

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.338 of 2018

Kunjannan

.. Petitioner

Vs.

1.Annamalai
2.Chidambaram
3.Perumal
4.Govindan
5.Settu
6.Perumal
7.Nadarajan
8.Azhakesan
9.Seenivasan
10.Sampath

.. Respondents

Prayer: Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C., to call for and set aside the order dated 22.07.2016 in Crl.M.P.No.2079 of 2016 passed by the District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District.

For Petitioner : Mr.P.G.Thiyagu

For Respondents : Mr.R.Johnsathyan (for R1 & R2)
K.Selvaraj

O R D E R

This criminal revision petition is preferred by the petitioner/defacto complainant against the order passed by the learned District Munsif cum Judicial Magistrate, Pennagaram made in Cr.M.P.No.2079 of 2016 dated 22.07.2016 wherein the learned Judicial Magistrate dismissed the protest petition filed by the petitioner/defacto complainant against the closing of final report.

2.Brief case of the petitioner/defacto complainant is that:

The prosecution case is that the petitioner belongs to Arunthathiyar caste and resides in the colony at Erkolpatti village and the petitioner was residing in a house which was built by the government for him and the said house got dilapidated and hence he demolished the same and put up fresh construction, against that the respondents/accused 1 to 10, who belong to Vanniyar caste joined together came to the place with stones, cycle chain, threatened him and abused using filthy

words by calling his caste name this incident was happened on 27.02.2016 at about 10.00 P.M. Due to the delay in registering the FIR, the petitioner filed the private complaint before the Judicial Magistrate, wherein the Court directed to register the FIR. The police registered the FIR in Crime Number 42 of 2016 on the file of the Ariyur Police Station under sections 147, 148, 506(ii) of I.P.C. r/w 3(i)(7) of S.C./S.T. Act. After investigation, the Inspector of Police filed the closure report as mistake of fact on 17.03.2016 and the learned Magistrate issued notice to the petitioner/defacto complainant. On appearance, a legal aid counsel was appointed and a protest petition in CrI.M.P.No.2079 of 2016 was filed.

3.The learned Magistrate, after perusing the documents and contentions raised by parties, dismissed the petition.

4.Aggrieved over the dismissal of protest petition, this criminal revision is filed.

5.The learned counsel for the appellant submits that the Court below misconstrued that the perusal of records and sworn statement for the purpose of taking cognizance enumerated under section 173(8) is quite different and distinct from the cognizance procedure commenced under section 200 to 205 of Cr.P.C. as the presence cognizance sought for, is a re-appreciation and perusing the material evidence produced by the police investigation and details of commission of offence is once elicited and ex-facie reading of the complainant elicits an occurrence of criminal offence which leads to cognizance and a detailed trial against the accused persons.

6.The learned counsel for the appellant submits that the Court below assigned two reasons such as digging the soil for foundation at night time caused the dispute, except the complainant no other witnessed has spoken about the commission of crime. As aforesaid, the protest petition under section 173 (8) is concerned, once the defacto complainant raised his protest against the final report which has been closed for the reason of mistake of fact, the statement of defacto complainant itself enough to throw light and final report that went negative and the Court is always open to rely upon the discrepancies, found in the final report. The reason of finding the defacto complainant itself as starting point of offence, the object of filing the protest petition is evaded and that reason is unnecessary and has no facts to substantiate the same.

7.The learned counsel for the appellant submits that the other reason of non-examination of witnesses is concerned, the entire evidence has been recorded by the investigation agency already and the examination of other supporting witnesses let in by the complainant that has not been taken into consideration as a matter of trial, nevertheless a point of taking cognizance under section 173(8) of Cr.P.C.

8.The learned counsel for the appellant submits that the Court below failed to understand the settled procedures under section 173(8) on receipt of the final report the Court may accept the same and frame the charge, in case of negative final report, the elements of accusation is discovered while perusing the reports and statement along with the final report and may forward the same for re-investigate further, then it will be a threat to social spirited persons, since the local police people will interfere in the present issues.

9.The learned counsel for the appellant submits that the respondent persons has no right to enter into the premises under the control of PWD Department and apart from that the point of protest petition is very limited and narrow scope to apply discretion, since it emerges from mandated provision under the relevant act.

10.The learned counsel for the appellant submits that the number of judgment of the Hon'ble Apex Court categorically states that preferring a private complaint in lieu of as a protest petition is not barred and it is completely distinctive from the cognizance stipulated under section 200 to 205. Since, the power of cognizance emerges from section 190(1)(a) of Cr.P.C.

11.The learned counsel for the appellant submits that the order passed by the Court below is a non speaking order except by assigning two reasons and that to on the conduct of the defacto complainant at the time of occurrence and the reiterating the decision of the investigation authority without any reference to materials placed by the police, the order subjectively is an improperly illogic and against the preponderance of probabilities.

12.The learned counsel for the appellant submits that the Court below is not an order of the reason since it stipulates except the present petitioner no other witnesses were examined as to the fact of abusing the petitioner by calling his caste name. But the statement of PW2 to PW5 explicitly deposed that the petitioner was abused and attacked with deadly weapons. The material fact of statement of witnesses was never been discussed in the impugned order and it is apparently bad and requires an interferences.

13.The learned counsel appearing for the respondents R1 and R2 supported the findings of the trial Court and sought for dismissal of the criminal revision.

14.I heard Mr.P.G.Thiyagu, learned counsel for the petitioner and Mr.R.Johnsathyan, learned counsel for the respondents 1 and 2 and perused the entire materials available on record.

15.It is seen from the records, that the investigation officer who filed the closure report enquired the witnesses as

alleged in the private complaint filed by the petitioner/defacto complainant. After closure report, in the protest petition the alleged witnesses were again examined and their statements were correctly appreciated by the trial Court.

16. There is no quarrel with the proportion and judgments cited in the grounds of the criminal revision petition. It is needless to say that in a criminal case, each case depends upon peculiar facts and circumstances.

17. In the result, this criminal revision petition is allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Pennagaram made in Cr.M.P.No.2079 of 2016 dated 22.07.2016, is set aside.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The District Munsif-cum-Judicial Magistrate,
Pennagaram, Dharmapuri District.

Copy To

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.P.G.Thiyagu, Advocate, S.R.No.20646

CRL.R.C.No.338 of 2018

LN(CO)

rrs 07/03/2019

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