



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.(MD) No.181 of 2016

and

Crl.M.P.(MD) No.2543 of 2016

Samuel Jebakani

... Petitioner / Petitioner /
De facto Complainant (LW-1)

-vs-

1.The Superintendent of Police

Thoothukudi District

Thoothukudi

2.The Inspector of Police

Thoothukudi North Police Station

Thoothukudi

Thoothukudi District

... Respondents / Respondents

3.Spenty Laborson

... Respondent / Respondent /
Sole Accused

PRAYER : Criminal Revision Petition is filed, under Section 397(1) r/w 401 Cr.P.C., to call for the records in Cr.M.P.No.90 of 2016 in S.C.No.232 of 2012, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, Thoothukudi District and set aside the order, dated 14.03.2016, and direct further investigation (or) re-investigation of the F.I.R., in Crime No.444 of 2011, on the file of the 2nd respondent which had culminated in the present Sessions Cases by a competent officer.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Mr.P.Kandasamy
Govt.Advocate (Crl.Side) for R1 & R2**O R D E R**

Samuel Jebakani, the de facto complainant dissatisfied with the decision of the learned Additional Sessions Judge, Fast Track Thoothukudi, dismissing his petition in Cr.M.P.No.90 of 2016 filed in S.C.No.232 of 2015, under Section 173 Cr.P.C., seeking re-investigation.



2. Based on the complaint of the said Samuel Jebakani, the Thoothukudi North Police, registered a case in Crime No.444 of 2011, for 'Girl Missing'. The Investigation Officer conducted the investigation, concluded it and filed the final report under Section 173(2) Cr.P.C., before the learned Judicial Magistrate No.II, Thoothukudi, for offences under Sections 366 and 376 I.P.C. The learned Judicial Magistrate took cognizance thereon in P.R.C.No.1 of 2013. Thereafter, the learned Judicial Magistrate supplied the copies of documents to the accused. The learned Judicial Magistrate, having found certain offences are exclusively triable by a Court of Sessions, committed the case to the Court of Principal Sessions Judge, Thoothukudi, under Section 209 Cr.P.C. The learned Principal Sessions Judge, Thoothukudi, made over the case to the learned Additional Sessions Judge, Fast Track Mahila Court, Thoothukudi, in S.C.No.232 of 2015, for trial.

3. The accused has appeared before the Trial Court. In the Trial Court, Samuel Jebakani filed Crl.M.P.No.90 of 2016, seeking a direction to Thoothukudi North Police Station, to conduct fresh investigation, under Section 173(8) Cr.P.C.

4. The learned Additional Sessions Judge, relying on the decision of the Hon'ble Supreme Court in **Reeta Nag Vs. State of West Bengal and Others (AIR 2010 SC (Cri) 401) : (2010 Crl.L.J.2245)**, held that under Section 173(8) Cr.P.C., the de facto complainant cannot ask for fresh investigation and dismissed the petition.

5. The learned counsel for the revision petitioner would contend that much water has flown under the bridge since **Reeta Nag's case** (supra). The issue as to whether at the instance of the de facto complainant can the Police be directed to undertake further investigation has been considered subsequently, by the Hon'ble Supreme Court in **Vinay Tyagi Vs. Irshad Ali [AIR 2013 SC (Cri) 292]**, and their Lordships of the Hon'ble Supreme Court have held that under the scheme of the Code of Criminal Procedure, to unravel the truth of the matter, a de facto complainant can request the Magistrate to direct the Police to undertake further investigation, when the facts and circumstances of the case so demands. This decision has been reiterated in **Chandra Babu vs. State [2015 (5) CTC 214 (SC)]**. (Also see **P.Ravindranath vs. K.Chandragandhi [2015 (3) MWN (Cr.) 236** and the latest decision in **Ram Saran Varshney vs. State of U.P. [(2016) 2 SCC (Cri.) 190]**).

6. The learned counsel for the petitioner would also submit that the facts of this case would show that the investigation has not been properly conducted and the truth of the matter has not been properly unraveled. Justice should not fail. Justice should be rendered. In such circumstances, Police shall be asked to



probe further.

7. According to the learned Government Advocate (Criminal Side), investigation has been done fairly, evidence has been collected and final report has been filed.

8. I have anxiously considered the rival submissions, perused the impugned order and the decisions cited.

9. Field of investigation is vast. It is stated that it is 'within the province of police' (See **King Emperor vs. Khwaja Nazir Ahmed [AIR 1945 PC 18]**). Within the field of investigation it is stated that Police is the Master. But, who is to monitor them. Who is to keep them within the bounds of law. Who is to pull their legs, when they tried to over step. Who is to tell them that they are not above the law. Who is to make them to focus on the principles laid down in the Criminal Procedure Code and the relevant statutes. Who is to tell them to do fair investigation, effective investigation and impartial investigation. Who is to remind them to inspire confidence of the complainant by their fair investigation. Necessarily the mantle should fall on the Courts. In a democratic country, when especially, police have the power of arrest and the power to register cases they must be made accountable to some authority. That is how the Courts started interfering with the investigation done by the Police when it is slipshod, ineffective and impartial.

10. The zeal of the Court is to see that justice should not become a causality. The truth must be unraveled. The innocent must be protected and the guilty must be dealt with appropriately.

11. In this view of the matter, the view taken by the Hon'ble Supreme Case in **Reeta Nag's case**, (supra) that the Police alone can do further investigation has been deviated subsequently by the Hon'ble Supreme Court in **Vinay Tyagi's case** (supra) and also in **Chandra Babu Vs. State [2015 Cr.LJ 4538]**.

12. Now, it is well settled that not only at the instance of the Police, even at the instance of the *de facto* complainant, further investigation under Section 173(8) Cr.P.C. can be undertaken by the Police to find out the truth of the matter. But, Subordinate Court is not competent to direct fresh, new, *de novo* investigation, which is entirely different from further investigation.

13. Thus, it seems that the learned Additional Sessions Judge, Fast Track Mahila Court, Thoothukudi, has not been informed of the latest trend of law on this aspect. Judges and Lawyers should update themselves with the latest trend of law. Law is a living



organism. It grows every day. It must be 'dynamic' and also 'pragmatic'. And should not be 'static'. Law and judge-made law (case-law) must undergo change in tune with the change in Society. Otherwise, it will be a dull subject. Thus, March of Law is bound to be.

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14. The issue involved in this case has not been adjudicated before the Trial Court. It has been left open by the learned Judge. Thus, we are of the view that in the light of the current trend of law (see **Vinay Tyagi's** case) supra, the Trial Court should be asked to redo the work.

15. In view of the forgoings, it is ordered as under:

- (i) This revision is allowed.
- (ii) The impugned order, dated 14.03.2016, passed in Cr.M.P.No.90 of 2016 in S.C.No.232 of 2015, by the learned Sessions, Fast Track Mahila Court, Thoothukudi, is set aside.
- (iii) The learned Additional Sessions Judge will restore Cr.M.P.No.90 of 2016 to his file.
- (iv) In the light of the guidance provided in this order, the learned Additional Sessions Judge will rehear the matter and after giving reasonable opportunity to both sides decide the application filed under Section 173(8) Cr.P.C., according to law, at an early date.
- (v) Consequently, connected criminal miscellaneous petition is closed.

Sd/-

Asistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

krk

To:

1.The Principal Sessions Judge,
Thoothukudi,

2.The Sessions Judge,
Fast Track Mahila Court,
Thoothukudi

<https://hcservices.courtsofmadras.org/> Advocate (crl.side),
Madurai Bench of Madras High Court,
Madurai



4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

5.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi,
Thoothukudi District.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1 cc to Mr. A.THIRUVAD KUMAR, Advocate, Sr.No: 45892

jam/24.08.16/PV/5P-8C

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