

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.1238 of 2019

Avinashippan

.. Petitioner/Accused

Vs

1.The Superintendent of Police,
Thirupur District Police Station,
Angeripalayam Main Road,
Tirupur.

2.The Inspector of Police,
Land Grabbing Cell,
Thiruppur District,
Tirupur.
(Crime No.39/2013)

.. Respondents

Prayer:- This Criminal Revision Petition is filed, under section 397 of Cr.P.C read with 401 of Cr.P.C., to set aside the closure order of the Judicial Magistrate cum Land Grabbing cases, Tirupur in protest petition 1 of 2016 in Crime No.39 of 2013 on 06.09.2018.

For Petitioner : Ms.R.Nasrine

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed by the petitioner/accused, seeking to set aside the closure order of the Judicial Magistrate cum Land Grabbing cases, Tirupur in Protest Petition No.1 of 2016 in Crime No.39 of 2013 on 06.09.2018.

2.This Court heard the learned counsel for the petitioner and the Learned Additional Public Prosecutor, appearing for the respondents.

3.The petitioner is the complainant, on whose instance, the case in Crime No.39 of 2013 was registered by the second respondent police on 18.11.2013. The second respondent, after completing the investigation, closed the case and served notice under RCS.No.13 of 2014 on 29.10.2014. After the filing of the closure report, the petitioner had filed the protest application and the same was numbered as Protest Petition No.1 of 2016. The petitioner had not appeared before the Court on 06.09.2018 and the learned Magistrate finding that the petitioner was absent on several occasions, and that he had failed to produce witness eventhough sufficient time was granted, after perusing the final report and being satisfied with the report, accepted the report and closed the protest petition. Against the closure of the protest petition, this Criminal Revision Petition has been filed.

4.The learned counsel for the petitioner would submit that the petitioner being a senior citizen, aged about 73 years, was unable to appear before the Court and that the learned Magistrate, by a cryptic order without issuing any notice to him for appearance and also without application of mind had dismissed the petition.

5.The learned counsel for the petitioner would submit that the duty of the Magistrate is not only limited to readily accepting the final report it is also incumbent upon him to go through the materials and after hearing the complaint and considering the contents of the protest petition, finally decide the future course of action, whether to continue with the matter or to bring the curtains down. In this case, the learned Magistrate without referring to the contents of the protest petition and materials available on record, had passed the cryptic order which needs to be set aside.

6.The learned counsel would further pray that taking into consideration, the age of the victim, one more opportunity may be given to put forth his case.

7.The learned Additional Public Prosecutor would submit that after notice was served, the petitioner had filed the protest petition. However, since the petitioner did not appear, the learned Magistrate, after perusal of the final report and being satisfied with the final report, had closed the protest petition.

8.Heard both sides.

9.I have perused the order passed by the learned Magistrate. The trial Court finding that the petitioner had not appeared on several occasions and had not produced the witnesses, after perusing the final report and after being satisfied, had closed the protest petition. However, nothing is on record to show that what are the materials, the learned Magistrate has gone through and on what basis he had arrived at a satisfaction.

10.This Court is of the opinion that taking into consideration the facts of the case and taking into consideration the age of petitioner is about 73 years, an opportunity may be given to him. In view of the above, the order dated 06.09.2018 passed in Protection Petition No.1 of 2016 by the learned Judicial Magistrate cum Land Grabbing Cases, Tirupur, is set aside. The petitioner is directed to appear before the learned Magistrate on 02.12.2019 without fail and on such appearance, the petitioner shall be given an opportunity to put forth his case. The learned Magistrate shall take the protest petition No.1 of 2016, hear and pass order in accordance with law within a period of two months from 02.12.2019. If the petitioner fails to appear on 02.12.2019, the learned Magistrate is at liberty to pass orders based on the available materials.

11.Accordingly, this Criminal Revision Petition is allowed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Judicial Magistrate cum Land Grabbing cases,
Tirupur.

2.The Superintendent of Police,
Thirupur District Police Station,
Angeripalayam Main Road, Tirupur.

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3.The Inspector of Police,
Land Grabbing Cell, Thiruppur District, Tirupur.

4. The Public Prosecutor, High Court, Madras.

+lcc to Ms.R.Nasrine, Advocate sr.95889(19/11/2019)

Crl.R.C.No.1238 of 2019

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nr 18/11/2019



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