

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No. 6268 of 2019
and CrI.M.P.Nos.3476 & 3478 of 2019

A.Sivarajan

... Petitioner

Vs.

State represented by
Station House Officer,
Bahour Police Station,
Puducherry-607 402.
Crime No.111 of 2014

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to STC No.643 of 2016 on the file of the learned Judicial Magistrate No.IV, Puducherry and quash the same.

For Petitioner : Mr.R.Natarajan

For Respondent : Mr.V.Balamurugane
Public Prosecutor (Pondy)

O R D E R

This Criminal Original Petition has been filed only on the ground that the learned Trial Court, without applying mind, simply putting seal on the charge sheet filed by the respondent and takes cognizance of the offence under section 34 B (ix) of the Police (Puducherry Amendment) Act, 1966.

2. It cannot be permitted. When the learned Magistrate takes cognizance of the charge sheet filed by the police, the Magistrate should peruse the evidence produced by the prosecution, apply his mind and after his independent satisfaction has to be reflected in the order taking cognizance.

3. In this regard, the learned counsel for the petitioner relied upon the Judgement of the Hon'ble Supreme Court of India reported in AIR 2018 SC 1229, which reads as follows :

"17. On a perusal of the order of the learned Magistrate taking cognizance, it is apparent that the learned Magistrate observes that the Sessions Court has already made out a prima facie case. Such finding would be difficult to sustain as the revisional court only observed certain aspects in furtherance of remanding the matter. Such observations could not have been made by the Magistrate as he was expected to apply his independent mind while taking cognizance. In the case on hand, we recognize the limitation on the appellate forum to review subjective satisfaction of the Magistrate while taking cognizance, but such independent satisfaction unless reflected in the order would make it difficult to be sustained. There is no dispute that Justice should not only be done, but should manifestly and undoubtedly be seen to be done. It is wrought in our constitutional tradition that we imbibe both substantive fairness as well as procedural fairness under our criminal justice system, in the sense of according procedural fairness, in the making of decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention."

4. Therefore, the order passed by the learned Judicial Magistrate No.IV Puducherry, taking cognizance, cannot be sustained and it is accordingly set aside. However, the learned Judicial Magistrate No.IV Puducherry, is directed to peruse the charge sheet along with the statements filed by the respondent and satisfy himself about the independent witnesses and take cognizance afresh. Thereafter, issue summons to the petitioners. In view of the above, the petition is ordered. It is also made clear that the trial Court is directed to pursue with the case uninfluenced by any observations made by this Court for the purpose of taking cognizance as against the accused.

5. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mpa

To

1.The Judicial Magistrate No.4,
Puducherry.

2.Station House Officer,
Bahour Police Station,
Puducherry-607 402.

3.The Public Prosecutor,
Puducherry.

+1cc to Mr.Natarajan, Advocate Sr.22773

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srg 23/04/2019