IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.4414 of 2015

D.I.Nathan

.. Petitioner

Vs

State rep.by
The Inspector of Police
N3 Muthialpet Police Station
Chennai 1. .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent to submit police report after conducting investigation into the complaint of the petitioner dated 20.08.2012 by examining the complainant and witnesses pending the evidence in C.C.No.3430 of 2012 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai and submit the final report before the court.

For Petitioner :Mr.K.Shanmugakani
For Respondents :Mr.C.Emalias,
Additional Public Prosecutor

ORDER

The defacto complainant is the petitioner before this Court and in this petition, the petitioner is praying for a direction to the respondent to submit police report after conducting investigation into his complaint dated 20.08.2012 by examining the complainant and witnesses pending the evidence in C.C.No.3430 of 2012 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai and submit the final report before the court.

2. It is seen that on the complaint lodged by this petitioner, a case in Crime No.1307/2012 was registered for an offence under section 506 (ii) IPC against three persons, viz., Usha, Prasath and Priya Nair. After completing the investigation, the police filed a final report against Prasath, Priya Nair and one Vinitha and they excluded Usha from the final report. The trial court took cognizance of the case based on the final report filed by the police and the case was taken on file as C.C.No.3430 of 2012 and the same is pending for trial. At this juncture, the defacto complainant has come up with the above prayer.

3. In the considered opinion of this Court, the petition under section 482 of Cr.P.C is not maintainable since the defacto complainant has had a remedy before the trial court by filing a

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protest petition as laid down by the Hon'ble Supreme Court in Vinaytyagi vs. Irshad Ali @ Deepak and others reported in 2013 (5) SCC 762 and Bhagwant Singh vs. Commissioner of Police and another reported in 1985 (2) SCC 537.

4. It is seen that this petitioner obtained certified copies of the final report from the Magistrate as early as on 12.12.2012 and he had not chosen to file any protest petition immediately thereafter. After the accused had approached this Court by filing Criminal Original Petition Nos.26716 and 26716 of 2014 for quashing the final report, the defacto complainant has come by way of the present petition.

5. In a case of this nature, the direction as sought for by the petitioner is not maintainable and the Criminal Original Petition is dismissed with liberty to the petitioner to adduce evidence in the witness box and in the course of his evidence, if materials surface against the deleted accused, by name Usha, the trial court can act in accordance with the provisions under Section 319 of Cr.P.C. If Vinitha is aggrieved over her inclusion as accused, it is open to Vinitha to file discharge petition if the charges have not been framed or file quash petition.

6. With the above observation, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
N3 Muthialpet Police Station
Chennai 1

2.The Public Prosecutor,
High Court, Madras.

3. The XVI Metropolitan Magistrate, George Town, Chennai.

4. -do- Through The Chief Metropolitan Magistrate, Chennai.

+ 4 ccs to M/s. K. Shanmugakani, Advocate SR.20132&19467

+ 1 cc to Mr.K. Rajasekaran, Advocate SR.19588

TS(CO)
EU 21.04.2015

Crl.OP No.4414 of 2015

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