



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
CORAM

DATED:10.04.2019

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

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CrI.R.C(MD)No.79 of 2019

Jeyaraman : Revision Petitioner/Complaint

Vs.

1.Vincent
2.Malika Mical : Respondents/Respondents

Prayer: Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, against the order, dated 03.01.2019 made in CrI.M.P.No.7628 of 2018 passed by the Judicial Magistrate No.II, Trichy.

For Revision Petitioners : Mr.T.Vadivelan

For Respondents : Mr.D.Gnanasekaran

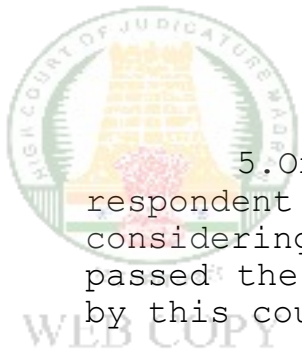
ORDER

This Criminal Revision is directed against the order, dated 20.12.2018 made in CrI.M.P.No.7628 of 2018 passed by the Judicial Magistrate No.II, Trichy.

2.The petitioner has filed a petition under Section 156(3) Cr.P.C before the Judicial Magistrate No.II, Trichy. The learned Magistrate dismissed the application filed by the petitioner, either without forwarding the same to the concerned police for investigation or taking cognizance. Hence, the petitioner is before this court.

3.Heard both sides and perused the materials available on record.

4.The learned counsel appearing for the petitioner argued that the order of the Judicial Magistrate is erred in holding that the complaint did not make any statement incriminating the offence and the Judicial Magistrate ought to have take the statement of the complaint to take cognizance and to register a case and investigate the matter, but the complaint of the petitioner was dismissed on ground that no document was adduced to establish the statement of the complaint and prays that the impugned order of the Judicial Magistrate No.II, Trichy, dated 03.01.2009 made in Cr.M.P.No.7628 of 2018 has to be set aside, by allowing this criminal revision.



5. On the other hand, the learned counsel appearing for the respondent argued that the learned Judicial Magistrate, after considering the entire documents available on record, has correctly passed the impugned order, which does not require any interference by this court and prays for dismissal of the criminal revision.

6. This court has carefully perused the submissions made on either side and perused the materials available on record.

7. Under Section 190(1)(a) Cr.P.C., the Magistrate has to receive the complaint and thereafter, under Section 200 Cr.P.C shall examine upon oath of the complainant and the witness present, if any, for recording the sworn statement of the complainant and other witnesses and the Magistrate may take cognizance of the offences or he may dismiss the complaint under Section 203 Cr.P.C on considering the oath of the complainant and witnesses.

8. Of course, as rightly pointed by the learned counsel appearing for the petitioner, there is no specific provision for dismissing the application before recording the sworn statement of the complainant. At the same time, this court is not agreeing with the contention of the learned counsel for the petitioner that the complaint cannot be dismissed before recording the sworn statement even if the complainant is absent before the court. After taking cognizance of the complaint and issuing summons to the accused, if the complainant is absent, as per summons case procedures, the Magistrate may invoke Section 256 Cr.P.C. and acquit the accused. After filing the complaint and the Magistrate, on receiving the complaint fixes any date for recording the sworn statement of the complainant and the complainant is absent on that date and also on the subsequent dates fixed for the same, though there is no specific provision for discharging the accused, it would not be proper and justifiable to say that the court has to wait compulsorily and indefinitely for the appearance of the complainant. In such a circumstance, the Magistrate may close the complaint, which would not amount to acquittal of the accused. Therefore, in this case, the learned Magistrate by dismissing the petition filed by the complainant under Section 156(3) of Cr.P.C has committed illegality.

9. In view of the above circumstances, the complainant must be given a chance to put forth his case and he should not be stopped at the threshold and hence, the order passed by the learned Judicial Magistrate No.II, Trichy, dismissing the application filed under Section 156(3) of Cr.P.C is set aside.

10. In the result, this criminal revision is **allowed**. The learned Judicial Magistrate No.II, Trichy, is directed to take the application filed under Section 156(3) of Cr.P.C on file and record the sworn statement of the complainant and dispose of the same on



merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

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/ True Copy /

Sub Assistant Registrar(CS)

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To,

1. The Judicial Magistrate No.II,
Trichy.
- 2.The Chief Judicial Magistrate, Trichy.
- 3.The Commissioner of Police,
Subramanyapuram, Trichy.
- 4.The Inspector of Police,
Cantonment Police Station,
Trichy.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.T.VADIVELAN, Advocate (SR-60229[F] dated 10/04/2019)

Order made in
Crl.R.C (MD) No.79 of 2019
10.04.2019

ES/07.06.2019/3P/7C