

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.602 of 2011
and
M.P.No.1 of 2011

1. A.Abdul Gafoor
2. Sameera @ Sabira
3. Abdul Samath
4. Nowsath
5. Mohammed Shaa ..Petitioners

Vs

1. N.Akhila
2. State rep. By
The Inspector of Police,
AWPS, Thudiyalur
Coimbatore.
Crime No.32 of 2009 ..Respondents

Prayer:- Criminal Revision filed under Section 397 r/w. 401 Cr.P.C., to set-aside the order dated 02.11.2010 made in C.M.P.No.5231 of 2009 in M.C.No.337 of 2009 on the file of the Judicial Magistrate No.I, Coimbatore.

For Petitioners: Mr. N.Ishtiaq Ahmed
For Respondent : Mr. C.Deivasigamani,
for R1.
: Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)
for R2.

ORDER

Challenging the order passed by the learned Judicial Magistrate, No.I, Coimbatore, in C.M.P.No.5231 of 2009 in M.C.No.337 of 2009 on 02.11.2010, the present revision has been filed.

2. The petitioners are the accused in Crime No.32 of 2009. The first respondent is the defacto complainant and she is the wife of the first petitioner/A1. The first respondent/defacto complainant had filed a complaint against the petitioners and based on the complaint, a case was registered by the 2nd respondent police in Crime No.32 of 2009,

for the offences under Sections 498(A), 406, 506(ii) IPC and Section 4 of Dowry Prohibition Act. After investigation, a final report has also been filed by the 2nd respondent police. After filing the final report, the first respondent/defacto complainant felt that investigation has not been properly conducted and the statements of witnesses were not properly recorded by the respondent police. Hence, she filed a petition under Section 465(2) of Cr.P.C., seeking further investigation. The Court below, after considering the material and on perusal of records, came to a conclusion that investigation was not properly conducted and hence, the court below directed the Deputy Superintendent of Police, P.N.Palayam, to conduct further investigation and record further statements of witnesses and file a final report. Challenging the order, now the petitioners/accused have filed the present revision.

3. I have heard Mr.N.Ishtiaq Ahmed, learned counsel for the petitioner and Mr.C.Deivasigamani, learned counsel for first respondent and Mrs.M.F.Shabana, Gov. Advocate (Crl. Side) for the second respondent.

4. The learned counsel appearing for the petitioners would submit that the petition under Section 465(2) Cr.P.C., itself is not maintainable and the court below has also no power to direct the Deputy Superintendent of Police, to conduct further investigation, who is not the original investigating authority, and it only amounts to a re-investigation, which is not permissible under law.

5. Per contra, the learned counsel appearing for the respondents would submit that even though the petition has been filed under Section 465(2) Cr.P.C., the court has ample power under Section 173(8) Cr.P.C. to order further investigation, and the court below had rightly ordered further investigation. Apart from that, only Deputy Superintendent of Police was ordered to conduct further investigation, and it will not amount to re-investigation.

6. I have heard the rival submissions.

7. Even though, the petition has been filed under Section 465(2) Cr.P.C., the court below after considering the material available on record, came to a conclusion that investigation was not properly conducted and invoking the power under Section 173(8) Cr.P.C., directed the Deputy Superintendent of Police to conduct further investigation and record further statements and directed to file a further report.

8. Considering all the materials available on record, I find no illegality or irregularity in the order passed by the court below. It is only the Deputy Superintendent of Police, immediate superior to the original investigating

officer, has been directed to conduct further investigation and it can not be considered as reinvestigation. Apart from that the court below has only ordered for further investigation, for which, the petitioners/accused cannot raise any objection. In the above circumstances, I do not find any reason to interfere with the order passed by the court below.

9. In the result, the Criminal Revision Case is dismissed. The Deputy Superintendent of Police, P.N.Palayam is directed to conduct further investigation and file a report within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate No.I,
Coimbatore.
2. The Deputy Superintendent of Police,
P.N. Palayam, Coimbatore.
3. The Inspector of Police,
AWPS, Thudiyalur, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s. N. Ishtiaq Ahmed, Advocate SR.2738
+ 1 cc to M/s. C. Deivasigamani, Advocate SR.2876

Cr1.R.C.No.602 of 2011

NR1 (CO)
EU (16/11/2017)