

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.18320 of 2015

and

M.P.No.1 of 2015

M.Abdul Samad

...Petitioner

Vs

1.The Superintendent of Police
Thiruvarur District.

2.The Deputy Superintendent of Police
District Crime Branch
Thiruvarur.

3.The Inspector of Police
District Crime Branch
Thiruvarur.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records pertaining to the summons dated 15.06.2015 issued by the 2nd respondent to the petitioner and quash the same.

For Petitioner : Mr.Veera Kathiravan

For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

Challenging the summons issued by the Deputy Superintendent of Police dated 15.06.2015, this writ petition has been filed.

2. It is seen that the respondent police registered a case in Cr.No.2 of 2011 and after completing the investigation, filed a Final Report in C.C.No.16 of 2014 before the learned Judicial Magistrate, Nannilam. While so, during the pendency of the trial, the de facto complainant appears to have filed an application under Section 173(8) Cr.P.C. in CrI.M.P.No.5430 of 2014 for further investigation, which was dismissed by the learned Magistrate by an

order dated 26.02.2015 holding that, the de facto complainant cannot ask for further investigation. Be that as it may, now it appears that, the Deputy Superintendent of Police has issued the summons for an offence under Section 160 Cr.P.C., which is impugned herein.

3. Mr.Veera Kathiravan, learned counsel for the petitioner would submit that summons under Section 160 Cr.P.C. cannot be issued without a formal permission from the learned Magistrate under Section 173(8) Cr.P.C.. The law on this aspect is well settled. The power of the police to proceed with further investigation in criminal case has always been preserved by the Code and the necessity to obtain permission is only a mere formality and not a legal necessity. In this case, the first Investigating Officer was the Inspector of Police and now the Deputy Superintendent of Police, Crime Record Bureau who is empowered under Section 36 Cr.P.C. has issued the impugned summons. This Court does not find any serious infirmity in the summons. It may happen that after further investigation by the Deputy Superintendent of Police, a report exonerating the petitioner may also be filed by the police. It cannot be presumed that the police will file a report implicating the petitioner.

4. Under such circumstances, this Court does not find reasons to interfere with the summons and therefore, this petition is dismissed with liberty to the petitioner to challenge the order, if any, that has been obtained, for further investigation in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Superintendent of Police
Thiruvarur District.

2.The Deputy Superintendent of Police
District Crime Branch
Thiruvarur.

3.The Inspector of Police
District Crime Branch
Thiruvavarur.

1 CC to M/s. A.Mohamed Ismail, Advocate SR.No. 31488

1 CC to the Government Pleader, SR.No. 31460

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SR (CO)
PSI (15.07.2015)



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