

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.614 of 2016

S.Kucheladoss

.. Petitioner

Vs.

State by Inspector of Police
CBCID, Puducherry
(Cr.No.2/2014)

2.Prabu @ Prabakaran

3.Murugan

4.Usharani

(respondents 3 and 4 are given up
vide memo dated 13.04.2016)

.. Respondents

Prayer :- Criminal Revision Petition filed under Section 397 r/w
401 of Cr.P.C. to set aside the order dated 02.12.2015 made in
CrI.MP.No.2435 of 2015 in CC.No.57 of 2014 passed by the learned
Judicial Magistrate, Puducherry.

For Petitioners : Mr.N.Ramesh

For Respondent : Mr.M.R.Thangavel, APP (Pondy) for R1.

ORDER

The Criminal revision is directed against the order passed
by the learned Judicial Magistrate, Pondicherry made in
CrI.MP.No.2435 of 2015 in CC.No.57 of 2014 dated 02.12.2015,
dismissing the petition filed to alter the charges against the
accused.

2.The learned counsel for the petitioner mainly contended
that the present petitioner is the defacto complainant filed
petition under Section 173(8) and 216 Cr.PC to implead the
necessary accused and to alter the charges against the accused.
The trial Court without considering the facts and circumstances
of the case erroneously dismissed the application filed by the
petitioner. In the FIR the names of Murugan and Usharani are
not added, the prosecution failed to array them as accused.
Hence, the petition by the defacto complainant before the trial

Court, the trial Court dismissed the plea of the petitioner. Aggrieved against the said order, the petitioner is before this Court by way of present revision seeking to set aside the order of the trial Court and to allow the criminal revision.

3.The learned Additional Public Prosecutor (Pondy) appearing for the first respondent mainly contended that the present petition is not maintainable and the Court alone is the competent authority to alter or frame charges in the complaint given by the complainant. There is no illegality or infirmity in the order passed by the trial Court and the learned Additional Public Prosecutor prays to dismiss the revision petition.

4.Heard the rival submissions made on both sides and perused the typed set of papers produced on the side of the petitioner. There is no representation on behalf of the second respondent.

5.The learned counsel for the petitioner relied on the following authorities before the trial Court, which are as follows :-

(i) 2013 (1) MLJ (crl) 172 - M.Mani V. Deputy Superintendent of Police, District Crime Branch, Villupuram District, Villupuram.

Code of Criminal Procedure, 1973 (2 of 1974), Section 173(8) - Reinvestigation - Criminal complaint - petition sought to transfer case to an independent investigation agency for investigation - petition for reinvestigation dismissed - revision - question as to whether petitioner/defacto complainant can seek for further investigation under section 173(8) Cr.PC - Held, Magistrate took cognizance of offence and investigation officer also filed charge sheet - defacto complainant cannot seek for further investigation - no infirmity found in impugned order - petition dismissed.

The following passage from the decision is apposite:-

However, the Hon'ble Supreme Court has categorically ruled in Reeta Nag V. State of West Bengal and others (2009) 4 MLJ (crl) 1004 (SC) that the Judicial Magistrate is not empowered to suo moto order further investigation under Section 173(8) Cr.PC. Similarly, the provision is not applicable to the defacto complainant to seek further investigation. Under the said provisions of law, the Magistrate is empowered to order further investigation only based on the subsequent report of the investigating office, in other words, the officer in charge of the police

station, collecting further evidence, either oral document shall forward the same to the concerned Magistrate, by way of additional report and if the Magistrate is satisfied that further investigation is needed, based on such report, he can order for further investigation, to meet the ends of justice." Similarly, in yet another judgment of this Court in Muthukrishnan V. State of Tamil Nadu (supra) it has been categorically held that

"Section 173(8) Cr.PC does not contemplate nor empower a learned Judicial Magistrate to order further investigation on the request of the defacto complainant. It was further held that nothing in the provisions under Section 173(8) Cr.PC provides for filing of application by the defacto complainant for further investigation".

(ii)2013 (2) MLJ (Crl) 486 - K.Kackuline Sathya Priya V. Inspector of Police, All Women Police Station, Srirangam, Trichy and others

Reinvestigation - Code of Criminal Procedure, 1973 (2 of 1974), Section 161(3) 173(2) -Indian Penal code (45 of 1860), Sections 420, 294(b), 506(i) - Tamil Nadu Prohibition of Women Harassment Act, Section 4 - petitions seeking further investigation dismissed by the trial Court - Criminal Revision - petitioner/complainant in her statement implicated her husband and mother in law - she has not implicated other 10 accused though they have been mentioned in FIR lodged by her - Held, Petitioner/complainant has no locus-standi in law to make a plea for further investigation - it is within realm and ambit of first respondent/police to ask for reinvestigation based on fresh material which comes on surface - petition not maintainable in law - no infirmity in impugned order - criminal revision dismissed.

(iii)2008 Crl.L.J. 2845 - Krishnammal V. The Revenue Divisional Officer and others

Criminal P.C (2 of 1974), Ss.211, 216 - Framing of additional charge - Court alone has power to frame charge or alter it or add new charges - neither prosecution nor person interested has locus standi to file petition for framing additional charges.

The relevant para is extracted hereunder :-

From the conjoint reading of the provisions of S.211 and 216. it is pellucid that only the Court is having power to frame charge or alter it or add new charges at any time before judgment is pronounced. Neither the prosecution nor the person interested, has right to file petition by invoking either of the said section so as to delete the existing charges or add new charges. In short, to alter the existing charges or to add new charges. In the instant case, the Court below after considering all the materials available on record, has framed a charge simpliciter u/s.302 of the Penal Code against the accused found therein. After framing a charge u/s.302 of Penal Code, the revision petitioner has filed Criminal Miscellaneous petition praying to frame additional charges against the accused u/s.302 r/w.34, 120(b), 201, 217, 218, 220, 331, 342, 348 and 367 of the Penal Code. The Court below has found that the charge u/s.302 of the Penal Code has been framed on the basis of available material on records. Since, the Court below has framed charge u/s.302 of the Penal Code, on the basis of available records, it is totally unwarranted on the part of the revision petitioner to file criminal miscellaneous petition to frame additional charges.

6. In this case, this Court perused the typed of papers produced on the side of the petitioner. On reading of the order of the trial Court, it is clear that some of the names has been mentioned in the FIR by the investigating officer, but failed to array them in the final report. On reading of the complaint given by the defacto complainant before the Police Station, investigation was conducted and final report was filed by the investigating authority. Hence, the petitioner/defacto complainant is not entitled to file petition to alter the charges already framed or to frame additional charge. Hence, the petition filed by the petitioner is not maintainable. The citation cited by the petitioner before the trial Court is not applicable to the facts of the present case in hand. This Court finds there is no illegality or infirmity in the order passed by the trial Court in dismissing the petition filed by the petitioner and the same does not warrant any interference by this Court.

7.In the result, the criminal revision petition stands dismissed.

Sd/-
Asst. Registrar

/ true copy/

Sub Assistant Registrar

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To

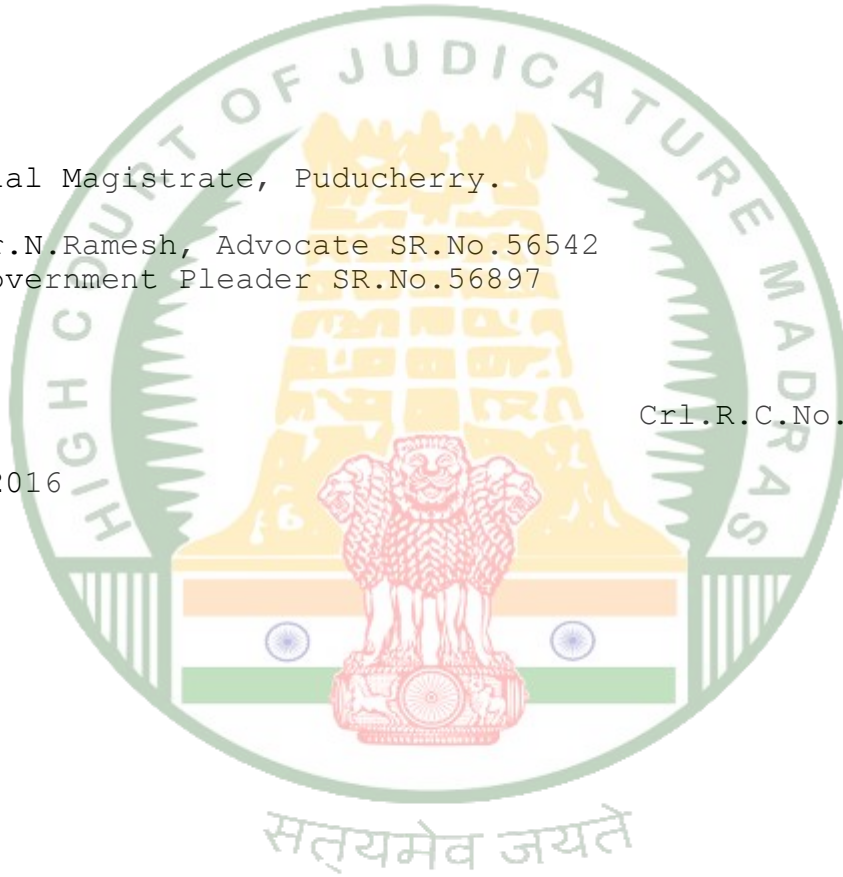
The Judicial Magistrate, Puducherry.

1 cc to Mr.N.Ramesh, Advocate SR.No.56542

1 cc to Government Pleader SR.No.56897

NM(CO)
CS 12/11/2016

Order in
Crl.R.C.No.614 of 2016



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