

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.816 of 2019

R.Vijay

..Petitioner/Complaint

Vs.

1. Sivaram

2. Sunitha

...Respondents/Respondents

3. The State represented by

The Inspector of Police,
S10-Pallikaranai Police Station,
Chennai.

..Respondent/Respondent

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 01.08.2019 passed in Crl.M.P.No.5107 of 2019 on the file of the Judicial Magistrate Court, Alandur.

For Petitioner : Mr.M.Velmurugan

For R3 : Mr.G.Ramar

Government Advocate(Crl.Side)

ORDER

The petition in Crl.M.P.No.5107 of 2019 filed under Section 156 (3) Cr.P.C. before the Judicial Magistrate Court, Alandur, has been dismissed on 01.08.2019, challenging which, the petitioner is before this Court under Section 397 r/w 401 Cr.P.C.

2. Heard Mr.Velmurugan, learned counsel for the petitioner, who submitted that the order passed by the Magistrate under Section 156 (3) Cr.P.C., conclusively decides the rights of the parties and therefore, the same is subject to the revisional jurisdiction of this Court under Section 397 r/w 401 Cr.P.C. in the light of the law laid down by the Supreme Court in Amarnath and others Vs. State of Haryana and another¹. The learned counsel for the petitioner, in particular, drew the attention of this Court to paragraph No.6 of the ruling, which reads as under:

"6.....It seems to us that the term "interlocutory order" in Section 397 (2) of the 1973 Code has been used in a restricted sense and

¹(1977) 4 SCC 137

not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court. (emphasis supplied)"

3. The learned counsel for the petitioner also placed strong reliance on the judgment of the Supreme Court in P.Sundarrajan and others Vs. R.Vidhya Sekar².

4. One can have no quarrel with the aforesaid proposition of law. The question is whether the order of a Magistrate refusing to direct the police to register an FIR completely shuts out all opportunities for the complainant.

5. In the opinion of this Court, the complainant does not have an unqualified right to demand a police investigation in all circumstances. Even if the Magistrate refuses to exercise his powers under Section 156 (3) Cr.P.C., it is always open to the petitioner to file a private complaint and proceed to prosecute the accused. Even under Section 202 Cr.P.C., the Magistrate has power to order investigation after cognizance of the offence is taken.

6. In Nathan Vs. Vaithinathan & Others³, this Court has held that the order under Section 156 (3) Cr.P.C. is not revisable under Section 397 (2) Cr.P.C.

² (2004) 13 SCC 472

³ 1975 CriLJ 1994

7. In *Kamlapati Trivedi Vs. State of West Bengal*⁴, a three Judge Bench of the Supreme Court has held in paragraph No.50 of its judgment, that an order of further investigation is an executive order and is not a judicial order. Thus, when an order under Section 173 (8) Cr.P.C. itself has been held to be an executive order, an order under Section 156(3) Cr.P.C. passed even before the Magistrate has taken cognizance of the offence, can, by no stretch of imagination, be held to be otherwise.

In view of the above, this petition is closed with liberty to the petitioner to prefer a private complaint and the Trial Court shall proceed to examine the same without in any manner being influenced by the dismissal of the petition under Section 156 (3) Cr.P.C.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Alandur.
2. The Inspector of Police,
S10-Pallikaranai Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras, Chennai -104.

AKM/22.10.19/3P-4C /

Cr1.R.C.No.816 of 2019