



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD)No.15398 of 2018

and

Crl.M.P (MD) No.6803 of 2018

Mani

... Petitioner/Defacto
Complainant

Vs.

The State rep. by
The Inspector of Police
Illuppur Police Station
Pudukottai District
Crime No.96 of 2012

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the cognizance taken by the learned District Munsif cum Judicial Magistrate, Keeranur in C.C.No.23 of 2013.

For Petitioner : Mr.D.Ramesh Kumar
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner who is the defacto complainant, aggrieved by the cognizance taken by the learned District Munsif cum Judicial Magistrate, Keeranur in C.C. No.23 of 2013.

2. The learned counsel for the petitioner would submit that the First Information Report was registered in crime No.96 of 2012 for offences under Sections 147,148,323,324,506(ii) of IPC and Section 25(1)(c) of Arms Act as against six named persons. Subsequent to the registration of the First Information Report, respondent police proceeded further with the investigation and have filed a final report on 02.10.2012 before the learned Judicial Magistrate, Keeranur and the same has been taken on file in C.C.No.23 of 2013. The respondent police have filed the final report only with regard to four accused persons and has dropped the names of two other accused persons. He would further submit that the offences with regard to Section 25(1)(c) of the Arms Act has also been deleted even insofar as four accused persons against whom the final report has been filed. It is the submission of the learned counsel that when the accused persons were dropped, no notice was served on the petitioner and no opportunity was afforded to the petitioner to file protest petition.



3. It is a well settled principle of law which has been reiterated in catena of judgments that when some of the accused whose name found place in the FIR, have been omitted in the final report, the Magistrate must issue notice to the defacto complainant. Useful reference can be made in this regard to the judgment in **C.Ve.Shanmugam -vs-Deputy Superintendent of Police, Tindivanam Sub Division, Rosanai Police Station, Tindivanam, Villupuram District and others** reported in **2010(2) (MLJ) Cr1.Pg.833**. In this case, the learned Judicial Magistrate, Keeranur has failed to follow the settled principles of law and has failed to issue any notice to the defacto complainant, when he took cognizance of the case in C.C.No.23 of 2013. The procedure followed by the learned Judicial Magistrate is illegal.

4. The petitioner is at liberty to file protest petition before the court below as against the dropping names of two of the accused persons in the Final Report and also with regard to the omitting of offences under Section 25(1)(c) of the Arms Act. On such petition being filed, the learned District Munsif cum Judicial Magistrate, Keeranur is directed to consider the same in accordance with law.

5. With the above direction, the Criminal Original Petition is disposed of. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The District Munsif Cum Judicial Magistrate
Keeranur, Pudukottai District
2. The Inspector of Police
Illuppur Police Station
Pudukottai District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.D.Ramesh Kumar, Advocate SR.No.81531
Aav

MK/RSK/SAR 2/17.09.2018/2P/5C

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Cr1.O.P. (MD) No. 15398 of 2018
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