

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

Coram

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.Revision Case No.899 of 2015

P.Jayaraman

.. Petitioner

vs

1. Asothai

2. Thamayangri

.. Respondents

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. against the order dated 27.07.2015 passed by the learned Judicial Magistrate, Gingee, Villupuram District in C.M.P.No.3708 of 2015 in C.C.No.260 of 2007.

For Petitioner : Party-in-person
No appearance

ORDER

When the matter was listed on 10.09.2015, 25.09.2015 and 12.10.2015, there was no representation for the petitioner-party in-person. Hence, the matter was directed to be listed today under the caption "for dismissal". Even today, there is no representation for the petitioner. Hence, the Criminal Revision case is taken up for disposal on merits as per the judgment of the Hon'ble Supreme Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka].

2. The petitioner has filed the above Criminal Revision Case challenging the order dated 27.07.2015 passed by the learned Judicial Magistrate, Gingee, Villupuram District in C.M.P.No.3708 of 2015 in dismissing the petition filed by the petitioner under Section 173(8) of the Criminal Procedure Code seeking reinvestigation in C.C.No.260 of 2007.

3. On a perusal of the order passed by the Court below, it is seen that the petitioner has filed a petition under Section 173(8) of Cr.P.C before the Court below seeking to add three more persons as accused in C.C.No.260 of 2007 and to direct the police to conduct further re-investigation in the matter. However, the Court below based on the decision of the Hon'ble Supreme Court reported in 2009(4) MLJ (Crl.) 1004 [Reeta Nag vs. State of West Bengal and others] dismissed the said petition as not maintainable on the ground that the final report in the matter has been filed by the police as early as 26.12.2007 after completing the investigation.

4. 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] by referring to the decisions rendered by it in various cases 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."

5. In view of the above decisions, I do not find any reason to interfere with the reasoned order passed by the Court below. Further, the revision is also not maintainable. Accordingly, this Criminal Revision Case is dismissed.

Vj2

Sd/-
Assistant Registrar (CS-II)

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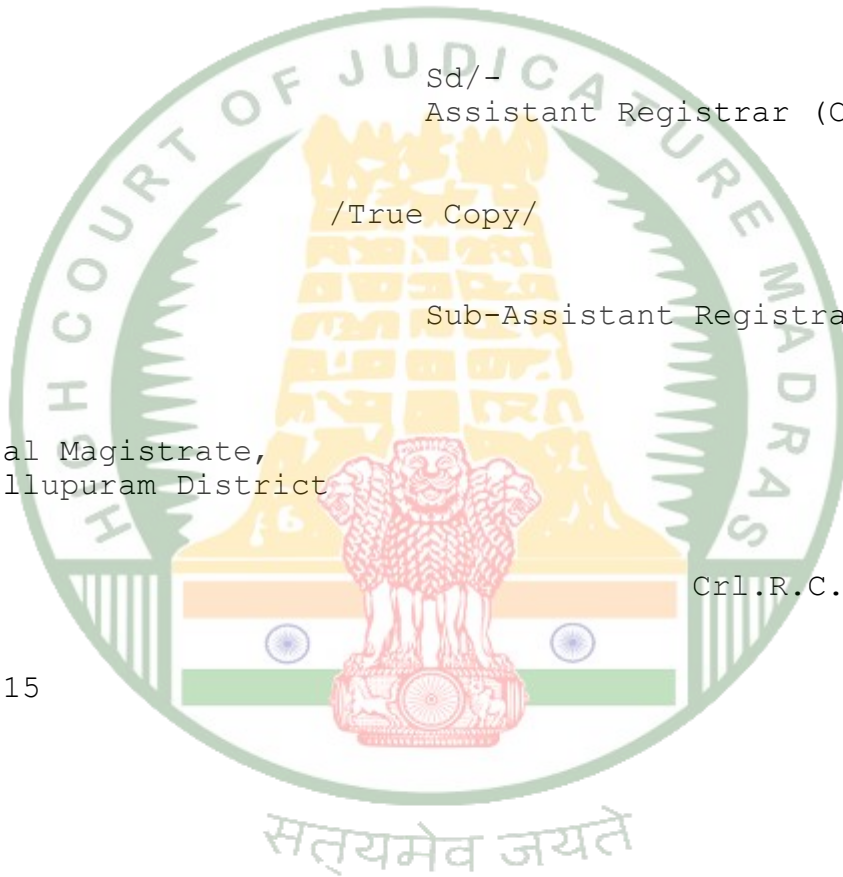
Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Gingee, Villupuram District

Crl.R.C.No.899 of 2015

SK(CO)
sd : 03/11/2015



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