

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.8.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

**Crl.R.C.No.1115 of 2017 and
Crl.M.P.No.10514 of 2017**

Thangaraj

.. Petitioner

Vs.

The State represented by
The Inspector of Police,
Nagarasampatti Post,
Pochampalli Taluk,
Krishnagiri District.

.. Respondent

Petition filed under Section 397 and 401 of Cr.P.C to call for the entire records in connection with the Crl.M.P.No.2990/2016 in C.C.NO.122/2014 on the file of the learned District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri District and set aside the order dated 19.05.2017.

For Appellant

: Mr.E.Kannadasan

For Respondents

: Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

This revision petition has been filed against the order passed by the Judicial Magistrate, Pochampalli in Crl.M.P.No.2990 of 2016 dated

19.5.2017.

2. The petitioner is the defacto complainant in Cr.No.89 of 2014 where based on his complaint, an FIR had been registered by the respondent / appellant on 17.3.2015 against the accused persons as well as three more persons, namely, Ashok Kumar, Kumar and Karthick for the alleged offences under Section 294(b), 323, 324 and 506(ii) of IPC. After investigation, the respondent has filed a charge sheet dated 19.5.2014 before the trial Court where the accused persons, namely, Ponni, Udhayakumar and Velmani against whom, the alleged charges have been framed and no charge has been framed against other three persons, namely, Ashok Kumar, Kumar and Karthick.

3. During that period, the present petitioner had moved Crl.O.P.No.23064 of 2015 before this Court seeking direction from this Court to direct the respondent police to conduct further investigation and file additional report before the Tribunal.

4. The said Crl.OP was disposed of by order dated 13.10.2015. By the said order, this Court by rejecting the claim made by the petitioner, had however made an observation that the petitioner can

file a protest petition before the trial Court and seek his remedy.

5. Pursuant to which, the petitioner had filed a protest petition in Crl.M.P.No.2990 of 2016 seeking a direction from the trial Court to direct the respondent police to investigate further and file additional charge against the three persons, namely, Ashok Kumar, Kumar and Karthick. The said petition after having been heard by the Court below has been dismissed by order dated 19.5.2017 under the impugned order. As against which the present revision has been filed.

6. I have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondent.

7. The learned counsel appearing for the petitioner would state that even though the said petition has been filed where specific allegations have been made against the said three persons, the court below without having considered the same has rejected it. The learned counsel would further state that when there were specific allegations against the said three persons, as according to the petitioner, they have also committed punishable offences, the respondent police failed to implicate them as accused and charges have been omitted to be

framed against them.

8. This omission on the part of the respondent police have been properly protested in the petition which was filed for which liberty was given by this Court in the order referred to above in the CrI.OP filed by the petitioner before this Court, however, the learned Judge has rejected the said protest petition without appreciable reasons.

9. Per contra, Mr.C.Iyyappa Raj, the learned Additional Public Prosecutor submitted that though allegations have been made by the petitioner against the accused persons as well as the other three persons by his statement which has been recorded in the FIR, after thorough investigation, the respondent police has found no materials against the three persons to implicate them for the alleged offences said to have been committed by them. Therefore, the respondent has filed charge sheet only against those three persons, who have been arrayed as accused in the case as against whom materials are available to charge them and therefore, charge sheet has been filed against them.

10. The learned Additional Public Prosecutor would also submit

that even if the trial is commenced, after examination of witnesses on the prosecution side, if anything is found to be considered that even the said three persons also have to be implicated as accused persons, such power would always vests with the Court, in the given facts and circumstances of the case to implicate those three persons also as accused under Section 319 of the Code. Therefore, at the present stage, according to the learned Additional Public Prosecutor, since nothing is available materially to implicate, the said three persons as accused, the learned Judge has rightly rejected the claim of the petitioner made during the protest petition and therefore, the impugned order does not require any interference.

11. I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

12. As has been rightly pointed out by the learned Additional Public Prosecutor that, though the petitioner has made complaint against the three accused persons as well as other three persons against whom the present petition has been filed, as if that, they are involved in criminal act and the same also has been reduced in FIR,

the actual averments made by the petitioner against the three persons, namely, Ashok Kumar, Kumar and Karthick only relates to the fact that they have allegedly broken some household articles belonging to the petitioner.

13. In respect of other persons, who have been arrayed in this case, some specific instances / overt acts have been mentioned by the petitioner.

14. Based on these allegations, the respondent police has investigated the matter. After investigation, they found some specific overt acts available only against those three persons and only in this regard against those three persons alone, charge has been filed. With regard to remaining three persons, though allegations have been made against them that they have broken some household articles, police found after investigation that no materials are available to come to such conclusion that those three persons have committed such offence of either trespassing or breaking the household articles, belonging to the petitioner.

15. When that being the position, it cannot be said that the police has to once again investigate the very same issue against the said three persons and to file a fresh charge sheet or additional charge sheet.

16. Only considering these aspects, the learned Judge, after having found that nothing is elucidated as incriminating materials against the alleged accused, namely, Ashok Kumar, Kumar and Karthick and also found that there is no iota of materials against them, except the statement of the defacto complainant, had rejected the said plea of the petitioner through the impugned order.

17. Therefore, in view of the said facts and circumstances, this Court finds that there is nothing improper or illegal attached to the said order which is impugned herein. Hence, this Court is of the view that the said order requires no interference from this Court in exercising the power of revision. Accordingly, the revision case fails. Hence, it is dismissed. Consequently, connected miscellaneous petition is closed.

30.8.2017

Index: Yes / No

Internet : Yes / No
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R.SURESH KUMAR,J.
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To

1. The District Munsif cum Judicial Magistrate,
Pochampalli, Krishnagiri District.

2. The Inspector of Police,
Nagarasampatti Post,
Pochampalli Taluk,
Krishnagiri District.



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