



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Crl.O.P. (MD) No. 10416 of 2015

WEB COPY

Lingam

... Petitioner

Vs.

State rep by
The Sub-Inspector of Police,
Velliyanai Police Station,
Karur District,
Karur.
(Crime No.56 of 2013)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to direct the learned Judicial Magistrate No.II, Karur to issue notice before proceeding with the trial in Crime No.56 of 2013 providing him an opportunity to be heard for omitting A6 in the Charge Sheet filed by the respondent whose name is mentioned in the FIR in Crime No.56 of 2013.

For Petitioner : Mr.N.Shanmugaselvam

For Respondent : Mrs.S.Prabha
Government Advocate (Crl.side)

O R D E R

This petition has been filed, for a direction to the learned Judicial Magistrate No.II, Karur to issue notice before proceeding with the trial in Crime No.56 of 2013, providing him an opportunity to be heard for omitting A6 in the Charge Sheet filed by the respondent, whose name is mentioned in the FIR in Crime No.56 of 2013.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the records.

3. The only grievance of the petitioner is that though the First Information Report has been filed against some of the accused from A-1 to A-12, the name of A-6 was omitted in the Charge Sheet. Therefore, the learned counsel for the petitioner submitted that learned Judicial Magistrate ought to have been issued notice to the petitioner insofar as A-6 is concerned before proceeding the trial. The learned counsel for the petitioner made reliance upon the Apex court in **Bhagwat Singh V. Commissioner of Police and another** ((1985) 2 SCC 537), wherein it has been held as follows:

"..... We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be



heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at that time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report."



well as this court in **A.Navin V.State by Superintendent of Police, Erode District and others** ((2008) 3 MLJ(Crl)54).

5. In such of the matter, this petition stands allowed and the learned Judicial Magistrate, Karur is directed to issue notice to the petitioner before proceeding the trial in C.C.No.51 of 2014.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Karur.

2.The Sub-Inspector of Police,
Velliyanai Police Station,
Karur District,
Karur.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Shanmuga Selvam,Advocate SR.No.35235

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PJL

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