

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
06.02.2019

Date of Pronouncing Judgment
13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1089 of 2018 and
Crl.M.P.No.12717 of 2018

N.Mohanraja

...Petitioner

Vs.

The State by
The Inspector of Police,
Alandurai Police Station,
Coimbatore District.
(Crime No.149 of 2016)

...Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records and set aside the order dated 04.07.2018 made in Crl.M.P.No.552 of 2018 on the file of the learned Judicial Magistrate No.V, Coimbatore and further issue direction appointing the Deputy Superintendent of Police, Perur Division, Coimbatore District or any other independent agency headed by an Officer in the rank of the Deputy Superintendent of Police, to conduct further investigation into the matter and file the final report as expeditiously as possible.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

O R D E R

The petitioner is de-facto complainant and respondent is complainant. The respondent/Police registered the case, based on the complaint given by the revision petitioner in Crime No.149 of 2016. After investigation the final report filed by the respondent police found that there is no offence, therefore, it was closed on mistake of fact. The Revision Petitioner/de-facto complainant herein filed the Protest Petition to reject the final report filed by the respondent police. The Magistrate has recorded a statement from the revision petitioner/de-facto complainant and held that there is no sufficient materials to issue process against the accused person and ordered investigation by the Inspector of Police under Section 202 Cr.P.C and to file a report.

2. Aggrieved against the above said order dated 04.07.2018, the de-facto complainant has preferred this present criminal revision before this Court.

3. The learned counsel for the revision petitioner would submit that since the Police has registered the case and after investigation final report has been filed. Thereafter, the revision petitioner/de-facto complainant filed the Protest Petition to reject the final report filed by the respondent police and seeks to order for further investigation. The Magistrate ordered for investigation and directed to investigate the matter under Section 202 CR.P.C. The learned counsel placed reliance on the Judgment of Hon'ble Supreme Court in the case of Bhagwant Singh -vs- Commissioner of Police & Another, reported in 1985(2) SCC 537 and wherein the Hon'ble Supreme Court held as follows:

"4. Now, when the report forwarded by the Officer incharge of a police station to the Magistrate under Sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process; or (2) he may disagree with the report and drop the proceeding; or (3) he may direct further investigation under Sub-section (3) of Section 156 and require the police to make a further report, the report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding; or (2) he may disagree with the

report and taking the view that is sufficient ground for proceeding further, take by the cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Sub-section (3) of Section 156....."

4.The learned Government Advocate (Crl. Side) appearing for the respondent/Police would submit that even under Section 202 Cr.P.C the Magistrate has got power to direct the Police to investigate the matter and to file a report under Section 202 Cr.P.C.

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

6.It is not in dispute that the respondent police registered the case based on the complaint given by the de-facto complainant in Crime No.149 of 2016. Subsequently, after investigation the respondent police filed a final report. Aggrieved with the final report, the revision petitioner filed Protest Petition before the Magistrate to reject the final report filed by the respondent police and to order for further investigation.

7.Though the Magistrate is of the opinion that it is a fit case to be ordered for investigation under Section 202 Cr.P.C. If a private complaint was filed by the party in order to find out as to whether or not sufficient ground for proceeding further the Magistrate may direct the Police to conduct investigation under the above mentioned Section. Where as in this case the petitioner lodged complaint against the accused before the respondent Police, the Police also registered a case and filed a final report aggrieved by the same, the petitioner filed a protest petition, therefore, the impugned order passed by the learned Magistrate is liable to be set aside and the Deputy Superintendent of Police, Perur Division, Coimbatore is directed to conduct further investigation under Section 156(3) Cr.P.C and to file a final report before the Magistrate.

8.With the above directions, this Criminal Revision Petition is disposed of. No costs. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

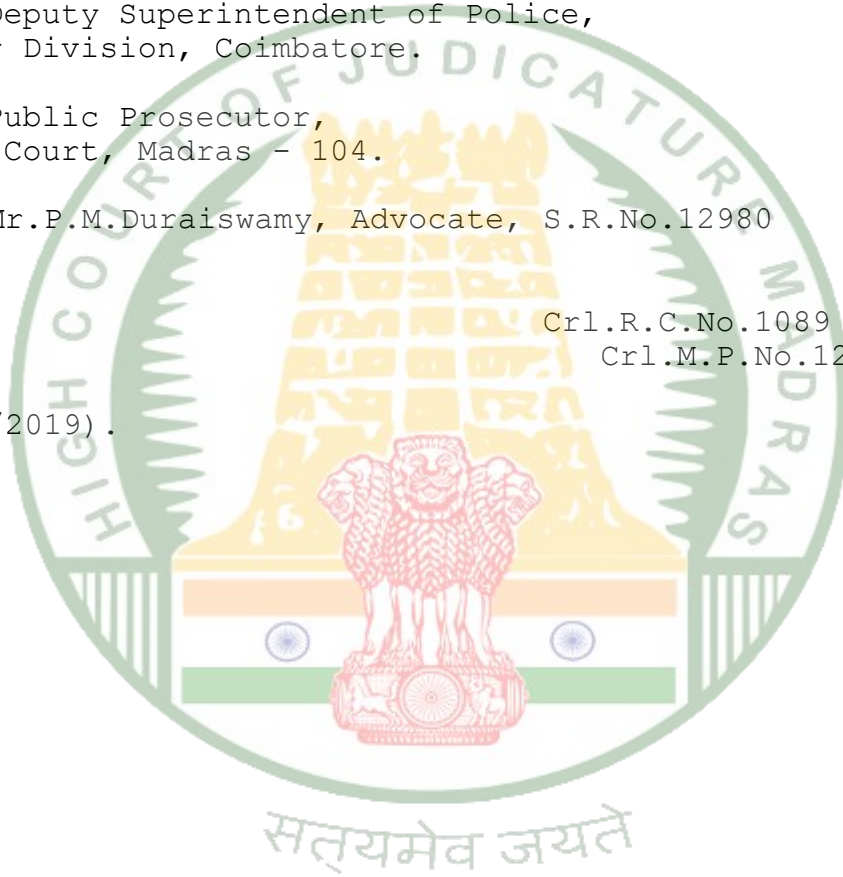
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To

1. The Judicial Magistrate Court No.V,
Coimbatore.
 2. - do - through The Chief Judicial Magistrate,
Coimbatore.
 3. The Inspector of Police,
Alandurai Police Station,
Coimbatore District.
 4. The Deputy Superintendent of Police,
Perur Division, Coimbatore.
 5. The Public Prosecutor,
High Court, Madras - 104.
- +1 cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.12980

Crl.R.C.No.1089 of 2018 and
Crl.M.P.No.12717 of 2018

SV(CO)
SSM(08/03/2019).



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