

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No.1170 of 2015

Dr.R.Gunaseelan

... Petitioner/
Defacto complainant

Vs.

1. State represented by
Inspector of Police
Cyber Crime Cell
Central Crime Branch
Chennai

.. Respondent/Complainant

2. Jayapragash

3. Dr.S.M.Balaji

... Respondents 2&3/Accused

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records of the learned XI Metropolitan Magistrate, Saidapet, Chennai and set aside the order passed by the learned Judge made in Cr.No.30 of 2014 dated 8.9.2015.

For Petitioner : Mr. B.Kumar, Sr.Counsel
for Mr.S.Ramachandran

For Respondents: Mr. C.Iyyapparaj
Government Advocate (Crl. Side)
for R1
Mr.P.Kumaresan for R2 & R3

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O R D E R

This petitioner preferred a complaint alleging commission of offences and through E-Mails. Case in Crime No.30 of 2014, on the file of 1st respondent was registered for offences under Sections 500 and 507 I.P.C. and Section 66(A) of Information Technology (Amendment) Act, 2008 (such Section has been struck down by the Hon'ble Apex Court in (Shreya Singhal v. Union of

India ((2015) 5 Supreme Court Cases 1) on 11.01.2014. After investigation, first respondent filed a final report informing commission of offences under Sections 506(i) and 507 IPC and Section 66D of Information Technology Act. Considering the same, the Court below informed that none of the offences alleged stood attracted and that there was no material to take cognizance thereof and rejected the final report. Aggrieved thereby, the defacto complainant is before this Court by way of this revision.

2. We have heard Mr.B.Kumar, learned senior counsel for the petitioner/defacto complainant and Mr.P.Kumaresan, learned counsel for respondents 2 and 3/accused as also learned Government Advocate (Crl.side) for first respondent.

3. It is the contention of learned senior counsel for defacto complainant that in considering the final report, the Magistrate ought to have issued notice to the petitioner/defacto complainant.

4. It is the contention of learned counsel for respondents 2 and 3/accused that there is no requirement in law, that such a course is to be adopted.

5. The provision of Section 173(2)(ii) of Code of Criminal Procedure, 1973 contains a mandate to the effect that

"The Officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person if any, by whom the information relating to the commission of the offence was first given."

6. Bhagwant Singh v. Commissioner of Police ((1985) 2 SCC 537):

"4. ... 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 sub-

section (2) of Section 154, sub- section (2) of Section 157, sub-section (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 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."

7.The Criminal Revision Case stands allowed and the order dated 8.9.2015, passed by XI Metropolitan Magistrate, Saidapet, Chennai is set aside. The matter shall now stand remitted to the Court below towards causing notice to the petitioner/defacto

complainant and passing a final order on the final report after affording him as also the State an opportunity of hearing.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ajr

To

- 1.The XI Metropolitan Magistrate, Saidapet, Chennai
- 2.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch, Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Chennai.

- 1 cc to Public Prosecutor, sr.No.5919
- 1 cc to M/s.S.Ramachandran, Advocate, sr.6214 (24.05.2016)
- 1 cc to Mr.P. Kumaresan, Advocate, Sr. 6446 (6/6/2016)

Cr1.R.C.No.1170 of 2015

lrs co
kra 11.05.2016

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