

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. RC. No.937 of 2017

T.G.Gopinathan
Petitioner

...

Vs.

State represented by
Inspector of Police
E-1, Mahabhalipuram Police Station,
Kancheepuram District.
Respondent

...

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order of closure of the FIR dated 24.11.2016 in CrI.M.P.No.3742 of 2016 in Cr. No.302/2015 on the file of the learned Judicial Magistrate, Thirukazhukundram and allow the same and direct further investigation by the respondent.

For Petitioner

: Mr.V.T.Narendran

For Respondents

: Mr.R.Sekar,
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed challenging the order of the Judicial Magistrate, Thirukazhukundram, dated 24.11.2016, closing the protest petition filed by the petitioner.

2. It is a case of the petitioner that he had filed a complaint against one Mayasamy and others for the alleged offences under sections 406, 420, 465 IPC.

3. The complaint which to have been given by the petitioner was enquired by the respondent police and after investigation, they filed a report dated 05.01.2016. As per the said report, the respondent police has stated that on investigation, they found that there is no punishable offence, as alleged by the defacto complainant, has been made out and therefore, they closed the complaint by sending final report to the concerned Magistrate, as mistake of fact.

4. Opposing the report submitted by the respondent police, the petitioner had filed a protest petition before the concerned Magistrate

Court. The said protest petition has been rejected by the learned Magistrate through the impugned order dated 24.11.2016 whereby the learned Magistrate has stated that the objection filed was recorded and therefore he closes the petition. Assailing the same, this revision has been filed.

5. Heard both sides.

6. The learned counsel appearing for the petitioner submits that whatever be the reason from the point of view of the prosecution, as disclosed in the report, the same should have been discussed in the order passed by the learned Magistrate. However, the learned Magistrate has simply rejected the protest petition by way of a cryptic order. The learned counsel appearing for the petitioner would rely upon the judgment by this court reported in 2015 (2) TLNJ (Criminal) (*S.Premkumar vs. Sub Inspector of Police, Anjugramam Polie Station, Kanyakumari District*) wherein the learned counsel would rely upon Paragraph 8 of the judgment, which reads as follows:

8. So far as further investigation is concerned, the Honourable Supreme Court has held in *Reeta Nag Vs. State of West Bengal and Others* reported in

(2009) 9 Supreme Court Cases 129 that further investigation cannot be ordered under [Section 173\(8\)](#) of the Criminal Procedure Code at the behest of the defacto complainant. Regarding that legal proposition also, there can be no doubt. But, at the same time, while considering the protest petition filed as against the negative final report, the learned Magistrate, as per settled law, has got three options, i.e., either to accept the negative report, or to take cognizance of the offences based on the available materials, or to order for further investigation. Ordering further investigation on the protest petition filed by the defacto complainant will be within his jurisdiction. The Magistrate may also treat the protest petition as a private complaint and proceed further. At any rate, when a protest petition is filed by the defacto complainant as against the negative final report, the Magistrate should meticulously go through the records and pass a detailed speaking order. Even for an administrative order, the Honourable Supreme Court has held that a non-speaking order is not an order in the eye of law and therefore, the same is liable to be set aside. When that is the position for even an administrative order, it is needless to say that a judicial order should be a speaking order, because the Judge can not speak, but the judgment should speak. In the case on hand, the impugned order does not reflect the application of mind of the learned Magistrate, as it is evident that he has not given any reason for passing the impugned order. For these

reasons, the impugned order is liable to be set aside and the matter needs to be remanded back to the learned Magistrate for fresh consideration in accordance with law.

7. By relying on said judgment the learned counsel would submit that the Magistrate should have applied his mind on the report submitted by the Investigating Officer and he should have passed a speaking order. Since the impugned order is bereft of any reasons, it only shows that the learned Magistrate has not analyzed the final report before passing the impugned order. Therefore, the same cannot be sustained and accordingly it is liable to be interfered with.

8. I have heard Mr. R.Sekar learned Government Advocate on the above aspect.

9. On the very face of the impugned order, this court feels the said order is not a sustainable one, the reason being that the learned Magistrate in the impugned order dated 24.11.2016 has passed only the following order:

*Heard the defacto complainant filed this
objection recorded. Hence this petition is*

closed.

10. The learned Magistrate has only stated that the defacto complainant was heard and petition filed recorded hence he has closed the petition.

11. No judicial officer could be expected to pass such a cryptic order. The learned Magistrate should have at least mentioned reasons for rejecting the protest petition.

12. In this context the said judgment cited supra by the side of the petitioner can very well be pressed into service. As has been rightly said in the judgment, a judicial order should be a speaking order, because the Judge cannot speak, his orders should speak.

13. The order impugned shows that the learned Magistrate has not applied his mind while rejecting the protest petition filed by the petitioner. Without even stating reasons, the learned Magistrate has simply passed a two line order. This type of cryptic order would in no way help the aggrieved persons to get justice. Therefore I have no hesitation to set aside the impugned order. Accordingly, the impugned

order is set aside and the revision is allowed. The matter is remitted back to the court below for reconsideration. It is made clear that while reconsidering the issue, the learned Magistrate shall take into account all aspects and pass a reasoned order, of course based on the merits of the issue. It is open to the learned Magistrate to give an opportunity to both the defacto complainant as well as the prosecution to put forth their case. After giving such opportunity to them, a final order could be passed by the learned Magistrate.

24.07.2017

Index: Yes/No

Internet: Yes/No

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To

1. The learned Judicial Magistrate,
Thirukazhukundram,
Kancheepuram District.

2. The Inspector of Police
E-1, Mahabhalipuram Police Station,
Kancheepuram District.

3. The Public Prosecutor,
High Court, Madras-104.

R.SURESH KUMAR.J.

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