

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.1047 of 2017

G.V.Rajagopal Chetty

...Petitioner

Vs.

The State rep. By
The Sub Inspector of Police,
Mathigiri Police Station,
Mathigiri, Hosur.

...Respondent

Prayer:- Petition filed under Section 397 & 401 of the Criminal Procedure Code, 1973 praying to call for the records in Crime No.211 of 2016 and set aside the order dated 07.04.2017 and to further direct the learned Judicial Magistrate-II, Hosur to reopen the case in Crime No.211 of 2016.

For Petitioner : Mr.S.C.Vishwanth

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

This revision case has been filed against the order passed by the learned Judicial Magistrate No.II, Hosur in Crime No.211 of 2016 dated 07.04.2017.

2. The case of the petitioner is that he has given a complaint to the respondent/police to investigate the alleged offences against the accused persons. According to the petitioner, the alleged offences are forgery, cheating and impersonation. It seems that based on the complaint given by the petitioner the respondent/police after having investigated the complaint has filed a final report before the Court below on 30.06.2016, wherein, it has been stated that this matter pertains to civil dispute between the parties and therefore after investigation it has been referred to the Assistant Director for Prosecution, he has opined that the case may be referred as civil in nature and further action may be dropped. Based on the said opinion given by the Assistant Director for Prosecution, the further action in this case was dropped and accordingly the final report dated 30.06.2016 was filed before the Court below.

3. On filing of such final report, a copy of the same had been given to the petitioner. On receipt of the same and after perusal of the ingredients of the said final report, the petitioner has filed a detailed objection before the Court below on 17.03.2017. In the said objection, the petitioner has given details as to how the petitioner has made accusation against the accused person who committed the said offence which are punishable.

4. However, the learned Magistrate by the impugned order dated 07.04.2017, has stated that the petitioner was informed to file Protest petition or Private complaint and the defacto complainant's objection has recorded and by stating that he has closed the FIR. As against the said order dated 07.04.2017, the present revision has been filed.

5. I have heard Mr.S.C.Vishwanth, learned counsel appearing for the petitioner and Mr.C.Iyyapparaj, learned Additional Government Pleader for the respondent

6. In the objection filed by the petitioner dated 17.03.2017, at paragraph No.7, the following objections has been specifically given:-

"7. Further it is submitted that, the copy of the Document No.6262/06 where the 1st accused Akshayaram's father by name S.A.Muralidharan had executed an settlement deed in favour of his son in respect to the petitioner/complainant's property. The said Akshayaram, when applying for patta, had produced an document in No.6262/06, in which, the 2nd page of the said document were manipulated and altered. The

said act of the accused can be clearly visible in the naked eye itself. The purpose of manipulating is, that the petitioner/complainant is the original owner of the property. So, in the 2nd page of the deed, they, all accused removed the name of the S.A.Muralidharan and written the petitioner/complainant's name G.V.Rajagopal chetty as the executants. In the said alleged document, the petitioner/complainant's ration card wrongly mentioned as No.31/09/0379900, instead of ration Card No.31/G/364037. This act is not a civil act and purely a criminal act. Alteration of government registered document, forgery of documents and forgery on the part of the 1st accused along with the aid of the other accused which purely criminal acts."

7. On seeing these avernments, this Court prima facie feels that certain ingredients have been specifically given by the petitioner which are worthy to be investigated as to whether the accused has really committed the said offence, especially an offence of forgery. However, on perusal of the final report filed by the respondent police, there is no specific avernments made to that effect that no such offence has been committed by the accused person as alleged by the petitioner.

8. Moreover, on consideration of the said final report of the respondent police as well as the objections filed by the petitioner, the learned Magistrate should have applied his mind and before taking any decision either to accept the objections of the petitioner or to reject the same, he must give the reasons on which basis he has come to the conclusion and rejected the said objections made by the petitioner. Instead, the learned Magistrate has passed the following order :-

*"Defacto complainant present.
Complainant's counsel present. Court informed
to them for filing protest petition or private
complaint in this case. Defacto complaint
objection recorded, hence this FIR is closed."*

9. On perusal of the said order, which is impugned herein, this Court is of the view that the learned Magistrate should not have passed such cryptic order without disclosing atleast minimum reasons which constitute the satisfaction of the learned Magistrate either to accept or reject the contention of the petitioner.

10. In this regard, the law laid down by the Hon'ble the Apex Court in **"Anil Kumar and others Vs. M.K.Aiyappa and another"**

reported in 2013 10 SCC 705, can very well be pressed into service in this case also. In the said judgment, the Hon'ble Apex Court in the context of decision to be taken by the learned Magistrate concerned under Section 156(3) of Cr.P.C. has held that the application of mind by the learned Magistrate should be reflected in the order. It is further held that mere statement that he has gone through the complaint and satisfied with, is not enough. What weighed in the mind of the Magistrate to order investigation/inquiry has to be clearly stated in the order. If these principles are applied to the present case in hand, though the learned Magistrate accepted the final report filed by the respondent police, he must have given the reasons as to what weighed in the mind of the learned Magistrate to come to the said conclusion i.e, to accept the said report.

11. Here, in the case in hand, if we peruse the cryptic order passed by the learned Judicial Magistrate-II, Hosur, no such reasons have been given. Therefore, this Court is of the considered view that the said order in the opinion of this Court, is not in consonance with the relevant provisions of the Code and also the Judicial Officer cannot be expected to pass such a cryptic order and he must apply his mind and must state the

reasons at least briefly to arrive at the decision he has taken.

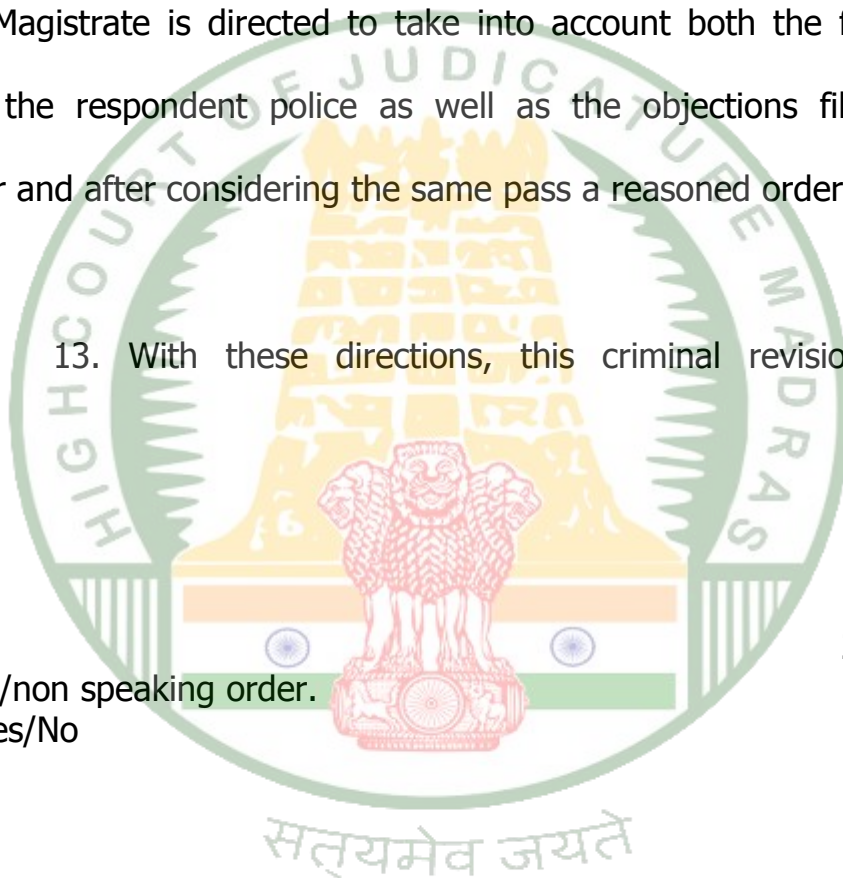
12. In view of the above, this Court has no hesitation to set aside the said order. Accordingly, the impugned order is set aside and the learned Magistrate is directed to take into account both the final report filed by the respondent police as well as the objections filed by the petitioner and after considering the same pass a reasoned order.

13. With these directions, this criminal revision case is ordered.

Speaking/non speaking order.
Index :Yes/No

rts

23.08.2017



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R.SURESH KUMAR,J.

rts

To

1. The Presiding Officer,
The Judicial Magistrate Court-II,
Hosur
2. The The Sub Inspector of Police,
Mathigiri Police Station,
Mathigiri, Hosur
3. The Public Prosecutor,
High Court, Madras.



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