



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP(MD) No.8707 of 2014

Marimuthu

..Petitioner

Vs

1.Rethis @ Rethinasamy
S/o.Arumugam
Middle Street
Chitraikudi Village
Budalur Taluk
Thanjavur District

2.Arumugam
S/o..Rethinasamy
Middle Street,
Chitraikudi Village,
Budalur Taluk
Thanjavur District

3.State represented by
the Sub Inspector of Police,
Kallaperambur Police Station,
Thanjavur District

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the order dated 01.04.2014 passed in Cr.M.P.No.2943 of 2014 in PRC No.3 of 2014 and set aside the same and further direct the learned Judicial Magistrate No.II, Thanjavur to entertain the petition filed by the petitioner in Cr.M.P.No.2943 of 2014 and to proceed with the same in accordance with law.

For Petitioner :Mr.K.Guhan

For Respondent :Mr.K.Balasundaram for R1 and R2

Mrs.S.Prabha for R3
Government Advocate(Cr1.Side)

**ORDER**

This petition has been filed to set aside the order passed in Cr.M.P.No.2943 of 2014 in PRC No.3 of 2014 and for a further direction to the learned Judicial Magistrate No.II, Thanjavur to entertain the petition filed by the petitioner in Cr.M.P.No.2943 of 2014 and to proceed with the same in accordance with law.

2. It is seen that on the complaint lodged by the petitioner, the respondent police registered a case in Crime No.32 of 2013 on 22.03.2013 under Sections 294(b), 341, 324 and 307 IPC against two accused. After completing the investigation, the respondent police filed the final report in PRC No.3 of 2014 before the Judicial Magistrate, No.II, Thanjavur. At that time, this petitioner filed an application under Section 173(8) Cr.P.C. for further investigation. It was dismissed by the trial Court. Challenging which, the petitioner has filed the present petition.

3. It is the grievance of the petitioner that Rethish (A1) should have been arrayed as A2 and Arumugam (A2) should have been arrayed as A1. It is also his grievance that the police have failed to examine certain other persons, who are aware of the facts of the case. The learned Judicial Magistrate, No.II, Thanjavur has passed the following order:

"The respondent police raised objections that the De-facto complainant, not entitled to file this petition under Section 173(8) of Cr.P.C. At the outset, in view of ratio laid down by Hon'ble Supreme Court in Reeta Nag. vs. State of West Bengal and others reported in 2009 4 MLJ (Cr1.) Page 1004 (SC). Defacto complainant has not locus standi to seek further investigation."

4. This Court does not find any infirmity in the said order, inasmuch as in a criminal case, it does not matter, who is arrayed as A1 and who is arrayed as A2. What matters in a criminal case is the evidence and not the array of the accused. Array is mere procedural formality. That apart under Section 311 Cr.P.C. the trial Court has got enough power to examine any person as a witness. Therefore, this Court does not find any infirmity in the order passed by the learned Judicial Magistrate, No.II, Thanjavur. Accordingly, this petition is dismissed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate No.II, Thanjavur.
2. Do Through The Cheif Judicial Magistrate, Thanjavur.

3. The Sub Inspector of Police,
Kallaperambur Police Station, Thanjavur District

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+one cc to M/s.K.Guhan, Advocate in SR.No.20193

+one cc to M/s.K.Balasundaram, Advocate in SR.No.20890

RR

CSL/MP/SAR-I/11.05.2016 : 3p/7c

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