IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.28790 of 2018

S.Ganeshkumar ... Petitioner

Vs.

The State,
Represented by the Inspector of Police,
Town Police Station,
Bharathita Street,
Karaikal-609 602. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the respondent to conduct further investigation and alter the final report by including Sections 381, 406, 408 and 120B of the Indian Penal Code in the respondent's Final Report No.120 of 2016 dated 31.12.2016 on the file of the Judicial Magistrate-II, Karaikal.

For Petitioner : Mr.Shabnam

For Respondents : Mr.Balamurugan
Additional Public Prosecutor
(Puducherry)

ORDER

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This petition has been filed seeking for a direction to the respondent police to conduct further investigation and to alter the final report by including Sections 381, 406, 408 and 120B of I.P.C.

2.The learned counsel for the petitioner would submit that the petitioner is the de-facto complainant. The accused persons were the employees of the petitioner and they had committed

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theft of all the stock and money from the petitioner's company. Based on the complaint given by the petitioner, an FIR was registered in Crime No.120 of 2016 for an offence under Section 381, 408 and 477-A r/w Section 34 of IPC. After the completion of the investigation, the respondent police have filed a final report on 03.02.2018 against four accused persons for an offence under Sections 420 and 477-A r/w Section 34 of IPC.

3.The learned counsel for the petitioner would further submit that based on the materials collected during the course of investigation, an offence under Sections 381, 406 and 408 and 120B is also made against the accused persons and therefore an altered final report has to be filed by incorporating these provisions.

4.The learned Additional Public Prosecutor on instructions, would submit that even though the respondent police have filed a final report for an offence under Sections 420, 477-A and 34 of IPC., the Court below at the time of framing of charges can always alter the provisions, based on the materials collected during the course of investigation. The learned Additional Public Prosecutor would further submit that even in the course of trial, the Court below has very wide powers under Section 216 of Cr.P.C to alter/add any offence based on the materials that surface during the course of trial. Therefore, the learned Additional Public Prosecutor would submit that there is no requirement for further investigation or to file an altered final report, at this stage. This Court is in complete agreement with the submissions made by the learned Additional Public Prosecutor. The petitioner being the de-facto complainant is given sufficient safeguards under Sections 301 and 302 Cr.P.C., to assist the prosecution as well as to conduct the prosecution. This right has now been affirmed by the Apex Court in the judgment reported in 2016 (3) Madras Law Weekly Notes (Criminal) 161. Therefore, the right of the de-facto complainant to participate in the proceedings is now a well recognized right.

5.As rightly pointed out by the learned Additional Public Prosecutor, the Court below does not act as Post Office by merely receiving the final report filed by the respondent police. Taking cognizance and framing charges is a Judicial Act, which requires application of mind. Therefore, the Court has all the powers to frame charges under any provisions which has not been spelt out in the final report, based on the materials collected by the police in the Course of investigation. That apart, the Court is also empowered to alter/add the charges at any stage till passing of the final judgment.

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6.Therefore, this Court is not inclined to give any positive direction as sought for by the petitioner. The petitioner can always work out his right in the manner indicated herein above and at an appropriate stage. Hence, this Criminal Original Petition is disposed of with the above direction.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsg1/ia

To

1.The Inspector of Police,
Town Police Station,
Bharathita Street,
Karaikal-609 602.

2.The Public Prosecutor,
High Court,
Madras.

+1 cc to M/s.Shabnam, Advocate, SR No.85552

Crl.O.P.No.28790 of 2018

ssm(28/12/18)

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