



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD)No.160 of 2016

and

Crl.M.P(MD)Nos.2355 and 5067 of 2016

S.Ramakrishnan

... Petitioner

Vs

1. The State rep.by
The Inspector of Police,
District Crime Branch
Nagercoil
Crime No.47 of 2012,
Kanyakumari District.

2. Ramadoss

... Respondents

(R2 impleaded vide order dated
13.06.2016 and made in Crl MP(MD)No.285/16
in Crl Rc (MD)No.160/16)

Prayer : Criminal Revision Case filed under Section 397 r/w 401 CR.P.C to call for the records relating to the order passed by the Judicial Magistrate No.I, Nagercoil in Crl.M.P.No.3269 of 2015 in C.C.No.159 of 2014 dated 29.02.2016 and set aside the same.

For Petitioner	: Mr.M.Subash Babu
For R - 1	: Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor
For R - 2	: Mr.S.Palanivelayutham

O R D E R

This Criminal Revision Case has been filed challenging the order dismissing the discharge petition, filed by the petitioner.

2.The petitioner is an accused in C.C.No.159 of 2014 on the file of the Judicial Magistrate No.I, Nagercoil for the offence under Sections 419, 468, 469, 471 and 120(b)(2) read with 34 IPC. The petitioner is the first accused. Earlier, he filed a petition to discharge him from the above charges. The Judicial Magistrate No.I, Nagercoil by the order dated 29.02.2016, dismissed the discharge petition. Thereafter, after signing the order and also after issuing copy of the order to the petitioner, on 11.03.2016, he passed another order stating that while typing



the order, the typist omitted to type two pages of the order. Hence, he corrected the earlier order and issued fresh order. Challenging the above order, the present Criminal Revision Case has been filed.

3. I have heard Mr. M. Subash Babu, learned counsel appearing for the petitioner, Mr. C. Mayilvahan Rajendran, learned Additional Public Prosecutor appearing for the first respondent and Mr. S. Palanivelayutham, learned counsel appearing for the second respondent.

4. The learned counsel appearing for the petitioner submitted that the Judicial Magistrate No. I, Nagercoil has already passed an order order 29.02.2016, dismissing the discharge petition. Once again, under the guise of correcting the error in the order, issued a fresh order, which is not permissible under law. Once the Magistrate passed the order and signed it, he has no right to alter the judgment in view of the bar under Section 362 Cr.P.C., But the Judicial Magistrate No. I, Nagercoil has altered the order and issued a fresh order.

5. Per contra, the learned counsel appearing for the second respondent submitted that it is only a clerical error sought to be corrected by the Judicial Magistrate No. I, Nagercoil and it is not amount to altering the order.

6. I have considered the rival submissions made on either side and perused the entire records carefully.

7. A perusal of the order it is seen that on 29.02.2016, the Judicial Magistrate No. I, Nagercoil passed a detailed order, dismissing the discharge petition. Thereafter, on 11.03.2016, he passed an official memorandum stating that while typing the order, the typist failed to type two pages of order. Hence, he includes two pages in the order and issued a fresh order.

8. From the perusal of the order, it could be seen that the Judicial Magistrate No. I, Nagercoil not included the omitted pages, but virtually passed the fresh order, dismissing the discharge petition, which is not permissible under law, in view of the bar under Section 362 Cr.P.C., Once the Court passed the final order dismissing the case, it shall not alter or review the order, except to correct some clerical or arithmetical error. But in the instant case, the Judicial Magistrate No. I, Nagercoil issued a fresh order which is barred under Section 362 Cr.P.C.

9. In the above circumstances, the impugned order passed in CrI.M.P.No.3269 of 2015 in C.C.No.159 of 2014 by the Judicial Magistrate No. I, Nagercoil is set aside and the matter is remitted to the Judicial Magistrate No. I, Nagercoil. The Judicial Magistrate No. I, Nagercoil is directed to consider the application



afresh and pass fresh orders after giving opportunity to both parties. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Consequently, Crl.M.P(MD)Nos.2355 and 5067 of 2016 are closed.

Sd/-

Assistant Registrar(P&A)

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/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Nagercoil.
2. -Do- Thro The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.
3. The Inspector of Police,
District Crime Branch, Nagercoil
Kanyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Subash Babu, Advocate Sr.No.78185

+1cc to Mr.S.Palanivelayutham, Advocate Sr.No.78107

MJ

VB/SV/MMS/SAR2/25/09/2017/3P/7C

Crl.R.C(MD) No.160 of 2016
11.09.2017