

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No. 375 of 2011

S.Thangavelu

... Petitioner/Defacto Complainant

Vs.

1. State by
The Sub Inspector of Police,
District Crime Branch,
Coimbatore

2. R.Krishnaveni

3. Rangasamy

4. Sundarammal

5. Subramanian

6. Ganesan

7. R.S.Palanisamy

8. K.Ramasamy

9. Venkatesan

10. Chithra

... Respondents

R2 to R10 impleaded as per the order of this Court dated
14.03.2011 in M.P.1 of 2011

Prayer:- Petition filed under Section 397 and 401 of Cr.P.C., to
call for records and set aside the order dated 31.03.2009 made
in Crl.M.P.No.1391 of 2006 on the file of learned Judicial
Magistrate, Palladam.

For Petitioner : Mr. P.M.Duraiswamy

For Respondent : Mrs.M.F.Shabana, G.A.(Crl.side) for R1
Mrs.Sithiraj Anandan for R2 to R4.

O R D E R

Challenging the order passed by the learned Judicial Magistrate, Palladam, dismissing the protest petition filed by the petitioner/complainant, the present revision has been filed. The petitioner earlier filed a private complaint against the Respondents 2 to 10 for offences punishable under Sections 420, 423 & 417 of IPC before the District Judicial Magistrate, Palladam. Earlier the learned Judicial Magistrate forwarded the complaint under Section 156(3) Cr.P.C to the Inspector of Police, Palladam for conducting investigation. Subsequently the police registered a case against Respondent 2 to Respondent 10 in Crime No.642 of 2004, for the offences under Sections 420, 423 and 417 of IPC. Thereafter, the matter had been transferred to the District Crime Branch, Coimbatore and renumbered as Crime No.8 of 2005. The matter had been investigated by the District Crime Branch, Coimbatore and they had filed the Final Report referring the matter as 'Mistake of Fact', thereafter, on receipt of the final report the learned Judicial Magistrate issued notice to the petitioner. After receipt of the notice the petitioner filed a protest petition in Crl.MP.No.1391 of 2006 against the final report. The learned Judicial Magistrate dismissed the protest petition by an order dated 25.04.2006. Challenging that order of dismissal, the petitioner filed a revision before this Court in Crl.R.C.No.777 of 2006 and this Court by order dated 28.11.2006 passed the following orders:-

"The petitioner is the defacto complainant. The learned Magistrate had ordered investigation to the respondent police under Section 156 of Cr.P.C. The respondent after registration of the case filed a referral report before the learned Magistrate. Aggrieved against that, a protest petition has been filed by the petitioner and incidentally prayed for re-investigation of the case with some other agency. Such prayer has been negatived and against that, the present revision petition has been filed before this Court.

2. I do not find any merit to disturb the finding reached by the learned Magistrate. However, the learned Magistrate may conduct an enquiry in the protest petition, may receive oral and documentary evidence and proceed with the case in accordance with law. With this

observation, the Criminal Revision case is closed. The connected M.P. is closed".

2. Thereafter, enquiry was conducted and oral and documentary evidence were received in the protest petition and the learned Judicial Magistrate referred the matter under Section 156 (3) Cr.P.C. to the very same investigation respondent/police for further investigation. Challenging the order passed by the learned Judicial Magistrate, Palladam in C.F.R.No.2434 of 2007, the defacto complainant has filed CrI.R.C.No.709 of 2007 and the accused also filed CrI.O.P.No.12300 of 2007 contending that since the petitioner/defacto complainant was already given an opportunity to adduce oral and documentary evidence, once again another opportunity cannot be given to the defacto complainant to give further oral or documentary evidence. But this Court, by a common order dated 21.04.2008 passed the following order:-

"In view of the above, the order passed in C.F.R.No.2434 of 2007 referring the complaint of the defacto complainant once again under Section 156(3) Cr.P.C. to the Inspector of Police, Palladam stands set aside and the learned District Munsif-Cum-Judicial Magistrate, Palladam is directed to conduct the enquiry on the protest petition and act in accordance with law giving an opportunity to the defacto complainant to lead the oral and documentary evidence and dispose of the matter within a period of two months from the date of receipt of a copy of this order. It is again made clear that the findings he had already arrived at to the effect that the case did not warrant re-investigation remains undisturbed".

3. Now after remand, once again the learned Judicial Magistrate passed the impugned order stating that since the defacto complainant wants to refer the case to CBCID, that prayer cannot be granted. The case was already forwarded to the respondent/police and there is no provision under Cr.P.C. to file a protest petition against the final report filed by the respondent/police. Now challenging that order, the defacto complainant once again has filed the present revision.

The learned counsel for the petitioner would contend that this Court on two earlier occasions directed the Judicial Magistrate to consider his protest petition and pass an order after receiving oral and documentary evidence in the protest petition and so far as the claim of the petitioner seeking further investigation/reinvestigation has already been negated

by this Court. The learned Judicial Magistrate without considering the earlier order passed by this Court, erroneously dismissed the petition holding that the petition itself is not maintainable, which is totally against the order passed by this Court on the earlier occasions.

4. The learned counsel for the respondents 2 to 10 submitted that since in the protest petition, petitioner only wants reinvestigation by the CBCID, since the learned Judicial Magistrate has no power to order reinvestigation in the protest petition filed. The learned Judicial Magistrate rightly considered his protest petition and dismissed the same. The above contention cannot be countenanced for the following reasons:-

The first revision petition in Crl.R.C.No.777 of 2006 was disposed of by this Court by order dated 28.11.2006, the defacto complainant also approached this Court by way of Crl.O.P.No.5094 of 2007. Seeking direction to the learned Judicial Magistrate to conduct an enquiry on the protest petition in accordance with law after affording an opportunity to the defacto complainant to place oral and documentary evidence but the prayer of the defacto complainant has been negatived. But the learned Judicial Magistrate, without considering the earlier order passed by this Court, dismissed the application stating that no protest petition is maintainable as the Magistrate has no power to order reinvestigation, after the completion of investigation. The Judicial Magistrate has not applied his mind and failed to consider that the final report filed by the investigation against referring the complaint as "Mistake of Fact", the defacto complainant is entitled to file protest petition and in that event, the learned Judicial Magistrate, Palladam after considering the material on record, either can accept the final report filed by the respondent police or can hold otherwise. Without doing so now the Judicial Magistrate simply dismissed the protest petition holding that he has no power to order reinvestigation and that the protest petition is not maintainable in law, which is not in compliance of the order passed by this Court.

5. In the result, the order passed by the Court below is liable to be set aside and accordingly it is set aside and the matter is remanded to the learned Judicial Magistrate and the learned Judicial Magistrate, Palladam is directed to consider the protest petition on merits and in accordance with law and pass a suitable order within a period of six weeks from the date of receipt of a copy of this order.

6. This Crl.R.C. is ordered on the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To

The Judicial Magistrate,
Palladam.

+1cc to Mr.Duraisamy, Advocate, S.R.No.2121

+1cc to Mr.Sithirai Anandam, Advocate, S.R.No.1890

KGK (CO)
RS (21/03/2017)

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