

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.3052 of 2016

Prof.D.S.Luther

...Petitioner

Vs.

1. The Deputy Commissioner of Police,
Mylapore Range,
Office of the Deputy Commissioner of Police,
Kutchery Road, Chennai 600 004.
2. The Sub Inspector of Police,
E-2, Royapettah Police Station,
Chennai - 600 014.
3. Rev.Immanuel Devakadatcham
Presbyter-in-charge
4. Samuel Aarun
5. Siva
6. John Mathew
7. Kovilpitchai
8. Linora James
9. Samuel Devaprasath
10. Stella Albert

...Respondents

(R3 to R10 are impleaded as
per the Order of this Hon'ble
Court dated 13.08.2018
made in Crl.MP.No.8686/2018
in Crl.OP.3052 of 2018)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, prayed to direct the respondents to take necessary steps for further investigation as requested in the petitioner/Defacto Complainant's representation dated 29/30.04.2015 in C.C.No.463 of 2015 on the file of the learned 18th Metropolitan Magistrate Court, Saidapet, Chennai in Crime No.515 of 2014 on the file of the second respondent .

For Petitioner : M/s.S.D.S.Philip
For Respondents : Mr.T.Shunmugarajeswaran
for R1 and R2

M/s.K.S.Sri Giri Prasath
for R3 to R10

ORDER

This petition has been filed by the Defacto Complainant under Section 482 of Cr.P.C, to direct the respondents to take necessary steps for further investigation as per the representation submitted by the petitioner dated 29/30.04.2015 in C.C.No.463 of 2015 on the file of the learned XVIII Metropolitan Magistrate Court, Saidapet, Chennai in Crime No.515 of 2014 on the file of the second respondent .

2. Heard Mr.S.D.S.Philip, learned counsel appearing for the petitioner/defacto complainant. Mr.T.Shunmugarajeswaran, learned counsel appearing for the first and second respondents. Mr.K.S.Sri Giri Prasath, learned counsel appearing for the respondents 3 to 10.

3. The learned counsel for the petitioner has submitted that based on the complaint given by the petitioner, the second respondent has registered a case in Crime No.515 of 2014 under Sections 147, 451 and 506(1) of I.P.C on 14.05.2014. He further submitted that inspite of several representations made by the petitioner, the investigation was very slow and finally on 23.01.2015, a final report has been filed under Sections 147, 451 and 506(i) of I.P.C and based on the same, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has taken the case in C.C.No.463 of 2015 against the respondents 3 to 10. He further submitted that the second respondent has not made a thorough search and investigation was not properly conducted. The relevant records were not seized and hence, the petitioner has submitted a representation dated 29/30.04.2015 before the first respondent and even thereafter, no steps have been taken for further investigation and hence he requests to direct the respondents to conduct further investigation.

4. The learned Government Advocate appearing for the respondents 1 and 2 has submitted that based on the complaint given by the petitioner, a case has been registered in Crime No.515 of 2014 and thereafter, the second respondent has conducted the investigation without any bias and filed the final report on 23.01.2015 and based on the same, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai has taken the case in C.C.No.463 of 2015 under Sections 147, 451 and 506(1) and hence, there is no necessity to conduct further investigation.

5. The learned counsel for the respondents 3 to 10 has relying up on the decision of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel vs. Sumanbhai Kanthibhai Patel and

others (Criminal Appeal No.1171 of 2016), has submitted that neither the learned Magistrate suo motu nor on an application filed before complainant/informant direct further investigation as per Section 173(8) of Cr.P.C and therefore, he prayed to dismiss the petition. The Hon'ble Supreme Court in Paragraph No.47 in the aforesaid decision has observed as follows:

" 47. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand."

6. From the aforesaid decision, it is clear that as per Section 173 (8) of Cr.P.C, further investigation can be ordered only on the request of the investigating officer. Further, investigation cannot be asked by the defacto complainant. But, in this case, admittedly, the defacto complainant has not filed any application before the Magistrate Court to give direction to the investigating officer for further investigation. Therefore, the aforesaid decision will not be applicable to the facts of this case.

7. In the additional typed set of papers filed by the learned counsel for the petitioner, a copy of the letter sent by the Assistant Commissioner of Police to the XVIII Metropolitan Magistrate, Saidapet, Chennai dated 28.04.2017 has been enclosed. In the said letter, the Assistant Commissioner of Police has stated that in view of the representation made by the defacto complainant, it was decided to conduct further investigation and also requested the concerned Magistrate to defer a Trial to enable him to conduct further investigation in

C.C.No.463 of 2015. From the aforesaid letter, it is clear that the Assistant Commissioner of Police, Royapettah range has decided to conduct further investigation. In the said circumstances, this court is of the view that this petition has become infructuous. It is open to the Investigating Officer to approach the learned Metropolitan Magistrate by filing a proper application under Section 173(8) of Cr.P.C seeking permission for further investigation.

8. For the aforesaid reasons, this petition is dismissed as infructuous.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vv/mbi

To

1. The XVIII Metropolitan Magistrate, Saidapet, Chennai.
2. Thro The Chief Metropolitan Magistrate, Chennai.
3. The Deputy Commissioner of Police
Mylapore Range
Kuthory Road, Chennai 4.
4. The Sub inspector of Police
E2 Royapettah Police station
Chennai 600 014.
5. The Public Prosecutor
High court, Madras 104.

+1 cc to Mr.K.K. Sivashanmugam, Advocate sr 56721.

+2 Ccs to Mr.S.D. Philip, Advocate sr 56662.

WEB COPY

Cr1.OP.No.3052 of 2016

PA(CO)
SP(11/09/2018)