



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.OP(MD)No.18171 of 2013

and

M.P.(MD)No.1 of 2013

1.M.Sivakumar
2.A.Shankar
3.R.Govinda Rajan
4.Ritan Nayan Thakkar ... Petitioners/ Accused

Vs.

1.The Sub Inspector of Police,
Tiruppuvanam Police Station,
Madurai District. ...1st Respondent/ Complainant

2.K.Ramasamy ...2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the order dated 20.06.2013 in C.C.No.40 of 2013 on the file of the Additional District Munsif cum Judicial Magistrate, Manamadurai and set aside the same as illegal.

For Petitioners : Mr.M.E.Ilango
For 1st Respondent : Mr.A.P.Balasubramani
Government Advocate (Crl.side)
For 2nd Respondent : No appearance

ORDER

The second respondent herein lodged a complaint against the petitioner herein before the first respondent. The first respondent registered a case, but, then closed the same as mistake of fact.

2.The second respondent herein upon notice from the jurisdictional Magistrate, lodged a private complaint. The same was taken on file by the learned Judicial Magistrate, Manamadurai and the process was issued straight away without following the amendment made to Section 202 Cr.P.C in the year 2005 which reads as follows:-



"Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there was sufficient ground for proceeding."

3. Admittedly, the petitioners are residing outside the territorial limits of the jurisdiction Magistrate, Manamadurai. Therefore, this procedure ought to have been followed. Instead the process has been issued straight away.

4. The issue raised by the learned counsel for the petitioners is covered by the decision of the Hon'ble Supreme Court reported in 2013 2 SCC 488 (National Bank of Oman Vs. Barakara Abdul Aziz and another). The Hon'ble Supreme Court after setting out the statutory provision held that if the provisions of Sections 202 Cr.P.C have not been followed, the proper course would be to set aside the order and direct the concerned Magistrate, to pass order afresh, following the provisions of Section 202 Cr.P.C.

5. Following the above said decision of the Hon'ble Supreme Court, the impugned order passed by the trial Court is set aside. The matter is remitted to the file of the jurisdiction Magistrate, Manamadurai to pass orders on merits and in accordance with law.

6. This criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Munsif cum Judicial Magistrate,
Manamadurai.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Judicial Magistrate, Manamadurai.



3.The Sub Inspector of Police,
Tiruppuvanam Police Station,
Madurai District.

+1CC TO Mr.M.E.Ilango, Advocate, Sr No.62008

WEB COPY

CRL.OP (MD) No.18171 of 2013
and
M.P. (MD) No.1 of 2013
17.04.2018

rmi

MS/CM-PN/SAR.1/14.05.2018/3P.5C