

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.654 of 2011
and
M.P.No.1 of 2011

Dr. Easwar Srikumar
Petitioner/Accused

Vs

1. Hemalatha
2. State rep. by.,
The Inspector of Police,
R-1, Mambalam Police Station,
Chennai.
(Crime No.1279 of 2009)

Respondents/Defacto
Complainant/Complainant

Prayer:- Criminal Revision filed under Section 397 and 401 Cr.P.C., to set aside the order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in P.R.C.No.32 of 2011.

For Appellant : Mr. V.Krishnamoorthy

For Respondent : Mr.J.William Shakespear
for R1

: M.F.Shabana,
Gov. Adv. (Crl. Side),
for-R2

ORDER

The petitioner is the sole accused in Crime No.1279 of 2009, on the file of the second respondent police.

2. Earlier the first respondent/defacto complainant had given a complaint against the petitioner for the offences under

sections 376 and 506(ii) IPC. Based on the complaint, a crime has been registered by the second respondent police in Crime No. 1279 of 2009. After investigation, the second respondent had filed a final report referring the case as a "mistake of fact". On receipt of the above said final report, the learned XVII Metropolitan Magistrate, Saidapet, Chennai, issued a notice to the petitioner, and the first respondent/defacto complainant, after receipt of the same, filed a protest petition before the said Magistrate. In the above protest petition, an enquiry was conducted by the learned Judicial Magistrate and 3 witnesses were examined. Thereafter, the learned Magistrate had passed a cryptic and non speaking order stating that upon perusing the evidence, the court find sufficient ground to proceed against the petitioner and a prima facie case has been made out, and took the case on file for an offence under Sections 376 and 506(ii) IPC and issued summons to the accused. Challenging the above said order, the present revision has been filed.

3. Mr. V.Krishnamoorthy, learned counsel appearing for the petitioner would humbly submit that when the police filed a negative final report, on the protest petition filed by the first respondent, 3 witnesses were examined before the learned Magistrate and thereafter, the Judicial Magistrate without giving any reason, passed a cryptic and non speaking order holding that prima facie case has been made out and issued process. Since the order is without any reason, it is liable to be set aside.

4. Per contra, the learned counsel appearing for the respondents would submit that after going through the entire material available on record, the learned Magistrate after being satisfied that there is a prima facie case has been made out, issued a process. Hence, there is no infirmity in the order passed by the learned Judicial Magistrate.

5. I have heard the rival submission and perused the records carefully.

6. On perusal of the records, it could be seen that the second respondent, after elaborate investigation and after recording the statements of 34 witnesses, filed a negative final report. Thereafter, on the protest petition filed by the defacto complainant, an enquiry was conducted by the Judicial Magistrate, and witnesses were examined. Thereafter, the learned Judicial Magistrate passed a cryptic order holding that upon perusing the evidence, the Court feels that there is sufficient ground to proceed with and took the matter on file and issued summons to the accused.

7. It is settled law that in the event, the Magistrate disagrees with the police report, he has two choices. One is

that he may act on the basis of the protest petition filed by the defacto complainant and the other is that while he disagrees with the police report, he should issue processes and summons to the accused. The Magistrate, ignoring the opinion expressed by the Investigating Officer, has to independently apply his mind in arriving at a conclusion that there is a prima facie case is made out in respect of the materials contained in the police report and take cognizance thereupon. Recently, the Hon'ble Supreme Court, in the decision reported in 2015(8) SCC 774 (Chandra babu @ Moses /vs/ State), after considering various judgments, held as follows:

"16. We have referred to the aforesaid authorities to reiterate the legal position that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation."

Recently, a Full Bench of this Court, in the decision reported in 2017-I-L.W.(Crl.)485 (Chinnathambi @ Subramani /vs/ State) has held as follows:

"31. Secondly, on investigation, if it is found that there was no crime at all committed or that the accused persons against whom the case was registered had not committed any such crime, then the Investigating Officer shall submit a report under Section 173(2) Cr.P.C., in the negative form. Law mandates that on receipt of the said negative report, the Court shall issue notice to the defacto complainant and the other interested parties [Vide judgment of the Hon'ble Supreme Court in Bhagwat Singh v. Commissioner of Police (AIR 1985 SC 1285:(1985) 2 SCC 537)]. As has been held by the Hon'ble Supreme Court in a catena of judgments, on receipt of the said notice, the defacto complainant or any other interested person is entitled to file a protest petition. After hearing the Investigating Officer and the protesters, if the Court passes any order accepting the said negative final report of the police, then the said order is also a judicial order as there is an element of adjudication...

44. We sum up our conclusions as follows:-

(i) An order of the Magistrate taking cognizance of offences on a police report is a judicial order."

8. The learned Magistrate taking cognizance of an offence, is supposed to apply his mind independently and the application of mind should be reflected in the order passed by him by giving reason for arriving at a decision that there is a prima facie case made out against the accused for issuing summons . The Hon'ble Supreme Court in the judgment reported in 2015(12) SCC 653 (Shree Mahavir Carbon Limited /vs/ Om Prakash Jalan (Financier) and another) held as follows:-

" 15. We are of the opinion that while recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on an objective consideration.

16. When we talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision-making, the focus is on what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in non-arbitrary ways in favour of making or accepting that decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.

17. We are not entering into a jurisprudential debate on the appropriate theory of legal reasoning. It is not even a discourse on how to write judgments. Our intention is to simply demonstrate the importance of legal reasoning in support of a particular decision, what we have highlighted is that instance is a case or arriving at a conclusion, in complete absence of reasons, what to talk of adequate or good reasons that justify that conclusion.

18. In the given case, it was required by the High Court to take note of the arguments of the complainant on the basis of which the complainant insisted that ingredients of the particular offences alleged are prima facie established justifying the cognizance of the complaint and the arguments of the respondents herein on the basis of which the respondents made an endeavour to demonstrate that it was a pure civil dispute with no elements of criminality attached. Thereafter, the conclusion should have been backed by reasons

as to why the arguments of the complainant are meritless and what is the rationale basis for accepting the case of the accused persons."

9 . In the instant case, after receipt of the negative final report filed by the Investigating Officer, the Magistrate, acted upon the protest petition filed by the defacto complainant and conducted a detailed enquiry and also examined the witnesses and after hearing the defacto complainant, the learned Magistrate has come to a conclusion that sufficient ground is available to proceed against the accused, by ignoring the final report filed by the respondent police. In those circumstances, the learned Magistrate, has to necessarily record reasons for arriving at a such conclusion. But the learned Magistrate passed the order in a mechanical manner without recording any reasons for arriving at his satisfaction.

10 . Hence, as the order has been passed in a mechanical manner, without recording any reason for his satisfaction, the impugned order is liable to be set aside and the matter has to be remanded back to the court below for the purpose of passing a reasoned and speaking order by considering the final report filed by the second respondent, and protest petition filed by the defacto complainant.

11. In the result, the Criminal Revision Case is allowed and the order passed by the Court below is set aside and the matter is remanded back to the Court below and the Court below is directed to pass a reasoned and speaking order by considering the materials available on record. The above said exercise should be completed within a period of 6 weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai

2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai

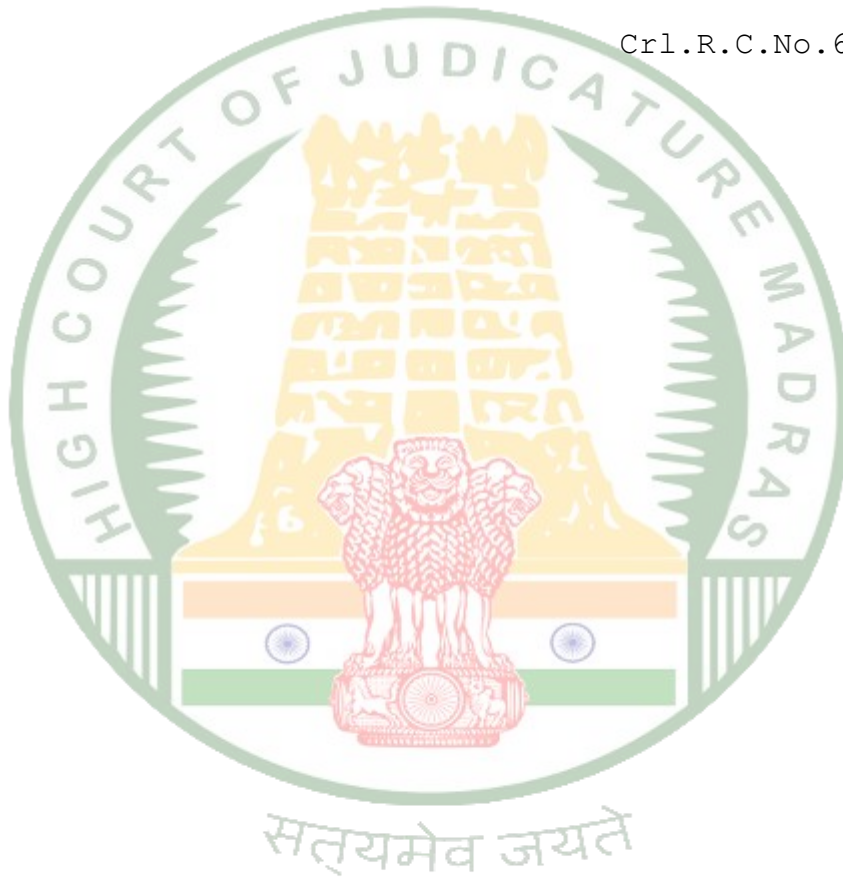
3. The Public Prosecutor,
High Court, Madras.

+1 Cc to Mr.V. Krishnamoorthy, sr 1708

+1 CC to Mr. William Shakesphere, sr 1730

Crl.R.C.No.654 of 2011

GJ(CO)
sp/16/5



WEB COPY