

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.30725 of 2018

and

Crl.MP.No.18024 of 2018

1.M.Balasubramanian

2.Sivakozhundhu

3.Sivaprakash

4.Manthiramurthy

5.Ganesan

6.Ramakrishnan

7.Marudhupandian

8.Jayaraman

.. Petitioners

Versus

The Revenue Division Officer,
Cuddalore District,
Cuddalore.

... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in P.R.C.No.3 of 2015 on the file of the learned Judicial Magistrate - II, Cuddalore, Cuddalore District.

For Petitioners: Mr.V.Kannadasan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in P.R.C.No.3 of 2015 on the file of the learned Judicial Magistrate - II, Cuddalore, Cuddalore District.

2. When the 8th accused had challenged the charge sheet in P.R.C.No.3 of 2015 before this Court, the proceedings insofar as the 8th accused was quashed, on the ground that

since the F.I.R was registered under Section 176 (1) of Cr.P.C., the Revenue Divisional Officer was not empowered to conduct the enquiry. The relevant portion of the order passed in Crl.O.P.No.8062 of 2018 dated 20.09.2019, reads as follows:-

"5. Section 176 of Cr.P.C reads as herein:

(1) When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry
Explanation-In this section, the expression "relative" means parents, children brothers, sisters and spouse".

6. The provision makes it mandatory for the Judicial Magistrate or the Metropolitan Magistrate to conduct an enquiry, in cases, where any person dies or disappears among other circumstances. While that being so, the FIR came to be registered under Section 176 of Cr.P.C, and the Revenue Divisional Officer has chosen to conduct the enquiry, which is apparently not permissible in view of Section 176 of Cr.P.C. When the foundation for the entire private complaint itself has been commenced on an illegal procedure, the consequent private complaint cannot be maintained. On this ground, the complaint is liable to be quashed.

7. The other ground raised by the learned

counsel for the petitioner is that the earlier complaint has been dismissed for non-prosecution. In the said dismissal order dated 14.11.2014, the learned Magistrate had observed that the complaint was pending for about a year and the complainant has not appeared before that Court except on the date of presentation of the complaint and the learned Magistrate was of the view that the complainant has no intention to conduct the case. He had further observed that inspite of several opportunities granted, the complainant has not come forward to examine her side witness as enunciated under proviso to Section 202 of Cr.P.C. On this ground also, the learned Magistrate has dismissed the complaint. The second complaint apparently has been presented without challenging the earlier order. No leave has obtained nor was the dismissal of the first complaint disclosed in the second complaint. The learned Magistrate, before taking cognizance of the said complaint has also not been appraised of the earlier dismissal order. While that being so, the second complaint itself would not be maintainable, since it has not been preferred on any changed circumstances, but on the same cause of action.

8. For all the reasons stated above, I am of the view that the petitioner is entitled to the relief as sought for in this petition. Consequently, the proceedings in PRC No. 3 of 2015 on the file of the Judicial Magistrate No.II, Cuddalore, insofar as it relates to the petitioner/A8 is concerned, stands quashed."

3. Since the petitioners herein have also been arrayed as accused A1 to A7 and A11 in the same P.R.C.No.3 of 2015, the order passed by this Court in CrI.O.P.No.8062 of 2018 shall also be applicable to the present petitioners. Hence, the proceedings in P.R.C.No.3 of 2015 on the file of the learned Judicial Magistrate - II, Cuddalore, Cuddalore District, stand quashed, insofar as the petitioners herein are concerned.

Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

bri

To

- 1.The Revenue Division Officer,
Cuddalore District,
Cuddalore.
- 2.The Public Prosecutor,
High Court of Madras.
3. The Judicial Magistrate II,
Cuddalore,
Cuddalore District.

+lcc to Mr.V.Kannadasan, Advocate, S.R.No. 91486

Cr1.O.P.No.30725 of 2018
and
Cr1.MP.No.18024 of 2018

NRL(CO)
GN(12/12/2019)