

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.419 of 2016

and

Crl.M.P.No.2780 of 2016

D.R.Sekar
S/o.Ramadass

.. Petitioner

vs.

1.Bonda
S/o.Elumalai

2.The Superintendent of Police,
Mamallapuram,
Kanchipuram.

3.The Inspector of Police,
Thirukazhukuntam Police Station,
Thirukazhukuntam.

.. Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned District Munsif cum Judicial Magistrate, Thirukazhukuntam, passed in C.M.P.No.2145 of 2012 on 26.09.2014.

For Petitioner : Mr.Thangavadhana Balakrishnan

For Respondents : No appearance [R1]
Mr.M.Mohammed Riyaz
Government Advocate (Crl.side) [R2 & R3]

ORDER

This revision arises against the order of learned District Munsif cum Judicial Magistrate, Thirukazhukuntam, passed in C.M.P.No.2145 of 2012 on 26.09.2014.

2. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for respondents 2 and 3. Despite having been served, there is no appearance on behalf of first respondent/*de facto* complainant.

3. Case in Crime No.198 of 2006 on the file of the third respondent was registered for offences u/s.16 of Bonded Labour System (Abolition) Act, 1976 r/w 3(1)(vi(x) of Scheduled Castes and Scheduled Tribes Act, 1989. Pursuant to investigation, a final report was filed informing the case to be one of 'mistake of fact'. Upon receipt of notice, the *de facto* complainant has filed a protest petition. Though the final report has been filed u/s.173(8) Cr.P.C. and the same sought 're-investigation', such petition could well have been read as one seeking further investigation. Court below has expressed the view that records reveal commission of offence under the Bonded Labour System (Abolition) Act, 1976. Court below has further observed that in the course of arguments, no

objection was raised by the Assistant Public Prosecutor and such officer of Court had asked the Court to examine witnesses which course had not been objected to by the counsel for *de facto* complainant/protest petitioner. Expressing the view that a proper decision could be arrived at only on examination of witnesses and it would not be proper to direct re-investigation in the case which was eight years old, Court below proceeded to treat the case as one pending committal, accorded P.R.C.No.23 of 2014 and proceeded to examine witnesses. The *de facto* complainant was examined as PW-1 on 30.10.2014 and the records reveal that Court below had observed that recording of the *de facto* complainant's evidence had commenced on such date but had been adjourned to a further date towards the *de facto* complainant deposing 'properly'. The *de facto* complainant not having affixed the signature to his deposition of 30.10.2014, the Court record informs the reason as 'witness ran away'. In such circumstances, this Court was concerned of the possibility of the *de facto* complainant being under threat against proceeding against the accused. This Court has called for records. A perusal thereof informs that save the *de facto* complainant none of the witnesses examined has spoken to any acts of wrong doing by the accused persons. Their statements are to the effect that they were paid their salaries and provided food as also allowed to work at other places on dates when no employment was available with the accused persons. In the circumstances, this Court informs that there is no reason to

find wrong with the final report filed by the third respondent.

At best, the Court below could have directed further investigation, taken cognizance if material available justified such a course and tried the case for offences triable by it, committed the matter for trial to a sessions Judge or required the *de facto* complainant to prefer a private complaint. In no event could have it recorded evidence as done by it. The Criminal Revision Case shall stand allowed. The order of learned District Munsif cum Judicial Magistrate, Thirukazhukuntam, passed in C.M.P.No.2145 of 2012 on 26.09.2014, shall stand set aside also for the reason that the offences complained of were under the Bonded Labour System (Abolition) Act, 1976 and Scheduled Castes and Scheduled Tribes Act, 1989. Offences under the both enactments would necessarily have to be tried by Sessions Court. Connected miscellaneous petition is closed.

02.01.2017

Index:yes/no
Internet:yes/no
gm

To

- 1.The District Munsif cum Judicial Magistrate,
Thirukazhukuntam.
- 2.The Superintendent of Police,
Mamallapuram,
Kanchipuram.
- 3.The Inspector of Police,
Thirukazhukuntam Police Station,
Thirukazhukuntam.
- 4.The Public Prosecutor,
High Court, Madras.

C.T. SELVAM, J

gm

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