

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Cr1.R.C.No.283 of 2012

M.Sampathkumari

... Petitioner/Defacto Complainant

Vs.

1. Sabarinath
2. R.Navaneethakrishnan
3. Vadivukarasi @ vadivu ... Respondents 1 to 3/A1 to 3
4. State by Inspector of Police,
Erode South Police Station,
Erode District. 4th Respondent/Respondent
(Crime No.227 of 2011)

Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order dated 25.02.2011 in S.T.C.No.123 of 2011 on the file of the Judicial Magistrate No.III, Erode and consequently, direct the trial Court to serve notice to the petitioner/informant and afford him an opportunity of being heard and frame the charges afresh by allowing the revision petition.

For Petitioner : Mr.R.Shase for
Mr.Guruprasad

For Respondents : Mr.P.K.Sivakumar for R1 to R3
Mr.P.Kritika Kamal, GA for R4

O R D E R

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for respondents 1 to 3 and the learned Government Advocate appearing for the fourth respondent.

2. This revision petition is filed under Section 397 r/w of Code of Criminal Procedure, aggrieved by the order of the Judicial Magistrate in S.T.C.No.123/2011 dated 25.02.2011.

3. The learned counsel for the revision petitioner would submit that the order impugned is ex facie, perverse, illegal and contra to establish the principles of law. According to the learned counsel, a complaint was lodged by the revision petitioner on 04.02.2011 against five named persons for alleged offence of using abuse, language, causing hurt and wrongful restrain. Pursuant to the complaint, the respondent-police completed the investigation and filed final report only for the offence under Section 294(b) of IPC, though all the ingredients for the offence under Sections 323 and 506(ii) IPC were made out both in the complaint as well as in the statements of the witnesses. The respondent-police has altered the final report excluding Sections 147, 323, 506(ii) IPC r/w 294(b) IPC. The final report was filed only against three of the accused, despite the complaint was lodged against five accused. The Investigating Officer has not informed the de-facto complainant about the dropping of charges against the remaining two accused and exclusion of Sections 147, 323, 506(ii) of IPC. Further, after filing the final report, the respondents 1 to 3 were summoned. They appeared before the Magistrate and pleaded guilty. Agreed their guilty plea, the Judicial Magistrate has imposed fine of Rs.300/- and given quietus to the criminal prosecution.

4. The learned counsel appearing for the de-facto complainant/revision petitioner would submit that though the First Information Report dated 04.02.2011 implicated 5 persons for the offence under Sections 147, 294(b), 323 and 506(ii) of IPC, the Investigating Officer has altered the charges and also dropped two of the named accused. The alteration Report has been submitted to the Court on the same day of complaint i.e. 04.02.2011. Thereafter, on completion of investigation, he has filed Final Report on 25.02.2011 for the offence under Sections 294 (b) IPC alone against three accused person, who are the respondents herein.

5. As pointed out by the learned counsel appearing for the revision petitioner, the records reveal that the investigation has been completed and the final report has been filed without proper investigation and the report has been filed in a cavalier manner omitting two accused and deleting major offence as alleged against respondents 1 to 3. While doing so, at least the Investigating Officer should have taken care to intimate the victim/de-facto complainant about the final report, which he has failed to do so. If the Investigating Officer had put the de-facto complainant to notice about the completion of the investigation and the content of the final report, opportunity to protest would have arose. The failure to intimate has lead to denial of the right to protest.

6. Further more, the learned Magistrate, without considering the materials placed before him along with the final report, had accepted guilty plea and imposed flee bite sentence of fine Rs.300/- and closed the prosecution. A little amount of devotion to peruse the records would have averted in justice.

7. In the light of the above facts, without going into further analysis of the demerits and merits of the action of the prosecution and the trial Court, the revision petition is allowed. The order dated 25.02.2012 passed by the trial Court is hereby set aside.

8. Accordingly, this revision petition is allowed. The de-facto complainant is permitted to file a protest petition before the concerned Magistrate, within a period of 30 days from the date of receipt of a copy of this order. The learned Judicial Magistrate shall proceed the protest petition. If any other offence is made out from the material facts placed by the prosecution, the same may be taken cognizance and complete the trial and dispose of the case on merits and in accordance with law, within a period of six months from the date of framing of charge.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III, Erode.
2. The Inspector of Police, Erode South Police Station, Erode District.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.Guruprasad, Advocate sr.no.12218

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nr 22/03/2019