



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.03.2015
CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

WEB COPY

Cr1.R.C.(MD)No.115 of 2015
and
M.P.(MD)No.1 of 2015

Balasingh .. Revision Petitioner/Respondent/Accused No.5
Vs.

1.State Represented by
Inspector of Police,
Sathankulam Police Station,
Cr.No.168/2014,
Tuticorin District. .. Revision Respondent/Respondent/Complainant

2.Jeya Ragavan .. Revision Respondent/Petitioner/Defacto Complainant

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records from the lower Court and to duly set aside the orders passed by the Judicial Magistrate, Sathankulam, Tuticorin District in Cr.M.P.No.5026 of 2014, dated 21.07.2014 in C.C.No.168 of 2011.

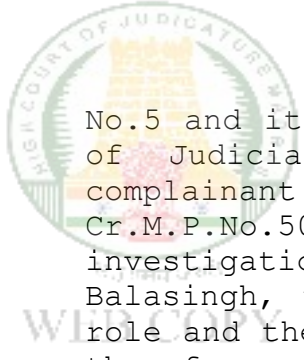
For Petitioner : Mr.V.Kathirvelu,
Senior Counsel for
Mr.K.Prabhu

For Respondent : Mr.C.Ramesh,
No.1 Additional Public Prosecutor

ORDER

The revision petitioner was subsequently arrayed as A-5 after further investigation by the first respondent in compliance of the impugned order, dated 21.07.2014 made in Cr.M.P.No.5026 of 2014 filed by the second respondent/defacto complainant. Challenging the legality of the same, the present revision is filed.

2. The second respondent herein has lodged a complaint on 27.08.2011 on the file of the first respondent alleging among other things that the named five accused had committed the offences under Sections 341, 294(b), 323, 325 and 506(ii) of I.P.C. In respect of the petitioner, who was arrayed as Accused No.5 in the said F.I.R, the allegation is that the petitioner/Village President along with villagers had wrongfully restrained the second respondent stating that without paying tax contribution, he cannot enter the temple and also abused him by using unparliamentary words and the other accused had also attacked him. The first respondent police after investigation has filed a final report against accused Nos.1 to 4 named in the F.I.R and left out Accused



No.5 and it was also taken cognizance in C.C.No.168 of 2011 by the Court of Judicial Magistrate, Sathankulam. The second respondent/defacto complainant has filed a petition in Cr.M.P.No.5026 of 2014 under Section 173(8) Cr.P.C, praying for further investigation stating among other things that the left out accused namely Balasingh, who was arrayed as Accused No.5, has also played a specific role and the statements of witnesses had also disclosed the said fact and therefore, filing of charge sheet leaving out the petitioner/A-5, is not sustainable and hence, prays for appropriate orders for implicating the revision petitioner herein as the fifth accused.

3. The trial Court has taken into consideration of the contents of the charge sheet and the averments made in the petition, had directed the first respondent to conduct further investigation and file a charge sheet against accused Nos.1 to 5. In compliance of the said order, the first respondent has conducted further investigation and arrayed this petitioner as fifth accused.

4. Mr.V.Kathirvelu, learned senior counsel would vehemently contend that the defacto complainant cannot invoke Section 173(8) Cr.P.C and pray for further investigation and that is available either to the investigating agency or to the jurisdictional Court and would further add that the trial Court cannot give a positive direction to conduct further further investigation and file a final report against accused Nos.1 to 5. He would further contend that in the light of the positive direction, the first respondent was left with no other option except to file the additional final report implicating the petitioner and also arrayed him as accused No.5 and the said procedure adopted by the trial Court is not sustainable in law and hence, prays for interference.

5. The learned Additional Public Prosecutor would contend that apart from the contents of the petition, the trial Court has also applied its mind to the contents of the charge sheet and felt that further investigation is to be ordered and rightly ordered further investigation and therefore, the first respondent, has conducted further investigation and arrayed the petitioner as A-5 and hence, prays for dismissal of this revision.

6. The scope of Section 173(8) Cr.P.C., has been considered in extenso by the Honourable Supreme Court in (2013) 5 Supreme Court Cases 762(Vinay Tyagi v. Irshad Ali Alias Deepak and Others), wherein the Honourable Supreme Court has observed as follows:

"The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8)itself. In fact, such power would have to be read into the language of Section 173(8). It will be a travesty of justice, if the Court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the Magistrate is a condition precedent to commencement of further proceedings before the Court. It is not a matter of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case.



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.

The supplementary report filed by the investigating agency shall be dealt with as part of the primary report. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence, and accordingly exercise its power under Section 227 or Section 228 Cr.P.C."

7. As rightly contended by the learned Additional Public Prosecutor, the trial Court while ordering further investigation under Section 173(8) Cr.P.C., has also gone into the contents of the charge sheet and applied its find and ordered further investigation.

8. No doubt, the trial Court while ordering further investigation has indicated that the first respondent/investigating agency to file a charge sheet against accused Nos.1 to 5 and though it is vehemently contended by the learned senior counsel that it has been considered as a positive signal and accordingly, the first respondent has filed a final report implicating this petitioner as A-5, in the considered opinion of this Court, the merits of the said submission cannot be gone into by this Court at this stage. If the petitioner is aggrieved by the additional charge sheet, he is also always at liberty to work out his remedy in accordance with law.

9. In the result, this revision is dismissed confirming the order, dated 21.07.2014 passed in Cr.M.P.No.5026 of 2014 by the learned Judicial Magistrate, Sathankulam, Tuticorin District. However, the petitioner if so advised, he is at liberty to work out his further remedy in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

\\True copy\\

Sub Assistant Registrar

To

- 1.The Judicial Magistrate, Sathankulam, Tuticorin District.
 - 2.-do-thro' The Chief Judicial Magistrate, Tuticorin District
 - 3.Inspector of Police, Sathankulam Police Station, Tuticorin District.
 - 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- +1cc to Mr.K.Prabhu, Advocate Sr.No.13368

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