

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2018
PRONOUNCED ON : 28.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1606 of 2013
and
MP.No.1 of 2013

Sudhakar

... Petitioner

- Vs -

1. Kutti

2. SHO State,
Sub Inspector of Police,
Tindivanam Town Police Station,
Tindivanam.

3. The Deputy Superintendent of Police,
Jeyapuram,
Tindivanam.

... Respondents

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to set aside the order dated 02.12.2013 passed in CMP.No.4161 of 2013 by the learned Judicial Magistrate No.1, Tindivanam.

For Petitioner : Mr.R.C.Paul Kanagaraj

For respondents: Mr.K.Balu for R1
Mr.R.Ravichandran
Government Advocate (Crl. Side)
for RR2 & 3

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O R D E R

This Criminal Revision Case has been filed to set aside the order dated 02.12.2013 passed in CMP.No.4161 of 2013 by the learned Judicial Magistrate No.1, Tindivanam.

2. The first respondent herein is the de facto complainant and the petitioner was shown as accused in a petition filed by the de facto complainant in CMP.No.4161 of 2013 before the learned Judicial Magistrate No.1, Tindivanam. It is seen from

the records that the first respondent/de facto complainant had filed a petition before the learned Judicial Magistrate No.1, Tindivanam seeking a direction to the second respondent police to register a case against the revision petitioner/accused and investigate the matter. The learned Magistrate, after taking the complaint on file, forwarded the same to the third respondent herein to register the FIR and conduct the investigation by order dated 02.12.2013. Challenging the said order, the accused preferred the present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that the order of the learned Magistrate passed in CMP.No.4161 of 2013 is without disclosure of reasonable causes for passing such order and the same is contrary to law and against the equity principles of natural justice. He would further submit that the learned Magistrate has passed the order mechanically without application of judicial discretion. The direction given to the third respondent is against the law as the third respondent is not empowered to register the FIR other than the special category cases. The learned Magistrate has not followed the law laid down by the Hon'ble Supreme Court and also Section 197 Cr.P.C since the revision petitioner/accused was the Inspector of Police. Therefore, for taking cognizance of the application in CMP.No.4161 of 2013 sanction is a must under the provision of Section 197(1)(b) of Cr.P.C. Further, he would submit that the grant of proper sanction by a competent authority is a sine qua for taking cognizance of the offence. Section 197 Cr.P.C is an embargo to take cognizance of an offence allegedly committed by a public servant, who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have committed by him while purporting to act in the discharge of his official duty except with the previous sanction of the Government and in the case of a person, who was employed at the time of commission of an alleged offence in connection with the affairs of the State, except with the previous sanction of the Government. The learned Magistrate, without following the provisions contemplated under law, received the petition filed by the first respondent/de facto complainant, forwarded the same to the third respondent for registering FIR and directed to file a report, which warrants interference. In support of the contention, the learned counsel placed reliance on the following judgments of the Supreme Court :-

- (i) Anil Kumar & Ors Vs. M.K.Aiyappa & Anr [2013 STPL 18774 SC]
- (ii) Mohd. Iqbal Ahmed Vs. State of A.P [1979 STPL 303 SC]
- (iii) Priyanka Srivastava & another Vs. State of U.P and Ors [2015 STPL 4290 SC]

4. The learned Government Advocate (Crl.Side) appearing for the respondent/State would submit that the accused was working as an Inspector of Police, Head Quarters, Tindivanam. The first respondent/de facto complainant made allegations against the revision petitioner/accused and he filed a complaint before the police station, in which, the revision petitioner was working, to take action against him. Since no action was taken on the said complaint, he filed a petition before the learned Judicial Magistrate No.1, Tindivanam seeking to take action against the revision petitioner herein. Since the revision petitioner himself was working as the Inspector of Police in the jurisdictional police station, the third respondent is empowered to register the FIR, which also falls under the special category cases. Further, the learned Magistrate, after going through the complaint filed by the first respondent/de facto complainant, forwarded the same to the Superior Officer of the revision petitioner for registering the case and directed to file a report. The revision petitioner has been given opportunity to give statement. After investigation, if no allegation was made out, the third respondent has to file a closure report or if there is any material, they have to charge sheeted to proceed further. As far as the Section 197 of Cr.P.C is concerned, to prosecute the public servant is necessary. In this case, there is an allegation against the revision petitioner, who is happened to be a Inspector of Police in the jurisdictional police station. Since the de facto complainant apprehends that he would not get any fair investigation, he moved before the learned Magistrate by way of the complaint. After perusing the petition, the learned Magistrate has rightly forwarded the same to the third respondent herein and directed to investigate and file a report. The sanction of prosecution is not necessary for registering and investigating the case and the same is necessary before taking cognizance of the offence. Therefore, the order of the Court below does not warrant any interference.

5. Heard the counsel for the revision petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials available on record.

6. Admittedly, in this case, the first respondent/de facto complainant had some grievance and levelled allegations against the revision petitioner herein. The revision petitioner is happened to be an Inspector of Police of the jurisdictional police station. Therefore, the de facto complainant filed a petition before the learned Magistrate seeking direction to register the case and investigate the case further. Mere registering the case would not cause any prejudice to the revision petitioner until the final report has been filed against him. Therefore, the contention raised by the revision

petitioner is not acceptable and the authorities cited by the learned counsel are not applicable to the present case on hand. The revision petitioner has got every opportunity to defend the case in various circumstances before the Court. The third respondent can obtain the sanction of prosecution from the department, if necessary, and laid a charge sheet. This Court finds no perversity in the order passed by the learned Magistrate. There is no merit in the revision and the same is liable to be dismissed.

7. In the result, this Criminal Revision Case is dismissed. The order dated 02.12.2013 passed in CMP.No.4161 of 2013 by the learned Judicial Magistrate No.1, Tindivanam, is hereby confirmed. Connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

KMI

To

1. The Judicial Magistrate No.1,
Tindivanam.
 2. The Chief Judicial Magistrate, Villupuram
 2. SHO State,
Sub Inspector of Police,
Tindivanam Town Police Station,
Tindivanam.
 3. The Deputy Superintendent of Police,
Jeyapuram,
Tindivanam.
 4. The Public Prosecutor,
High Court, Madras-104.
- +1 CC to Mr.R.C.Paul Kanagaraj, Advocate sr 73751.

Cr1.R.C.No.1606 of 2013

NRL (CO)
SP(23/09/2019)