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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1483 of 2017

and

Crl.M.P.No.15570 of 2017

P.Muthuammal

...Petitioner/Defacto Complainant

Vs.

The Station House Officer,
Aladi Police Station,
Cuddalore District.

... Respondent/Respondent

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C to set aside the order dated 07.10.2017 made in Crl.M.P.No.3999 of 2017 on the file of the Judicial Magistrate - II, Viruthachalam.

For Petitioner : Mr.S.Rajanikanth

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl.Side)

ORDER

This Criminal Revision has been filed against the order of dismissal dated 07.10.2017 made in Crl.M.P.No.3999 of 2017 by the learned Judicial Magistrate - II, Viruthachalam. The said Crl.M.P. was filed seeking further investigation.

2. The case of the petitioner is that he has preferred the complaint against 10 persons. The respondent police registered a case based on the complaint given by the petitioner in Cr.No.44 of 2015 for the offences under Sections 147, 148, 294 (b), 323, 506(ii) IPC & 436 IPC r/w. Sec.3 and 4 of Tamil Nadu Prevention of Public Property Damages Act, 2012 r/w. 149 of IPC. After investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate, Virudhachalam for the offence under Section 147, 148, 294(b), 323, 506(ii) IPC r/w. Sections 3, 4 of TNPPD Act, 2012 and the same was taken on file in P.R.C.No.16 of 2016. Aggrieved against the said charge sheet, the petitioner filed a petition in Crl.M.P.No.3999 of 2017 before the learned Judicial Magistrate - II, Virudhachalam,



under Section 173 (8) of Cr.P.C seeking further investigation. The learned Magistrate, after hearing both sides, dismissed the petition by order dated 07.10.2017 observing that prima facie, there are allegations made out against the petitioner.

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3. Aggrieved against the above said order dated 07.10.2017, the petitioner/complainant has preferred the present revision before this Court.

4. The learned counsel for the petitioner would submit that the respondent police initially registered the case for the offences under Sections 147, 148, 294(b), 323, 324, 506(ii) IPC & 436 IPC r/w. Section 3 of Tamil Nadu Prevention of Public Property Damages Act, 2012 but thereafter without any substantial reason they failed to proceed with the charge sheet for the very same offence and laid the impugned charge sheet for the offences under Sections 147, 148, 294(b), 323, 506(ii) IPC r/w. Sec.3 and 4 of Tamil Nadu Prevention of Public Property Damages Act, 2012 r/w. 149 of IPC. He further submitted that offence under Section 436 of IPC has to be tried by Sessions Court. They filed the charge sheet in which Section 436 of IPC has been deliberately omitted in order to do favour to the accused. After filing the charge sheet before the learned Magistrate, the respondent police have not examined the petitioner and the witnesses who were present and saw the occurrence. The said fact has not been considered by the learned Magistrate and he had erroneously dismissed the petition, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the respondent police investigated the matter with the available materials on records and they came to the conclusion that the offence was committed under Sections 147, 148, 294(b), 323, 506(ii) IPC r/w. Sec.3 and 4 of Tamil Nadu Prevention of Public Property Damages Act, 2012 r/w. 149 of IPC and Sections 3 and 4 of TNPPD Act. There is no material to implicate the accused for the offence under Section 436 of IPC, which does not call for any interference.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Though the petitioner was not examined and the witnesses on behalf of the petitioner were also not examined, before laying the charge sheet, it is the duty of the investigating officer to record the statement of the defacto complainant and also the persons whom he referred as witnesses have to be examined and the statements of the witnesses has to be recorded under Section 161 Cr.P.C. The learned Magistrate has dismissed the petition for one reason that the case was taken on file in



P.R.C.No.16 of 2016 and therefore, refused to order further investigation under Section 173 (8) Cr.P.C. the same is not acceptable. Therefore, this Court is of the view, the order passed by the learned Judicial Magistrate - II, Virudhachalam in Crl.M.P.No.3999 of 2017 dated 07.10.2017 is liable to be set aside. The respondent police is directed to conduct further investigation on the prima facie allegations made in the complaint itself and lay the charge sheet.

In the result, this Criminal Revision is allowed. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Station House Officer,
Aladi Police Station,
Cuddalore District.

2.The Judicial Magistrate - II,
Virudhachalam.

+1 CC to Mr.R.Thirumoorthy, advocate sr 36995.

Crl.R.C.No.1483 of 2017

AD(CO)
SP(13/01/2020)