



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

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WEB COPY

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P. (MD) No.16180 of 2011

Stalin Rajkumar

... Petitioner/De-facto complainant

Vs.

State Rep. by
The Sub-Inspector of Police,
Central Crime Branch,
Madurai.
(Crime No.98/2007)

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the cognizance taken by the learned Judicial Magistrate No.I, Madurai, in C.C.No.189 of 2009 and direct him to re-investigate the abovesaid case.

For Petitioner : Mr.R.Paul Sukumar
For Respondent : Mr.K.Anbarasan
Government Advocate (Criminal side)

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to set aside the cognizance taken by the learned Judicial Magistrate No.I, Madurai, in C.C.No.189 of 2009 and direct him to re-investigate the abovesaid case.

2.The case of the petitioner is as follows:-

The petitioner preferred a complaint under Section 156(3) Cr.P.C., before the Judicial Magistrate Court No.I, Madurai, against 6 accused persons and the same was numbered as Cr.M.P.No.5687 of 2007, dated 12.10.2007. Accordingly, the learned Magistrate forwarded the complaint to the respondent police and thereafter, the respondent police registered a case for the alleged offences under



Sections 406, 420, 465, 468, 471 and 120-B IPC in Crime No.98 of 2007 on 31.12.2007 against all the accused. After conducting investigation, the respondent police filed a final report against A1 alone under Sections 406, 420, 465 and 471 I.P.C. and left out Section 120-B I.P.C. Though the Law Enforcing Agency removed the names of A2 to A6 from the charge sheet, they were cited as witnesses in the charge sheet. Aggrieved by the same, the petitioner filed a petition under Section 173(8) Cr.P.C., before the Judicial Magistrate Court No.I, Madurai, on 04.11.2009, which was numbered as Cr.M.P.No.5729 of 2010 only on 13.08.2010, but no progress was made in that petition and no counter was filed. Taking advantage of the final report submitted by the respondent police, the 1st Accused, viz., Parthiba Raja has filed a discharge petition under Section 239 Cr.P.C., on 30.11.2009. However, on 01.12.2011, the petitioner withdrew Cr.M.P.No.5729 of 2010 with liberty to move the High Court to ventilate his grievances for adding the other accused persons in the charge sheet by way of further investigation or re-investigation afresh.

3.The learned counsel for the petitioner submitted that the issue involved in this case is covered by the decision of this Court reported in 2010 (2) MLJ (Cr1) 833 [C.Ve.Shanmugam Vs. Deputy Superintendent of Police, Tindivanam Sub-Division, Rosanai Police Station, Tindivanam, Villupuram District and others], wherein this Court after discussing the said case elaborately gave a finding that before accepting a final report, where some of the accused, whose names find a place in the FIR have been omitted, the learned Magistrate must issue notice to the de-facto complainant and remitted the matter back to the learned Judicial Magistrate No.I, Tindivanam, directing him to issue notice to the petitioner therein and permitting him to file a protest petition or objections and after sufficient opportunity to the petitioner therein, the FIR named accused and the respondents 2 to 15 therein to make their submissions and then, to pass appropriate order on the final report.



4. In the present case on hand, though rightly the petitioner filed a petition under Section 173(8) Cr.P.C., before the Judicial Magistrate Court No.I, Madurai, however, he withdrew the said petition with liberty to approach this Court. The said withdrawal is contrary to the judgment of this Court in the case of C.Ve.Shanmugam [cited supra].

5. The learned counsel for the petitioner after seeing the directions issued by this Court in the decision cited supra, seeks permission of this Court to permit the petitioner again to file a petition under Section 173(8) Cr.P.C., before the Judicial Magistrate Court No.I, Madurai and a direction may be issued to the learned Magistrate to pass appropriate orders within a time limit that may be prescribed by this Court.

6. I have heard the learned Government Advocate (Criminal side) appearing for the respondent on the abovesaid submission made by the learned counsel for the petitioner.

7. In view of the abovesaid decision cited supra and the submissions made by the learned counsel for the petitioner, I am inclined to grant permission to the petitioner to file an appropriate petition before the Judicial Magistrate Court No.I, Madurai. Accordingly, the petitioner is permitted to file an appropriate petition before the said Court, within a period of three weeks from the date of receipt of a copy of this order and the learned Judicial Magistrate No.I, Madurai, is directed to pass orders on the same in accordance with law, after giving opportunity to the petitioner and all the accused persons, within a period of six weeks thereafter. Accordingly, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/



To

- 1.The Judicial Magistrate No.I,
Madurai.
- 2.The Sub-Inspector of Police,
Central Crime Branch,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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