

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

CRL.R.C.No.588 of 2016

Abdual Ajeez

... Revision Petitioner

Vs.

1. State Rep. by its
The Inspector of Police,
Poraiyar Police Station.
(Cr.No.426 of 2012)

2. N.Bashee Ahamed
3. Mohammed Ali
4. M.Mohammed Rafiq
5. A.Mohammed Jaffer

Respondents 2 to 5 are impleaded
as per order of this Court dated
14.10.2015 made in M.P.2/2015.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records of the Judicial Magistrate No.II, Mayiladuthurai in R.C.S.No.1 of 2013 in C.M.P.No.5383 of 2013 and set aside the Order dated 17.03.2014 and further direct the Judicial Magistrate to take cognizance in accordance with law.

For Petitioner : Mr.Shivakumar
for M/s. K.M.Vijayan Associates

For respondent : Mr.V.Arul,
Government Advocate (Crl. Side)

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O R D E R

Aggrieved by the accepting of the referred charge sheet filed in Crime No.426 of 2012 in R.C.S.No.1 of 2013 on the file of the Poraiyar Police Station, Nagapattinam District, the defacto complainant has directed this revision.

2. Actually it is 'Final Report' but loosely called 'Charge Sheet'.

3. On the basis of the complaint of the petitioner/defacto complainant, Poraiyar Police registered a case in Crime No.426 of 2012 under section 143, 448, 427, 379 and 506(ii) IPC. After investigation, the Investigating Officer/ DSP, Sirkali Sub Division referred this case as 'Mistake of Fact'. It is a negative Final Report.

4. The learned Judicial Magistrate No.II, Mayiladuthurai issued notice to the defacto complainant. He appeared through a learned counsel. He filed his written objection which is used to be called 'protest petition'. The learned Magistrate perusing the Final Report and statements recorded by police under section 161 Cr.P.C. had agreed with the conclusion of the Investigating Officer.

5. Under certain circumstances, a police case will become a private case and a private case will become a police case. A private case filed under section 200 Cr.P.C. becomes a police case when a direction has been issued under section 156(3) Cr.P.C. Because thereafter the police must necessarily register F.I.R. under section 154 Cr.P.C. A F.I.R. so registered, when referred by the police and when a protest petition is filed by the defacto complainant, thereafter it must be proceeded with as a private complaint. Thus the private case becomes a police case. In such a case, private complaint procedure has to be followed. (See Section 200, 202, 190(1)(a), 204, 203 Cr.P.C.)

6. When a referred charge sheet is filed by the police and on notice the complainant files his objection/protest petition, the learned Magistrate has to record the sworn statement of the complainant and his witnesses and then peruse such materials and if he finds any sufficient reasons to proceed further, he can take cognizance under section 190(1)(a) Cr.P.C. and issue summons to the accused under section 204 Cr.P.C. If there is no sufficient ground to proceed further, then he has to dismiss the protest petition under section 203 Cr.P.C. briefly stating his reasons for so doing.

7. Now, in the instant case, such a procedure has not been followed. Thus, the impugned Order requires revision.

8. In the circumstances, the Order of the learned Judicial Magistrate No.II, Mayiladuthurai passed in C.M.P.No.5383 of 2013 dated 17.03.2015 in R.C.S.No.1 of 2013 in Crime No.426 of 2012 of Poraiyar Police Station, Nagapattinam District is set aside. The learned Magistrate will restore the protest petition to file and proceed further in accordance with law.

9. Accordingly, this revision is disposed of.
vrc

-s/d-
Assistant Registrar (CS-V)

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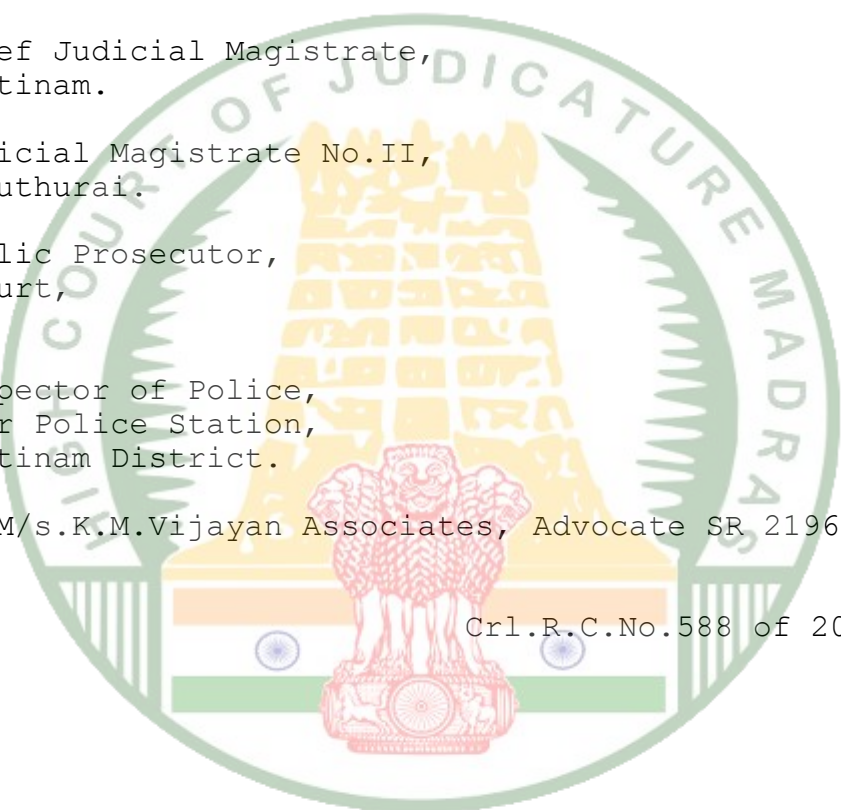
Sub-Assistant Registrar

To

1. The Chief Judicial Magistrate,
Nagapattinam.
 2. The Judicial Magistrate No.II,
Mayiladuthurai.
 3. The Public Prosecutor,
High Court,
Madras.
 4. The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.
- + 1 cc to M/s.K.M.Vijayan Associates, Advocate SR 21968

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prk3/5

Cr1.R.C.No.588 of 2016



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