

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.8047 of 2015

V.P.Raman

Petitioner

Vs

1.The State of Tamil Nadu
Rep. by the Director General of Police
Chennai 600 004.

2.The Inspector of Police
Theevattipatti Police Station
Omalur Taluk
Salem District.

3.CBCID
Rep by the Superintendent of Police
Salem.
Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate No.4, Salem, to take the private complaint filed by the petitioner and number the same in C.C.SR.No.6567/2014 which was returned on 13.08.2014.

For petitioner : Mr.R.S.Jeevarathanam
Senior Counsel
for Mr.T.D.K.Govindarajan
For Respondents : Mr.C.Emalias
Addl.Public Prosecutor

O R D E R

This petition has been filed to direct the learned Judicial Magistrate No.4, Salem, to take the private complaint filed by the petitioner and number the same in C.C.SR.No.6567/2014 which was returned on 13.08.2014.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. On the complaint lodged by Geetha, a case in Deevattipatti Police Station Cr.No.615/2008 for offences u/s

336, 338 and 317 IPC was registered on 22.12.2008, which was later altered to one u/s 304A, 317 and 506(i) IPC and Final Report was filed in C.C.No.99/2009 before the Judicial Magistrate, Omalur against Ashokan [A1] and Arjunan [A2]. On the petition filed by V.P.Raman, the grandfather of the deceased boy and the father of Geetha, this Court by order dated 29.04.2009, in CrI.O.P.No.6900/2009, set aside the Final Report and ordered fresh investigation. Since V.P.Raman was not satisfied with the further investigation, he filed M.P.No.1/2009 in CrI.O.P.No.6900/2009, in which, this Court has passed an order dated 08.04.2010, directing the Deputy Superintendent of Police, CB CID, Salem to take over the investigation of the case.

4. On the complaint given by Ashokan, School Correspondent, a case in Cr.No.570/2011 was registered against the petitioner and after completing the investigation, a Final Report has been filed in C.C.No.1/2012 on 10.03.2012 before the Judicial Magistrate, Omalur for offences u/s 431 and 307 IPC @ 341 and 324 IPC. Now it is seen that C.C.No.3/2014 is ripe for trial and when the petitioner was summoned to give evidence, it is stated that he refused to give evidence on the ground that he has filed a private complaint against Ashokan and 11 others alleging offences u/s 317, 304(ii), 193, 166, 167, 209, 218, 219 r/w 1280-B IPC before the Judicial Magistrate-IV, Salem and it is the grievance of the petitioner that the learned Judicial Magistrate is not taking the complaint on file and instead he is returning the complaint on some specious reasonings.

5. In a case where police are conducting investigation and filed Final Report filed against some persons and the de facto complainant is aggrieved that the police have not included some of the accused, it is open to the de facto complainant to file a private complaint for establishing his case. Therefore, the learned Judicial Magistrate-IV, Salem cannot refuse to take the private complaint on file. The Magistrate after taking the same on file can either take cognizance u/s 190 Cr.P.C. or refuse to take cognizance by passing an appropriate order. If the Magistrate takes cognizance, he should record the statement of the complainant and witnesses u/s 200 Cr.P.C. and proceed further. Even at that stage, he can dismiss the complaint u/s 203 Cr.P.C. These steps cannot be bypassed by the Magistrate and the complaint simply returned to the complainant. Hence, this Court directs the learned Judicial Magistrate IV, Salem, to take on file the private complaint and pass orders in accordance with law as stated above. However, pendency of this private complaint cannot be a good reason for the stay of trial in C.C.No.1/2012 and C.C.No.3/2014 and the petitioner/complainant cannot absolve himself of his responsibility by contending that he has filed a private complaint.

With the above direction this petition is closed.
gms

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Director General of Police
Chennai 600 004.

2.The Inspector of Police
Theevattipatti Police Station
Omalur Taluk
Salem District.

3.The Superintendent of Police
CBCID, Salem.

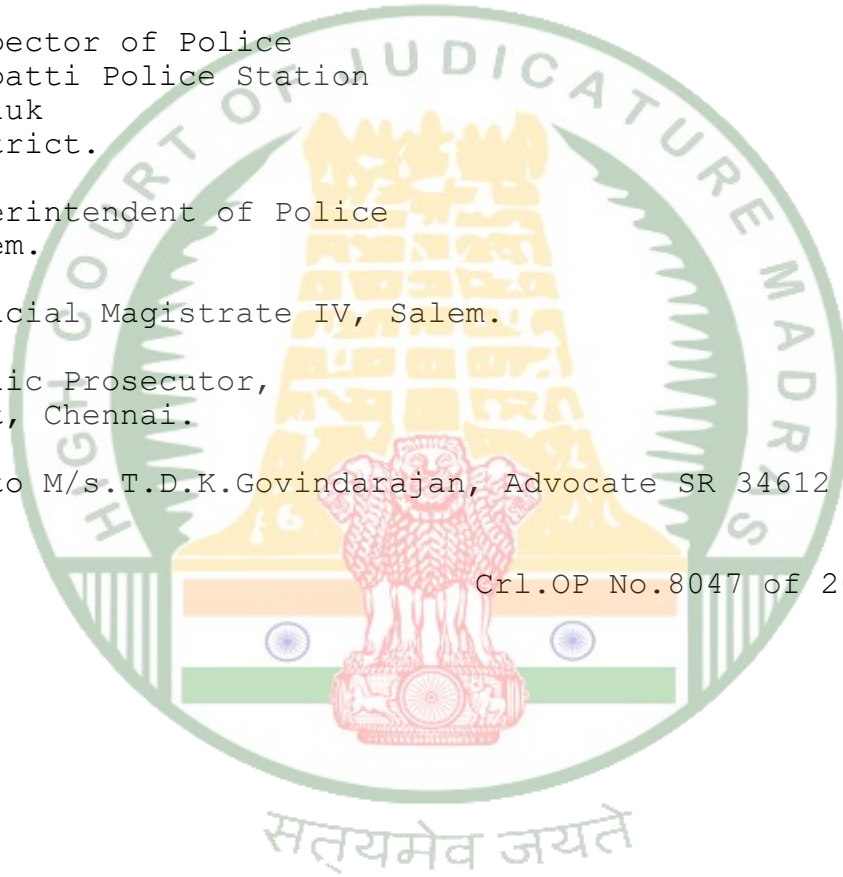
4.The Judicial Magistrate IV, Salem.

5.The Public Prosecutor,
High Court, Chennai.

+ 1 cc to M/s.T.D.K.Govindarajan, Advocate SR 34612

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Cr1.OP No.8047 of 2015



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