, Theni District, to consider all the materials produced by the accused and the petitioner/defacto complainant.



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iv) The learned Judicial Magistrate, Theni, Theni District, is directed to dispose the proceedings in Cr.M.P.No.7075 of 2019 in C.C.No.68 of 2012 within a period of two months from the date of receipt of a copy of this order.

6. With the above directions, this Criminal Revision is allowed.

19.09.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

- 1.The Judicial Magistrate,
Theni, Theni District.
- 2.The Inspector of Police,
District Crime Branch,
Theni, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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