



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.293 of 2016

Anthony Manuvel Raj

... Petitioner / Petitioner

-vs-

State rep.by its  
Inspector of Police,  
Theni Police Station,  
Theni District.

... Respondent / Petitioner

**PRAYER:** Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for records relating to order passed by learned Judicial Magistrate, Theni in Cr.M.P.No.5 of 2016 dated 22.03.2016 and set aside the same.

For Petitioner: Mr.R.Suriya Narayanan

For Respondent: Mrs.S.Prabha  
Govt.Advocate (Crl.Side)

### **O R D E R**

This criminal revision has been directed as against the dismissal of the protest petition filed in Crl.M.P.No.5/2016 by the learned Judicial Magistrate, Theni, by his order dated 22.03.2016.

2.This revision arose in the following circumstances :

The revision petitioner's father Vedamanickam stated to have owned Tractor No. TN 45 D 5133 and Trailer No.TN 45 D 5331. The revision petitioner filed a private complaint before the learned Judicial Magistrate, Theni, alleging that while his father was bedridden, the accused had forged the signature of his sick father and effected name transfer of the said vehicle in his name. In Crl.M.P.No.1715/2015, under Section 156(3) Cr.P.C., the learned Magistrate directed the respondent/Inspector of Police, Theni, to conduct investigation and report. It is pertinent here to note that no enquiry or investigation under Section 202 Cr.P.C was ordered by the learned Magistrate. The police registered a case in Crime No.1715/2015. After investigation, the Investigation Officer filed a negative final report that there is no cognizable case. In the circumstances, the revision petitioner filed protest petition in Crl.M.P.No.5/2016 to the said police report. The



learned Magistrate proceeded it as a private complaint and recorded the sworn statement of the revision petitioner and also certain witnesses. Thereafter, the learned Magistrate, placing heavy reliance on the negative final report of the Investigation Officer, passed the impugned order dismissing the protest petition that as regards the matter he has to seek appropriate remedy in a civil Court.

3. The learned counsel for the petitioner would submit that the impugned order suffers from legality. The procedure adopted by the learned Magistrate is not in accordance with law.

4. The learned Government Advocate (criminal side) submitted that based on the materials placed before him, the learned Magistrate has passed the impugned order.

5. I have deeply considered the rival submission, perused the impugned order and also the materials available on records.

6. So far as the procedure adopted by the Magistrate, we may say that it is correct, but not wholly correct. In dealing with a negative final report filed by the police, the Magistrate has to follow certain procedures.

7. If the Magistrate is of the view that the negative final report ought not to have been filed and it should have been a positive report, can the learned Magistrate simply disregard the conclusion of the Investigation Officer and proceed further with the matter, if there is a prima facie case issue summons to the accused under Section 204 Cr.P.C. But if the Magistrate is of other view he must issue notice to the complainant. If the complainant files a counter or objection, which is also known as 'protest petition', he should treat it as a private complaint. Then the provision of Sections 200, 202, 203 and 204 Cr.P.C will apply. In such a circumstances, the Magistrate has to record the sworn statement of the petitioner in the protest petition and his witnesses, if any, and consider the materials and if he finds a prima facie case, he can take cognizance thereon and issue summons to the accused under Section 204 Cr.P.C. Supposing if he does not find any prima facie case, he shall dismiss the complaint under Section 203 Cr.P.C however, briefly stating the reasons therefor.

8. If he look at the impugned order, we find that the learned Magistrate placing heavy reliance on the negative final report of the Investigation Officer, has dismissed the complaint. Such negative final report is not equalent to the Judgment of a Magistrate. Such negative final report is not a biblical verse. ~~He has to independently consider the averments in the protest petition and sworn statement recorded, apply his judicial mind and take a decision.~~



9. In view of the forgoings, this revision is allowed. The impugned order of the learned Judicial Magistrate, Theni in CrI.M.P.No.5/2016 is set aside. CrI.M.P.No.5/2016 is remanded back to the said Magistrate. The learned Magistrate will consider the materials already on record and pass orders as per law. After restoring CrI.M.P.No.5/2016 to his file, the learned Magistrate will issue notice to the revision petitioner/ complainant, hear him and pass orders according to law.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

1.The Chief Judicial Magistrate,  
Theni.

2.The Judicial Magistrate,  
Theni.

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

4.The Inspector of Police,  
Theni Police Police Station, Theni.

+1cc to Mr.R.Suriya Narayanan, Advocate Sr.No.27263  
skn

AA/NGM-MP/SAR-III/08.06.2016/3p-6c

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