

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.101 of 2015

and

M.P.Nos.1 to 4 of 2015

1. A.Nirmala
2. B.Sarasu @ Saraswathi
3. B.Vasudevan @ Vasu
4. B.Sankar @ Jaisankar
5. Surya
6. Saravanan, S/o.Angamuthu
7. Saravanan, S/o.Subbiramani ... Petitioners

vs

State rep.by its
Deputy Superintendent of Police
Erode North Police Station
Erode(Crime No.92/13) ... Respondent

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 27.11.2014 passed by the learned Chief Judicial Magistrate, Erode in Crl.M.P.No.1103 of 2013 in C.C.No.206 of 2013.

For Petitioners: Mr.R.Karthikeyan

For Respondent : M/s.Md. Riyaz,
Government Advocate (Criminal Side)

ORDER

The petitioner has filed the above Criminal Revision Case challenging the order dated 27.11.2014 passed by the learned Chief Judicial Magistrate, Erode in Crl.M.P.No.1103 of 2013 in C.C.No.206 of 2013 in allowing the petition filed by the prosecution under Section 173(8) of the Criminal Procedure Code seeking reinvestigation in C.C.No.206 of 2013.

2. Learned counsel appearing for the petitioners would submit that the Court below has erred in ordering re-investigation in the matter, in which, final report itself has been filed for the occurrence that took place in the year 2013 on the ground that the complainant, viz., Selvi had given a complaint stating that she did not mention that she was abused by the accused persons, during the course of investigation. Further, he would submit that the investigating agency itself cannot seek for such an order. Accordingly, he would pray for setting aside the order passed by the Court below.

3. Learned Government Advocate (Criminal side) would submit that the prosecution has filed only a memo seeking for further investigation and in fact, the court below has not ordered re-investigation of the matter and it has directed the prosecution side only to conduct further investigation in the matter based on the complaint received. Accordingly, he would submit that the order passed by the court below is fair and reasonable.

4. Heard both sides.

5. On a perusal of the order passed by the Court below, it is seen that the investigation agency itself has filed a petition under Section 173(8) of Cr.P.C before the Court below seeking further re-investigation of the matter based on the complaint given by a victim. Even as per the decision of the Hon'ble Supreme Court reported in 2009 (4) MLJ (Crl.) 1004 [Reeta Nag vs. State of West Bengal and others] any application filed by the witness for re-investigation cannot be entertained. However, it has also held that the Magistrate has got power under Section 173(8) of the Criminal Procedure Code to order for further investigation, if the investigating agency feels at any time, that certain persons have been omitted to be examined. In fact only on the memo filed by the investigating agency, the court below has ordered for further investigation of the matter and not re-investigation.

6. Further, the Hon'ble Supreme Court in the recent decision reported in (2015) 42 SCD 766 [Chandra Babu @ Moses vs. State through the Inspector of Police and others] has distinguished its own decision made in the case of Reeta Nag vs. State of West Bengal reported in (2009) 9 SCC 129 and in the case of Vinay Tyagi vs. Irshad Ali reported in (2013) 5 SCC 762 and has held thus:

"19. We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word "reinvestigation". Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi (supra) it has been held:

"The power of the Magistrate to direct "further investigation" is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of

justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

20. In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that:-

"At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh", or "de novo" and even "reinvestigation". "Fresh", "de novo" and even "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

And again:-

"Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

7. In view of the above, I do not find any reason to interfere with the reasoned order passed by the Court below as it has only ordered further investigation in the matter and that too, based on the memo filed by the prosecution side. It is also made clear that it is always open to the

petitioners to raise all their defences raised before this Court during trial.

8. With the above observation, this Criminal Revision Case is disposed of. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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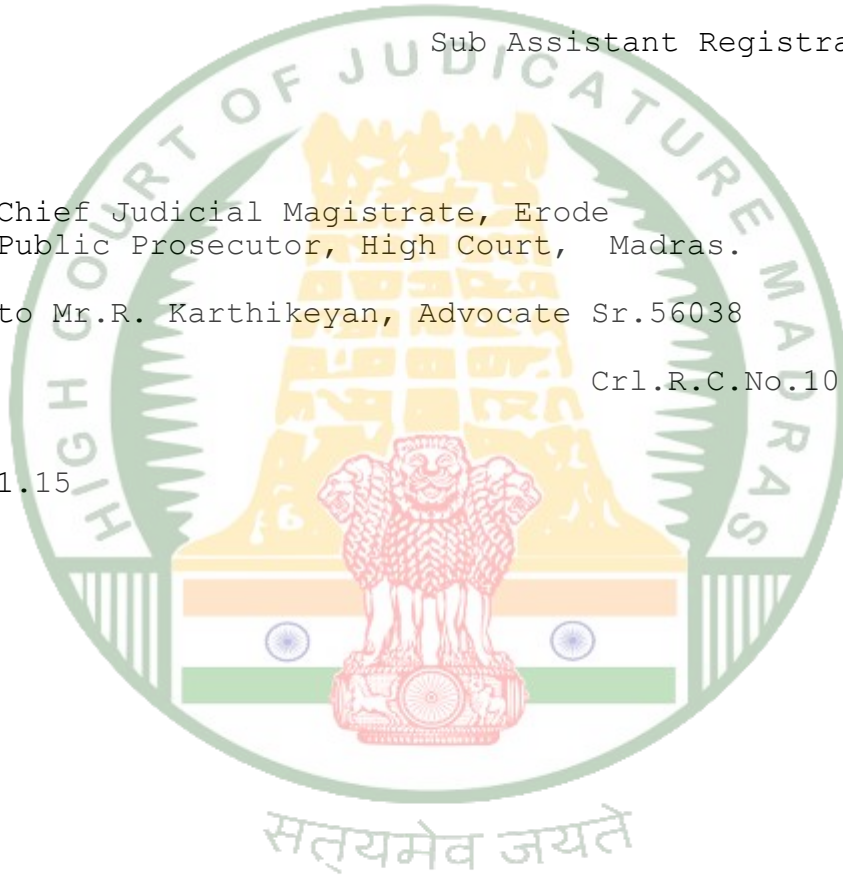
To

1. The Chief Judicial Magistrate, Erode
2. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.R. Karthikeyan, Advocate Sr.56038

Cr1.R.C.No.101 of 2015

VD(CO)
Eu 30.11.15



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