



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.04.2017

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WP.(MD)No.16348 of 2016

R.D.Chandrakumar

: Petitioner

-Vs-

1.The Commissioner of Police,
Madurai-2.

2.The Inspector of Police,
B.5- South Gate Police Station,
Madurai.

: Respondents

PRAYER: Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the second respondent to take action on petitioner's complaint dated 21.06.2016 in the light of the order dated 28.07.2016 passed by this Court in CrI.O.P.(MD)No.13061 of 2016.

For Petitioner
For Respondents

: Mr.M.Patturajan
: Mr.T.S.Mohammed Mohideen
Additional Government Pleader

O R D E R

On the complaint lodged by the petitioner, the Sub-Inspector of Police, B.5 South Gate Police Station, Madurai City registered a case in Cr.No.763 of 2016 on 04.09.2016 for the offences under Sections 419 and 120B I.P.C. against one Devawaram Gamaliel Paul and Manuel Jeyaraj. While so, the petitioner has filed the present writ petition with the above prayer.

2. Today when the matter was taken up for hearing, the learned Additional Government Pleader submitted that the investigation in Cr.No.763 of 2016 was completed and the charge sheet has been filed before the learned Judicial Magistrate No.IV, Madurai for the offences under Sections 417 and 418 I.P.C. against Devawaram Gamaliel Paul (A.1) and the same has been taken on file as C.C.No.25 of 2017.

3. The learned Counsel appearing for the petitioner/defacto complainant submitted that he has made specific allegations against Manuel Jeyaraj (A.2) who has already been arrayed as accused in the F.I.R, but strangely the police have not filed any charge sheet against him.



4. It is settled law that if a person mentioned in the F.I.R. is deleted in the charge sheet, an opportunity should be given to the defacto complainant to file protest application. In this case, no opportunity appears to have been given by the learned Judicial Magistrate No.IV, Madurai to the petitioner/defacto complainant to file a protest application before taking cognizance of the offences in the final report. Under such circumstances, if cognizance has been taken by the learned Judicial Magistrate No.IV, Madurai on the final report filed by the police in Cr.No.763 of 2016, the same is quashed. The petitioner is given two weeks' time from the date of receipt of a copy of this order to approach the learned Judicial Magistrate No.IV, Madurai and file a protest application and on filing of the protest application, the Judicial Magistrate No.IV, Madurai shall deal with the same in accordance with law laid down by *Vinay Tyagi Vs. State of U.P., and Others* reported in *Laws (All)-2010-8-369*.

5. This Court is setting aside only the cognizance order if passed by the learned Judicial Magistrate No.IV, Madurai, but the proceedings can be conducted in the same C.C. viz., C.C.No.25 of 2017 and they need not be any new C.C.No. assigned. The petitioner shall file a copy application within a period of three days from today.

6. With the above directions, this Writ Petition is disposed of.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

ssl/das

To

1.The Judicial Magistrate No. IV, Madurai.

2.The Commissioner of Police,
Madurai-2.

3.The Inspector of Police,
B.5- South Gate Police Station, Madurai.

1CC TO MR.. M. PATTURAJAN, ADVOCATE SR: 53037

1CC TO THE SPL GOVT PLEADER SR: 52042

AM SKN RSK SAR 3/24/04/2017/2P 6C

W.P. (MD) No.16348 of 2016
Dated: 20.04.2017