

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.O.P.No.26264 of 2018

and

CrI.M.P.No.15114 of 2018

R.Moorthy ... Petitioner/Defacto-Complainant

Vs.

1.The Sub Inspector of Police,
B4 Taluk Police Station,
Villupuram-605 602.1st Respondent/Complainant

2.S.Sivaraj,
Elected Member of the Tamilnadu Legislative Assembly,
78, Rishivanthiyam Assembly Constituency,
Villupuram District, No.34, 6th Cross Street,
Raja Annamalai Puram
Chennai-28 ...2nd Respondent/Accused No.3

Prayer: Criminal Original Petitioner filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.No.47 of 2012 order dated 24.01.2012 without given a summon/notice to the petitioner and without given an opportunity to be heard at the time of consideration of the report. Trial case has posted on 20.03.2018 before the Learned Judicial Magistrate Court-1, Villupuram, on the file of the Judicial Magistrate at Villupuram and set aside the docketal order.

For Petitioner : Mr.R.Moorthy (party-in-person)

For Respondent : Mr.R.Ravichander (Criminal Side)
Government Advocate

O R D E R

The petitioner is the defacto complainant. Aggrieved by the cognizance taken by the learned Judicial Magistrate Court I, Villupuram in C.C.No.47 of 2012 based on the final report filed by the Law Enforcing Agency under Section 173(2) of Cr.P.C., without furnishing the final report to the defacto

complainant, the present petition is filed.

2.The case of the petitioner are as follows:

On 26.03.2011 at 12.30 FN., the petitioner, his wife M. Jayanthi and his son M. Sathya Narayanan entered the District Collector Office for submitting his wife's nomination as an independent candidate for Tamil Nadu General Legislative Assembly Election 2011 at 78, Rishivanthiyam Assembly constituency before the Returning Officer. At that time, the previous elected member, one S.Sivaraj A3 and other persons joined together and attacked the petitioner, his wife and his son, thereby they sustained grievous injuries and were admitted at Mundiampakkam Government Hospital. The wound Certificate was also issued. Thereafter, he lodged a complaint before the respondent police for taking appropriate action against the accused persons. However, the respondent police did not take any action. Therefore, was forced to file a CrI.O.P.No.8884/2011. Though the complaint was registered, however, the investigation was not conducted in a proper manner. Aggrieved by the same, he filed CrI.O.P.No.8884/2011 under Section 482 Cr.P.C, as party-in-person before this Court to transfer the investigation in FIR No.169 of 2011 to the CBI. However, this Court, by an order dated 30.10.2017, the same was dismissed for non prosecution.

3.Thereafter, the Law Enforcing Agency conducted investigation and filed the final report under Section 173(2) Cr.P.C., implicating two persons A1 Kumar and A2 Vijayan without giving any notice to the petitioner and had not implicated the main accused persons who had actively participated in the offence and the trial Court also accepted the final report and issued process for trial. In view of the non furnishing of the final report to the petitioner, he is not able to file appropriate petition before the lower Court for implicating the other accused persons. Hence, the petitioner filed the present petition under section 482 of Cr.P.C., against the order dated 24.01.2012 in CC No.47/2012 on the file of Judicial Magistrate No.1 Villupuram for taking cognizance against the accused persons.

4.For better understanding of the relevant Sections 173 (1) and 173 (2) Cr.P.C., provisions are extracted as follows:-

"173.Report of police officer on completion of investigation

(i) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on

a police report, a report in the form prescribed by the State Government, stating-

- (a) the name of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given."

5. On a perusal of 173(2)(ii), it is stated that the Officer shall also communicate the action taken by him to the person if any, by whom the information relating to the commission of offence was first given. In the present case, the petitioner is an informant and non furnishing of the final report to the petitioner is unsustainable and the learned Public Prosecutor fairly concedes that charge sheet was also not furnished to him. In the above aspect, the Honourable Apex Court reported in (1985) 2 SCC 537, following para in the judgment would be relevant:-

"4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-Section (2) (i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceedings or (3) he may direct further investigation under sub section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding 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. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2) (ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. 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. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on

account of the difficulty of effecting service of the notice on the informant. But we do not think tis can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section 92) (i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of sevice of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

6.A perusal of the above decision makes it clear, before taking cognizance, based on the final report, the Magistrate has to give opportunity to the first informant enabling the first informant to persuade the Magistrate for taking cognizance of the offence. In the present case, the Law Enforcing Agency did not furnish the final report to the first informant. Hence, he is not able to file appropriate application before the trial Court for ventilating his grievance. Hence, the cognizance taken by the magistrate is unsustainable one. Accordingly, the order dated 24.01.2012, cognizance taken by the learned Judicial Magistrate No.I Villupuram is set aside and the respondent police is hereby directed to furnish copy of the final report to the petitioner within a period of two weeks. Thereafter, the petitioner may file appropriate application before the learned Magistrate within a period of two weeks. If any application is filed, the learned Magistrate shall pass appropriate orders in accordance with law.

7.With the above terms, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

AT

To

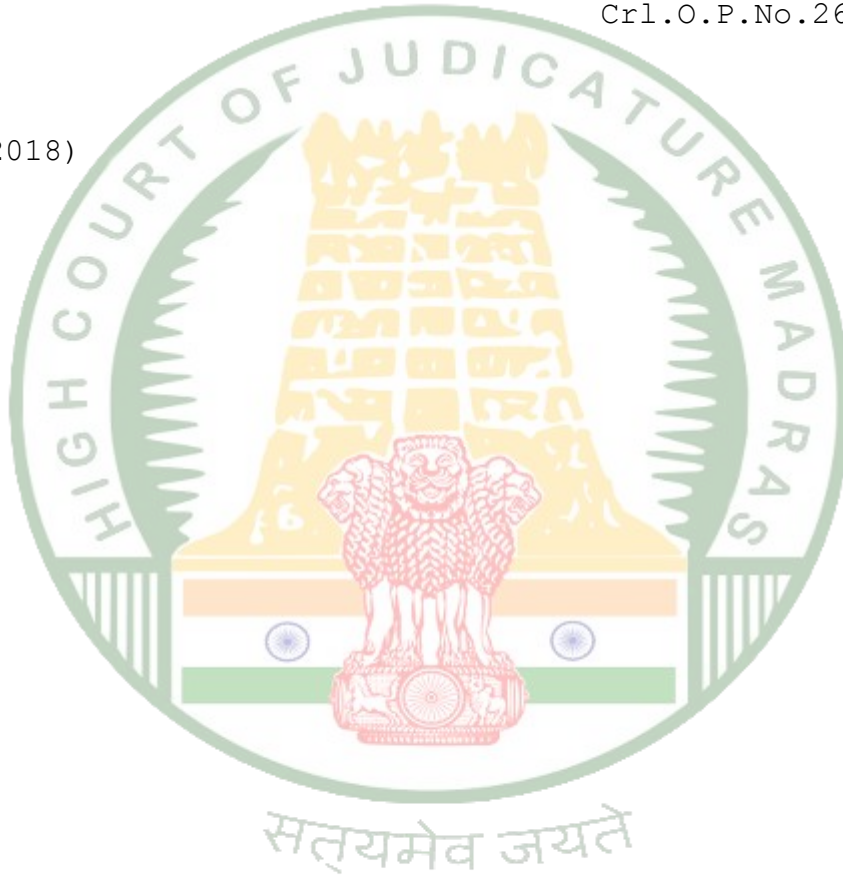
1.The Sub Inspector of Police,
B4 Taluk Police Station,
Villupuram-605 602.

2. The Judicial Magistrate Court-1,
Villupuram,

+lcc to Mr.R.Moorthy, Advocate, S.R.No. 82727

Crl.O.P.No.26264 of 2018

GN(26/12/2018)



WEB COPY