



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2019

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C(MD)No.402 of 2019

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Mahamayee

: Petitioner/Defacto Complainant

Vs.

State through,

The Inspector of Police,

Thirumangalam Town Police Station,

Madurai. (in Crime No.343/2009)

: Respondent/Complainant

PRAYER: Revision Case filed under Section 397 and 401 Code of Criminal Procedure, to set aside the impugned order dated 06.12.2014 passed by the learned Judicial Magistrate, Thirumangalam in unnumbered R.C.S and to direct the learned Judicial Magistrate, Thirumangalam to issue notice to petitioner to afford opportunity to petitioner to raise petitioner's objections by filing a protest petition by furnishing the copies of statement of witnesses and other related documents and the investigation report strictly in accordance with law and granting such other and further reliefs.

For Petitioner : Mr.K.Muthumalai

For Respondent : Ms.M.Ananthadevi

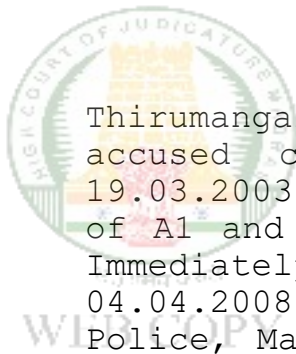
Government Advocate (Crl.side)

ORDER

The present criminal revision petition has been filed against the order passed by the learned Judicial Magistrate, Thirumangalam, dated 06.12.2014, by dropping the action initiated by the petitioner herein in RCS No.301 of 2014 without affording any opportunity to her by not furnishing the copy of the closure report filed by the respondent police.

2.According to the petitioner, she has filed a private complaint under Section 156(3) Cr.P.C before the learned Judicial Magistrate, Thirumangalam, against the accused for the alleged offences under Sections 416, 419, 420, 463, 464, 465, 468, 409, 471, 474 r/w 120(b) IPC. The above complaint was forwarded to the respondent police, who registered a criminal case against the accused in Crime No.343 of 2009 for the aforesaid offences on 02.06.2009.

3.The case of the petitioner was that the accused, namely, A1 to A8 joined together and hatched a conspiracy in order to grab her property comprised in Survey No.47/2 in Josiar Alangulam Village,



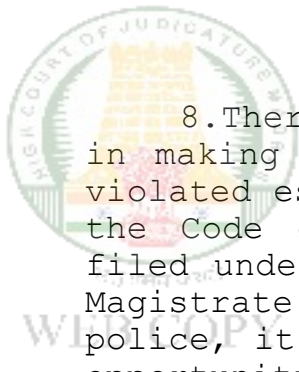
Thirumangalam, Madurai District. According to the petitioner, the accused created a bogus registered power of attorney dated 19.03.2003 as if the same was executed by the petitioner in favour of A1 and on the basis of which, the transaction had taken place. Immediately, the petitioner lodged a complaint before the police on 04.04.2008 followed by representation to the Superintendent of Police, Madurai. Thereafter, a private complaint was filed before the learned Judicial Magistrate, Thirumangalam.

4. After the so called investigation into the complaint, the respondent police, according to the petitioner, colluded with the accused and closed the case as 'Action Dropped' (AD). On the basis of the police report, learned Judicial Magistrate ordered Action Dropped vide order dated 06.12.2014, which is impugned in this petition.

5. The learned counsel appearing for the petitioner would strenuously contend that as the de-facto complainant, the petitioner was entitled to get a copy of the closure report filed by the respondent police, on the basis of which, the impugned order was passed and also entitled to be heard before the final decision is taken on the complaint. According to the learned counsel, by affording of opportunity to the petitioner by giving her a copy of the closure report, it would provide an opportunity to the petitioner to put forth her case in support of the complaint and would also enable her to file protest petition under the provisions of the Code of Criminal Procedure. Unfortunately, without following due process of law, the learned Judicial Magistrate has simply dismissed the complaint as Action Dropped, which is clearly contrary to established procedure contemplated under the Code of Criminal Procedure. In the said circumstances, the learned counsel would request this Court to remand the matter back to the Judicial Magistrate by directing the Magistrate to afford reasonable opportunity to the petitioner by giving a copy of the closure report and then pass order thereon.

6. Heard Ms. Anandha Devi, learned Government Advocate [Criminal Side] appearing for the respondent on the above contentions.

7. This Court is entirely in agreement with the submission made by the learned counsel for the petitioner. The learned Judicial Magistrate ought to have given an opportunity to the petitioner before proceeding to pass final order in the application filed under Section 156(3) Cr.P.C. Unfortunately, in this case, the learned Judicial Magistrate unilaterally passed the order by dropping further action in the private complaint filed by the petitioner. It is found that neither a copy of the closure report was furnished to the petitioner nor the petitioner was heard before the impugned order was passed by the learned Judicial Magistrate.



8. Therefore, the learned counsel for the petitioner is correct in making his submission that the learned Judicial Magistrate has violated established procedure contemplated under the provisions of the Code of Criminal Procedure, while dealing with the petition filed under Section 156(3) Cr.P.C. In the case on hand, when the Magistrate is acting on the basis of report filed by the respondent police, it is imperative on the part of the Magistrate to afford an opportunity to the petitioner before passing such order. In the absence of the same, the order passed by the Magistrate cannot be countenanced in law. It is the basic understanding of the procedure that if any adverse order is passed against the private complaint filed by the petitioner, he/she ought to have been extended due opportunity before any decision is taken. The learned Magistrate has failed to adhere to the procedure contemplated under the provisions of the Code of Criminal Procedure by passing a cryptic order. Therefore, this Court has no hesitation in setting aside the order passed by the learned Judicial Magistrate.

9. For the above said reasons, the revision petition is allowed and the order passed by the learned Judicial Magistrate, Thirumangalam dated 06.12.2014 made in RCS No.301 of 2014 is hereby set aside and the matter is remanded back to the learned Judicial Magistrate with the direction to provide due and reasonable opportunity to the petitioner by providing a copy of the closure report filed by the respondent police and hear the petitioner and pass final order on merits and in accordance with law. The learned Judicial Magistrate is also directed to pass final order after following the procedure contemplated as indicated within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AS)

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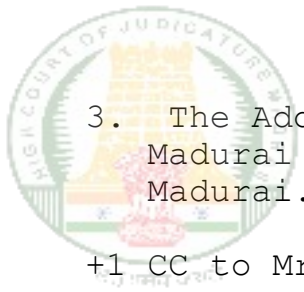
Sub Assistant Registrar (CS)

rmk/skn

To

1. The Judicial Magistrate, Thirumangalam,
Madurai District.

2. The Inspector of Police,
Thirumangalam Town Police Station,
Madurai.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai._

+1 CC to Mr.K.MUTHUMALAI, Advocate (SR-97819[F] dated 13/11/2019)

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