

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.03.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Criminal Revision Case No.405 of 2016

Angamuthu

.. Petitioner

vs.

1. The Inspector of Police
Thammampatti Police Station
Salem District
(Crime No.632 of 2008)
2. Dhandapani
3. Angamuthu Tailor, M/A.43 yrs
S/o.Saravana Padayachi
4. Tailor Angamuthu, M/A.28 yrs
S/o.Periyasamy
5. Karuppazhagi
6. Ramkumar
7. Balu
8. Sakthi
9. Pandian
10. Sikki @ Chinnathambi
11. Asaithambi
12. Periyasamy
13. Varadaraj
14. Angamuthu, M/A.31 yrs
S/o. Pariyasamy
15. Chelakannu @ Mani
16. Prabhakaran

.. Respondents

Criminal Revision against the order dated 09.12.2013 made in CrI.M.P.No.33467 of 2011 on the file file of the learned Judicial Magistrate No.2, Athur, Salem District.

For petitioner : Mr.L.Mahendran

For respondent-1 : Mr.V.Arul
Government Advocate (CrI. Side)

ORDER

The defacto complainant upset by the exclusion of certain accused in taking cognizance by the learned Judicial Magistrate No.2, Athur, Salem District, has directed this revision.

2. Based on the complaint of the defacto complainant, viz., Angamuthu, the first respondent, viz., Thammampatti police, Salem District registered a case in Crime No.632 of 2008 as against A1 to A5. After investigation, the Investigating Officer filed final report as against A1 to A3. The learned Magistrate took cognizance as against them only and proceeded further. Admittedly, as on today, the trial has not started.

3. The defacto complainant filed this revision for having aggrieved by the order passed in the petition under Section 173 (8) Cr.P.C. in Crl.M.P.No.33467 of 2011 before the said Magistrate against the left out accused, who were already named in the First Information Report.

4. The learned Magistrate coming to the conclusion that he has no jurisdiction under Section 173(8) Cr.P.C to order for further investigation, dismissed the petition.

5. The learned counsel for the revision petitioner would submit that the defacto complainant has named five accused in the First Information Report, the police filed one sided final report protecting some accused by not including them in the final report. It is not a fair investigation. In such circumstances, the Magistrate has got the power to see that all the accused are brought to justice.

6. On the other hand, the learned Government Advocate (Crl. Side) would submit that in this case, the Investigating Officer has not filed any petition for undertaking further probe. In such circumstance, the order of the learned Magistrate is perfectly correct. It does not suffer from any legality and it is in accordance with law.

7. I have anxiously considered the rival submissions, perused the impugned order of the learned Magistrate and the materials on record.

8. Commission of some cognizable offence was reported by the defacto complainant. A police case has been registered under Section 154 Cr.P.C by registering the F.I.R. On such registration, the police got the power of investigation. Investigation is nothing but collection of evidence. On analysing the evidence, if any cognizable offence appears to have been committed, the police officer has to submit his

(final) report to the Court. It is a police report. It is loosely called 'charge sheet'. Thereafter, the learned Magistrate has to consider the allegations in the First Information Report, statement of witnesses recorded under Section 161 Cr.P.C and documents attached thereto and shall take cognizance under Section 190 Cr.P.C.

9. F.I.R may contain names of several persons as accused. But final report can be filed only as against persons, against whom incriminating materials were collected. As in the instant case though in the F.I.R A1 to A5 were named, as incriminating materials were available only with reference to A1 to A3, the Investigating Officer had filed the final report accordingly and thereafter, as stated earlier, the learned Magistrate took cognizance thereon on the offences stated therein applying his judicial mind. At this stage, the learned Magistrate has got power to take cognizance also as against any left out accused, but there must be incriminating materials as against him.

10. Question of further investigation will arise when the Investigating Officer discover some new fact, which requires probe, then he can go for further investigation vide Section 173(8) Cr.P.C. But it would be otherwise, before taking cognizance under Section 190 of Cr.P.C, on the final report, if the learned Magistrate feels there are some grey areas, there are gaps, which require further statement to be recorded from some witnesses, he can direct the Investigating Officer to do so, but he cannot direct the police as to the manner of investigation.

11. The impleading of parties is known in Civil Law. The impleading of accused is unknown in Criminal Law. Taking cognizance as against an accused is known in Criminal Law. If evidence has been presented before the Court and if there are materials from such evidence that some other persons are also involved in the commission of crime, the Court can take cognizance as against them under Section 319 Cr.P.C and issue them summons under Section 204 Cr.P.C.

12. Now in this case, as on date the learned Magistrate has not recorded the prosecution evidence. Therefore, when the complainant enters the witness box as PW.1, if there are concrete materials in his evidence as against the left out accused, who were already named in the F.I.R, he can be proceeded as against them under Section 319 Cr.P.C. But the learned Magistrate cannot simply take his testimony as gospel

truth, still he can subjected him to cross examination and see that any incriminating materials are there warranting issuance of summons to the left out accused.

13. In view of the foregoing, this Criminal Revision Petition is disposed of with a direction to the learned Judicial Magistrate No.II, Athur, Salem, to take further action under Section 319 Cr.P.C at the appropriate stage, in case there is evidence warranting summoning of certain other persons as accused.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II
Athur,
Salem District.
2. The Chief Judicial Magistrate,
Salem District.
3. The Government Advocate(Criminal Side)
High Court, Chennai.
4. The Inspector of Police
Thammampatti Police Station
Salem District.

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Crl.Revision Case No.405 of 2016

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srg(05/04/2016)