

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl. Revision Case No.1186 of 2015

and

M.P.No.1 of 2015

Mottaiyan

... Petitioner

vs.

1. State rep. by

The Sub Inspector of Police,
Attur Police Station,
Salem Dist.

2.Chinrasu

3.Selvakumar

4.Saraswathi

... Respondents

Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records and set aside the order passed by the Judicial Magistrate No.I, Attur in C.M.P.No.682 of 2013 in C.C.No.258 of 2009 dated 11.08.2015 and order further investigation by some other superior police office of the first respondent police, pass appropriate direction.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)
for R1

ORDER

Challenging the order dismissing the petitioner's application, filed under Section 173(8) Cr.P.C, for further investigation, the present revision has been filed.

2. The grievance of the petitioner/defacto-complainant is that, the investigation has not been properly conducted and the learned Judicial Magistrate has failed to take in to consideration the factual aspect as well as legal position in this regard and thereby dismissed the application of the petitioner for further investigation. Admittedly, in this case, the petitioner had approached the court below only after final report having been filed by the police and cognizance of the

offence has been taken by the learned Judicial Magistrate

3. Full bench of this Court in Chinnathambi @ Subramani vs. State), (2017) 2 CTC 241 held in para 44 as under:-

"(vii) The power to grant permission for further investigation under Section 173(8) Cr.P.C., after cognizance has been taken on the police report can be exercised by the Magistrate only on a request made by the Investigating Agency and not, at the instance of anyone other than the Investigating Agency or even suo motu.

(viii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. can be exercised by the Magistrate before accepting the Negative Police Report thereby acting on the Protest Petition by the victim or the defacto complainant." [emphasize supplied]

In the light of the above said legal position, this Court is of the view that the defacto complainant cannot maintain a petition under Section 173(8) Cr.P.C., seeking further investigation and this Court finds no illegality in the order passed by the court below.

4. In the above circumstances, there is no merits in the revision and the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg

To

- 1.The Judicial Magistrate No.I,
Attur.
- 2.The Sub Inspector of Police,
Attur Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras-104.

Cr1.R.C.No.1186 of 2015
and

Cr1.M.P.No.1 of 2015

SS (CO)
GN(08/11/2017)