

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.21509 of 2018

and

CrI.M.P.Nos.11743, 11744 of 2018

Indira

.. Petitioner

Vs.

1.The State Rep. by
The Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
(Crime No.10 of 2016)

2.D.Boopathi

3.V.Bharanitharan

.. Respondents

3rd respondent is impleaded as per the order dt:05/10/2018)
made in CRL.MP.12287/18

PRAYER:Criminal Original Petition has been filed under
Section 482 of Criminal Procedure Code to call for the records
in Committal Order dated 20.02.2017 passed by the Learned
Judicial Magistrate No.2, Coimbatore, now pending on the file of
the Learned Principal Subordinate Judge, Coimbatore in S.C.No.35
of 2017 and setaside the same.

For Petitioner : For S.Anathanarayan SC
Mr.A.Gokulakrishnan

For Respondents : Mr.R.Ravichandran
Government Advocate (CrI. Side)for R1

Mr.A.E.Ravichandran (for R2)
R3 :No Appoance

O R D E R

This petition has been filed under Section 482 of Criminal Procedure Code to call for the records in Committal Order dated 20.02.2017 passed by the Learned Judicial Magistrate No.2, Coimbatore, now pending on the file of the Learned Principal Subordinate Judge, Coimbatore in S.C.No.35 of 2017 and set aside the same.

2.The case of the prosecution is that the petitioner is the wife of one Gopal, filed a complaint before the 1st respondent police. In her complaint, the 2nd and 3rd respondents were implicated in her statement under Section 161 (3) Cr.P.C. that they have entered into a conspiracy to murder her husband and the 2nd respondent drove his car in a rash and negligent manner and dashed against her husband, who was travelling in a Honda Activa bike, due to which, her husband sustained grievous injury and admitted in a hospital.

3.Thereafter, a complaint has been filed and the said complaint was registered on 15.01.2016 in Crime NO.10 of 2016 under Section 307 IPC. Thereafter, the respondent police recorded the 161(3) Cr.P.C. statement, filed a charge sheet under Section 173(2)(ii) Cr.P.C. filed before the learned Judicial Magistrate No.2, Coimbatore in S.C.No.35 of 2017.

4.The learned Senior counsel for the petitioner would submit that neither the police authorities nor the learned Judicial Magistrate had served or furnished any copies of final report or notice on the informant enable him to file a protest petition before the learned Judicial Magistrate for appropriate action against the other accused in support of his contention. The learned Senior counsel relied upon the judgment reported in CDJ 1997 SC 1008 dated 11.09.1997 in the case of Union Public Service Commission Vs S.Papaiah and Others and paragraph 9 of the judgment is extracted hereunder:

"9.In the present case, admittedly, no notice was issued by the V Metropolitan Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the learned court accepting the final report. The issue is no longer re integra. A three-Judge Bench of this Court in the case of Bhagwant Singh v. Commr. Of Police speaking through Bhagwati, J. while dealing with a situation arising out of the report being forwarded by an officer in charge of a police station to the Magistrate under sub Section 2(i) of Section 173, stating that no offence appears to have been committed, opined that on receipt of such a report the Magistrate

can adopt one of the three courses i.e. (1) he may accept the report and drop the proceedings, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. the Bench, dealing with the first option (of dropping the proceedings) went on to say : (SCC p.542, para 4) "There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2) (i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report".

5.The learned counsel appearing for the private respondents would submit that he has no objection in furnishing the copy of the final report to the petitioner.

6.The learned Government Advocate (Crl. Side) would submit that either the law enforcing agency or the Trial Court has furnished copies to the petitioner.

7.On a perusal of the decision cited supra and the provisions of Section 173(2) of Cr.P.C. makes it clear that the informant is entitled to receive a copy of the final report. Without furnishing copy of the final report and filing it before Court is preventing the person to take further course of action. Hence, I have no hesitation to say that the petitioner is entitled to receive copy of the final report.

8.In view of the above, without furnishing the copy of the charge sheet filed under Section 173(2)(ii) is non est in law.

9. Accordingly, the order dated 20.02.2017, passed by the learned Judicial Magistrate No.2, Coimbatore and now pending on the file of the learned Principal Subordinate Judge, Coimbatore in S.C.No.35 of 2017 is set aside. The respondent is hereby directed to furnish copy of the final report to the petitioner within a period of two weeks. Thereafter, the learned Magistrate shall pass appropriate orders on the petition, if any, filed by the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To.

1.The Judicial Magistrate No.2
Coimbatore,

2.-do-Thro Chief Judicial Magistrate,
Coimbatore.

3.The Principal Subordinate Judge
Coimbatore.

4.The Inspector of Police,
Kovilpalayam Police Station,
Coimbatore District.
(Crime No.10 of 2016)

5.The Public Prosecutor
High Court of Madras.

+1cc to Mr.A.E.Raviachandran, Advocate, S.R.No.88877

+1cc to Mr.A.Gokulakrishnan, Advocate, S.R.No.88048

Cr1.O.P.No.21509 of 2018

RR(CO)
GSP(24/01/2019)