

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.8885 of 2017 and
Crl.M.P.No.6399 of 2017

E.Prem Kumar

... Petitioner

Versus

- 1.The Director General of Police,
Government of Tamil Nadu,
Mylapore,
Chennai-600 004.
 - 2.The Additional Director General of Police (CBCID),
Crime Branch CID,
Pantheon Road,
Egmore,
Chennai-600 008.
 - 3.The Superintendent of Police (CBCID),
CBCID South Zone,
Pantheon Road,
Egmore,
Chennai-600 008.
 - 4.The Inspector of Police,
CBCID, Ooty,
The Nilgiris District.
 - 5.The Joint Director,
Central Bureau of Investigation, Chennai Zone,
Chennai.
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to quash the final report by the fourth respondent on 31.01.2017 before the chief Judicial Magistrate, Coimbatore in C.C.No.23 of 2017.

For Petitioner : M/s.M.Ravi

For R1 to R4 : M/s.M.Prabhavathy,
Additional Public Prosecutor

For R5 : M/s.K.Srinivasan,
Special Public Prosecutor (CBI)

ORDER

This Criminal Original Petition has been filed to quash the final report filed by the 4th respondent before the learned Chief Judicial Magistrate, Coimbatore in C.C.No.23 of 2017.

2.The petitioner, who is the defacto complainant in Crime No.1 of 2015 has given a complaint against 16 named persons and 3 others and he is a member of CSI Kovai, Thirumandalam Church, which functions under the Church of South India Trust Association. This association is running several educational institutions. According to the petitioner, some of the institutions in Coimbatore Diocesan are misappropriating the funds. Against which he lodged a complaint on 07.11.2013. On receipt of the complaint dated 11.05.2015, the 4th respondent/the Inspector of Police, Crime Branch CID, The Nilgiris Unit registered a case in Crime No.1 of 2015 for the offence under Sections 406, 408 r/w 34 of IPC and filed the charge sheet on 31.01.2017 against three persons only before the learned Chief Judicial Magistrate, Coimbatore and the same is taken on file as C.C.No.23 of 2017. The copy of the charge sheet has been sent to the defacto complainant by the registered Speed Post on 06.02.2017, which the petitioner admitted to have received the same.

3.The contention of the learned counsel for the petitioner is that in the complaint dated 07.11.2013, the petitioner had given specific instance and specific overtact against the named accused and others, who misappropriated and swindled the funds of the church. On perusal of the charge sheet in Crime No.1 of 2015, it is seen that there is no explanation for what reason the other accused have not been charged. Since no worthwhile investigation was carried out, the petitioner made representation to the 1st to 4th respondent on 22.11.2016 and proof of the same is also produced. Thereafter, the charge sheet filed was on 06.02.2017. Against which the present petition.

4.it is seen that the remedy available to the petitioner is to file a protest petition before the trial Court setting out his reasons and grievance. According to the petitioner, only the copy of charge sheet in Crime No.1 of 2015 has been sent to

him and no R.C.S notice as regards dropping of charges and also dropping of the names of the accused in F.I.R (Crime No1 of 2015) had been served to him. Further, he was not given any opportunity to make his protest by filing a protest petition along with available materials and to make his submissions.

5.The Apex Court in the case of "Bhagwant Singh Versus The Commissioner of Police and Another" reported in AIR 1985 SC 1285 has held as follows:-

"There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

6.Followed and elaborated in "(2010) 2 MLJ (Cr1) 833 [C.Ve.Shanmugam V. Deputy Superintendent of Police, Tindivanam Sub-Division and others]".

7.Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report.

8.In view of the facts obtaining in this case, the learned Magistrate should have issued notice to the defacto complainant before accepting the final report as some of the persons, whose name figured in FIR was excluded in the final report. This is not having been done, the right of the defacto complainant to file a protest application has been foreclosed.

9.In view of the same, the petitioner is at liberty to make a submission by filing protest petition before the trial Court. On receipt of the same, the trial Court is directed to pass appropriate orders on merits.

10.With the above direction, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CJ Conf)

//True copy//

Sub Assistant Registrar

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To

- 1.The Director General of Police,
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The Nilgiris District.
- 5.The Joint Director,
Central Bureau of Investigation, Chennai Zone,
Chennai.
6. The Chief Judicial Magistrate,
Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Ravi, Advocate SR.No.83242

CRL.O.P.No.8885 of 2017

KK(CO)
GMY(25/10/2019)