



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Crl.R.C (MD)No.551 of 2015

Thachayani

... Petitioner

-Vs-

State Rep.by
The Inspector of Police,
West Police Station,
Kumbakonam,
Thanjavur District
In Crime No.209 of 2014

... Respondent

PRAYER: Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, praying to call for the entire records relating to the order of the Judicial Magistrate, Kumbakonam, dated 14.10.2015 in RCS.No.59 of 2015 in Crime No.209 of 2014 on the file of the respondent and set aside the same by allowing the present Criminal Revision Petition.

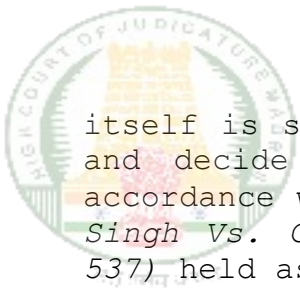
For Petitioner : Mr.G.R.Swaminathan for Mr.P.Sivachandran

For Respondent : Mr.S.Prabha
Govt.Advocate (Crl.side)

O R D E R

The petitioner has come forward with this petition, seeking to quash the proceedings in RCS.No.59 of 2015, on the file of the learned Judicial Magistrate, Kumbakonam, dated 14.10.2015.

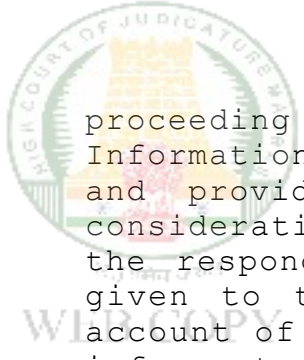
2. The case of the petitioner is that the the complaint given by the petitioner was duly enquired and after enquiry, the prosecution filed the final report and referred the matter as mistake-of-fact, which the respondent is entitled to do so. But it does not mean that the report given by the enquiry officer will have to be included by the criminal court. When a complaint is closed and a copy of the closure report is also given to the petitioner, it is for the petitioner to make necessary complaint to the Magistrate concerned, invoking the provision of the Act, including Section 200 of Cr.P.C. The petitioner is entitled to file objections by way of protest petition and the same will have to be considered independently after looking into the report of the enquiry officer, which has been submitted before the court. The Judicial Magistrate cannot mechanically accept the report and charge sheet and permit the petitioner to file a private complaint under Section 200 of Cr.P.C. The referred charge sheet, for which protest petition filed



itself is sufficient for the Magistrate to take cognizance of the matter and decide the issue independently and proceed with the matter in accordance with law. The Hon'ble Apex Court in the decision in *Bhagwant Singh Vs. Commissioner of Police and Another* reported in (1985 (2) SCC 537) held as follows:-

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"4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things.: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under subsection (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may accept the report and drop the proceeding or. (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in subsection (2) of Section 154, subsection (2) of Section 157 and subsection (2) (ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. 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 subsection (2) (i) of Section 173 and 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."

3. In yet another case, the Hon'ble Supreme Court in *Abhinandan Jha : Roopchand Lal Vs. Dinesh Mishra : State of Bihar* reported in (1967 0 Supreme (SC) 141), in paragraph 15, held as follows:-

"15. Then the question is, what is the position, when the Magistrate is dealing with a report submitted by the police, under Section 173, that no case is made out for sending up an accused for trial, which report as we have already indicated, is called, in the area in question, as a final report'.? Even in those cases, if the Magistrate agrees with the said report, he may accept the final report and close the proceedings. But there may be instances when the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the police is not based on a full and complete investigation, in which case, in our opinion, the Magistrate will have ample jurisdiction to give directions to the police, under S. 156 (3), to make a further investigation. That is, the Magistrate feels, after considering the final report, that the investigation is unsatisfactory, or incomplete, or that there is scope for further investigation, it will be open to the Magistrate to decline to accept the final report and direct the police to make further investigation, under Section 156 (3). The police, after such further investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1) (b), notwithstanding the contrary opinion of the police, expressed in the final report. "

4. In this case, the impugned order is very clear that even without enquiring the complainant an order has been passed by the learned Judicial Magistrate stating that the referred charge sheet filed before the Court, is accepted and the petitioner is permitted to file a private complaint. I find the order passed by the Judicial Magistrate is cryptic without analysing the facts and law. Hence, I am inclined to interfere with the order dated 14.07.2015 of the learned Magistrate



5. In the result, the Criminal Revision Case is allowed and the proceedings in RCS.No.59 of 2015, on the file of the learned Judicial Magistrate, Kumbakonam, is quashed and the learned Magistrate is directed to hear the complainant's objection, if any, in the protest petition and decide the issue afresh, in accordance with law.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Kumbakonam

2.The Inspector of Police,
West Police Station,
Kumbakonam,
Thanjavur District

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

+1cc to Mr.P.Sivachandran, Advocate SR.No.67117

Crl.R.C(MD)No.551 of 2015

24.11.2015

MPK

NS/MP-PM/07.12.2015 : 4P/5C