

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1380 of 2018 and
Crl.M.P.No.16004 of 2018

M.Appusamy

...Petitioner/Defacto Complainant

-Vs-

1. Palanisamy
2. Muthukumar
3. Gandhimathi
4. Vinitha
5. Sumathi
6. Velathal

...Respondents/Accused 1 to 6

7. State rep. by

The Inspector of Police,
Anamalai Police Station,
Coimbatore District.

(Crime No.223 of 2013)

...Respondent/Complainant

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records relating to the order dated 04.09.2018 made in C.M.P.No.105 of 2014 in S.C.No.38 of 2014 on the file of the learned Assistant Sessions Judge, Pollachi, and set aside the same by allowing this criminal revision case.

For Petitioner : M/s.N.Manoharan

For Respondents : Mr.N.Ponraj for RR1 to 6

: Mr.R.Ravichandran

Govt. Advocate (Crl.Side) for R7

ORDER

The revision petitioner is a defacto complainant and based on the complaint given him, a case was registered in Cr.No.223 of 2013 against the respondents 1 to 6 by the 7th respondent police. After completing investigation, 7th respondent/police has filed a charge sheet before the learned Judicial Magistrate No.I, Pollachi, and since the case was triable only by the Court of Sessions, the same was committed to Principal Court of Sessions and the Sessions Court taken the case on file in S.C.No.38 of 2014 and subsequently made over the same to the Court of Assistant Sessions Judge, Pollachi, for disposal in

accordance with law. The petitioner has filed a miscellaneous petition under Section 173 (8) of Cr.P.C. seeking further investigation. The learned Assistant Sessions Judge, by order dated 04.09.2018 dismissed the petition, against which, the petitioner is before this Court.

2 The learned counsel for the petitioner would submit that the learned Assistant Sessions Judge dismissed the petition only on the ground that petition seeking further investigation should be filed before the committal Court only and not before the trial Court. The petitioner being a defacto complainant has every right to ask further investigation. Therefore the order passed by the learned Assistant Sessions Judge, Pollachi, warrants interference.

3 The learned counsel for the respondents 1 to 6 would submit that, after taking cognizance of the case, the Magistrate has no power to order for further investigation. In support of his contentions, the learned counsel rely on the decisions rendered by the Hon'ble Supreme Court reported in (2017) 4 SCC 177 (Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others). Therefore, petitioner can file a petition before the Court of Sessions and hence the order passed by the learned Assistant Sessions Judge warrants interference.

4 The learned Government Advocate (Crl.Side) appearing for the 7th respondent police would submit that at the instance of the defacto complainant further investigation cannot be done at this stage. Therefore, the learned Assistant Sessions Judge has rightly dismissed the petition, which does not call for any interference.

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

6 It is seen that the petitioner has filed a petition seeking further investigation and the Sessions Judge has dismissed the same stating that the same should be filed before the committal Court. The petitioner has filed a complaint and based on that 7th respondent police has registered a case and after investigation filed a charge sheet before the Magistrate, since the case was triable only by the Court of Sessions, the same was forwarded to the learned Assistant Sessions Judge, Pollachi, through the Principal Court of Sessions. It is not the grievance of the petitioner that the witnesses mentioned by the petitioner has not been examined and the materials submitted by him was not considered by the prosecution. The respondent police have investigated the witnesses and filed a charge sheet, for which the petitioner cannot say that witness cited by him alone has to be examined. It is for the prosecution to examine any

person who is relevant to the case, besides the witnesses cited by the petitioner/defacto complainant.

7 Further, the Hon'ble Supreme Court and this Court time and again held that the prosecution can invoke Section 173 (8), if there is necessity for further investigation. But in this case, no circumstances warrants to invoke Section 173(8) of Cr.P.C. If at all, the petitioner has any grievance, he can avail his remedy in the manner known law, but not by way of invoking 173(8) at this stage. This Court finds no merit in the revision and the same is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

cgi

To

1. The Assistant Sessions Judge, Pollachi.
2. The Inspector of Police, Anamalai Police Station, Coimbatore District.
3. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer, Criminal Section (Records)
High Court, Madras

+1cc to Mr.N.Manokaran, Advocate SR.No.22864

CrI.R.C.No.1380 of 2018 and
CrI.M.P.No.16004 of 2018

GJ II(CO)
GMY(10/05/2019)

WEB COPY