

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-04-2015

CORAM:

THE HONOURABLE MR. JUSTICE P.DEVADASS

CRIMINAL REVISION CASE NO.399 of 2015

Smt.R.Vijaya Chamundeswari .. Petitioner/De facto Complainant

vs.

Inspector of Police,
Mailam Police Station,
Tindivanam,
Villupuram.

.. Respondent/Complainant

This Memorandum of Revision Petition is preferred under Sections 397 and 401 of Cr.P.C., calling for the records in connection with the order dated 1.4.2015 passed by the learned Judicial Magistrate No.II, Tindivanam in CrI.M.P.No.192 of 2015 in Crime No.679 of 2013 on the file of the Mailam Police Station, Tindivanam, Villupuram and set aside the same.

For Petitioner : Mr.P.Thiagarajan

For Respondent : Mr.V.Arul,
Government Advocate (Criminal Side)

O R D E R

Aggrieved by the dismissal of CrI.M.P.No.192 of 2015 by the learned Judicial Magistrate, Vanur, the de facto complainant had preferred this revision.

2. The de facto complainant lodged a complaint with the respondent police. The police registered a case in Crime No.679 of 2013 for offences under Sections 147, 447 and 506 (i) of IPC.

3. After investigation, the Investigation Officer treated the case as a civil case, and filed the negative Final Report before the learned Magistrate.

4. The learned Magistrate issued notice to the de facto complainant/revision petitioner, calling for his objection, if any, on the said Negative Final Report. The revision petition filed in CrI.M.P.No.192 of 2015 under Section 173(8) Cr.P.C., seeking further investigation.

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5. The learned Magistrate dismissed the said petition holding that as already Investigation Officer has come to a negative

conclusion there is no use in asking him to redo the work and dismissed the petition with a direction to file a private complaint.

6. Heard the learned counsel for the petitioner and the learned Government Advocate.

7. A complaint complaining of commission of certain cognizable offences has been filed with the Station House Officer. If it discloses a cognizable offence, he registers FIR under Section 154 Cr.P.C., and it marks the birth of a criminal case. From that moment, Police Officer gets the power of investigation under Section 156 Cr.P.C. The procedure is prescribed in Section 157 Cr.P.C. Thereafter he is bound to report the result of his investigation to the Jurisdiction Magistrate by filing a Report under Section 173(2) Cr.P.C. Such a report is 'Final Report', of course, loosely called 'charge sheet'. The said Report may be 'positive' or 'negative'. If an offence appears to have been committed is stated in the Final Report it is positive. If no offence is mentioned, it is treated as 'mistake of fact', 'mistake of law', 'accidental fire', 'civil in nature' it is also Final Report, but it is 'Negative Final Report'. It also falls under Section 173 (2) Cr.P.C.

8. When once a Negative Final Report is filed before a Magistrate, it is not a biblical verse. The Final Report filed by the Investigation Officer is not equivalent to the judgment of a Court. Once a Final Report is filed, the ball is in the Court of the learned Magistrate. The Magistrate has got several options, either he can concur with the conclusion of the Investigation Officer and record the negative report accordingly or if he finds any incriminating materials, he can take cognizance thereon under Section 190 Cr.P.C., or if he finds some loose ends or the investigation is incomplete on certain aspects, he can direct the Investigation Officer to work further and submit his further Report. But, at the same time, the Magistrate cannot direct the manner of investigation.

9. Above all one important aspect is that if the learned Magistrate proposed to accept the negative Final Report, he is bound to give notice to the de facto complainant inviting his objections, if any. Thereafter if any objection is filed, which is popularly known as 'protest petition' and such a protest petition has to be proceeded further like a private complaint. The procedure contemplated under Sections 200-202 Cr.P.C., has to be followed.

10. Upon consideration of the sworn statement of the complainant and of his witnesses, if any or documents, if any, if the Court finds a prima facie case, it can take the case on file issuing summons to the accused under Section 204 Cr.P.C. If there is no prima facie case, then he can dismiss the petition under Section 203 Cr.P.C.

11. Now in this case, the learned Magistrate is right in issuing notice to the complainant before considering the Negative Final Report. Thereafter, the learned Magistrate did not follow the

procedure contemplated under Sections 200-202 Cr.P.C. The complainant has filed a petition under Section 173(8) Cr.P.C., seeking further investigation. In the facts and circumstances, it can be treated as a protest petition by the de facto complainant to the Negative Final Report filed by the Investigation Officer and it can be proceeded with accordingly.

12. In the circumstances, ordered as under:-

(i) The order of the learned Judicial Magistrate, Vanur in CrI. M.P. No.192 of 2015 dated 1.4.2015 is set aside;

(ii) CrI.M.P.No.192 of 2015 is restored to the file of the said Magistrate;

(iii) The learned Magistrate will treat the said petition as a protest petition to the Negative Final Report filed by the Investigation Officer and follow the private complaint procedure and dispose of it according to law;

(iv) The learned Magistrate shall fix a date and send notice to the revision petitioner.

13. With the above observations, this Criminal Revision Petition is disposed of.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Svn

Copy to:

1.The Chief Judicial Magistrate,
Villupuram.

2.The Judicial Magistrate,
Vanur.

3.The Judicial Magistrate No.II,
Tindivanam.

4. The Inspector of Police,
Mailam Police Station,
Tindivanam,
Villupuram.

5.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.P. Thiagarajan, Advocate, Sr. 24443