

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.16140 of 2015

S.Subramani

... Petitioner

Vs

1.State Rep. by its
Sub Inspector of Police,
D3 Sooramanalam, Salem-5.

2.Periyasamy

... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the order dated 19.11.2014 passed in C.C.No.428 of 2014 on the file of Judicial Magistrate-II at Salem by taking cognizance of the offence and direct the transfer of investigation in the case to any other agency.

For Petitioner : Mr.P.Sidharthan
For Respondents : Mr.C.Emalias, Addl. Public Prosecutor
[for R1]

O R D E R

This petition has been filed to quash the order dated 19.11.2014 passed in C.C.No.428 of 2014 on the file of the learned Judicial Magistrate-II, Salem and to transfer the investigation of the case to any other agency.

2. Heard the learned counsel for the petitioner; learned Additional Public Prosecutor appearing for the 1st respondent and perused the materials placed on record.

3. On a complaint given by this petitioner, the respondent police registered a case in Crime No.660 of 2014 on 05.08.2014 for offences under Section 447, 326, 506[iii] IPC against one Periyasamy and some others whose name was not given in the FIR. After completing the investigation, the police have filed Final Report, excluding Periyasamy against one Chinnasamy and Sureshkumar.

4. The grievance of the petitioner is that, when once the police have deleted an accused, he should have been given an opportunity to file a protest application. Without that opportunity,

the Trial Court has taken cognizance of the offence. There is sufficient force in the submission made by the learned counsel for the petitioner.

5. Under such circumstances, the order dated 19.11.2014 taking cognizance of the offence by the learned Judicial Magistrate II, Salem, is hereby set aside and the petitioner is directed to file his protest application and the same shall be considered, in the light of the law laid down by the Supreme Court in Vinay Tyagi Vs Irshad Ali reported in 2013 [5] SCC 762.

6. With the above direction, this Criminal Original Petition is closed. Consequently, connected miscellaneous petition is closed.

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s/d-

Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

- 1.The Sub Inspector of Police,
D3 Sooramanalam,
Salem-5.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Judicial Magistrate No.III, Salem.
- 4.-do- thro' The Chief Judicial Magistrate, Salem.

+ 2 ccs to Mr.P.Sidharthan, Advocarte SR 32780

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