



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2019

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.14554 of 2019

M.Malaviya

... Petitioner/Defacto complainant

Vs.

1. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
2. Additional Superintendent of Police,
(Prohibition Enforcement Wing) PEW,
Tirunelveli District.
Tirunelveli.
3. Deputy Superintendent of Police,
Tirunelveli Rural Sub Division,
Thazhaiyuthu, Tirunelveli District.
Tirunelveli.
4. The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District,
Tirunelveli.
(Crime No.54/2016)

... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the respondent to conduct the further investigation on the complaint of the petitioner in Cr.No.54/2016 on the file of the 4th respondent.

For Petitioner : Mr.A.P.Dhas

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)



O R D E R

This Criminal Original Petition has been filed for further investigation on the complaint of the petitioner in Cr.No.54/2016, on the file of the 4th respondent.

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2. The learned counsel for the petitioner would submit that on the complaint lodged by the petitioner, a case has been registered in Crime No.54/2016 for the offence under Sections 294 (b), 506 (i) IPC and 3 (1) (r), 3 (1) (3), 3 (2) (va) SC/ST (POA) Amendment Act 2015 r/w 109 IPC. Thereafter, the second respondent conducted an enquiry and unfortunately recorded the statement of the accused who are arrayed as A1 and A2 under Section 161 (2) of Cr.P.C., and the same was closed as 'mistake of fact'. The petitioner specifically alleged so many allegations as against the accused 1 and 2. Under these circumstance, the third respondent ought not to have examined the accused person under Section 161 (2) of Cr.P.C. Therefore, he prayed for further investigation.

3. Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the respondents would submit that on the complaint lodged by the petitioner, a case has been registered as against the petitioner in Crime No.54 of 2016 for the offences under Sections 294 (b), 506 (i) IPC and 3 (1) (r), 3 (1) (3), 3 (2) (va) SC/ST (POA) Amendment Act 2015 r/w 109 IPC. In which, there are totally three accused. After conducting investigation and after examining other witnesses including the accused persons, the case was closed as 'mistake of fact' even as early as on 04.04.2016 itself. Thereafter, Referred charge sheet was filed before the learned Judicial Magistrate, No.III, Tirunelveli. It is numbered as RCS.No.31/2018 and the notice was also sent to the petitioner / defacto complainant on 19.03.2018. Therefore, the third respondent failed to conduct investigation and file a final report. After filing final report, there is no further investigation has been ordered. Since, other remedy open to the petitioner is that he has to file a protest petition before the concerned Judicial Magistrate. Therefore, he prayed for dismissal of the petition.

4. On the complaint lodged by the petitioner, a case has been registered in Crime No.54 of 2016 for the offences under Sections 294 (b), 506 (i) IPC and 3 (1) (r), 3 (1) (3), 3 (2) (va) SC/ST (POA) Amendment Act 2015 r/w 109 IPC as against accused one viz., Sathya Bama, Inspector of Police, All Women Police Station, Tirunelveli and one Mr.Udhayakumar, Panchayat President, Marukal Kurichi, Nanguneri.

5. A perusal of the records would show that the second respondent recorded the statements from various witnesses and also enquired with the accused 1 and 2 and recorded the statement under Section 161 (3) Cr.P.C. Recording of statement under Section 161 (3) Cr.P.C. is to support the case of the defacto complainant. In



this regard, it is also relevant to rely upon the judgment in **Karuppaiah Vs. State**, reported in **2016 (1) MWN (Cr.) 390**. The relevant paragraph of the said judgment is follows:-

" Thus is the power of Police to investigate is the widest. The investigation should be impartial. The Investigating Officer should rule out the possibility of fabrication. Once the investigation is found to be reckless and unfair and it casts shadows upon the statement of witnesses and when the Statements remain untested and the Investigating Officer chooses to accept one set of Statement without even taking proper steps to find out which can be true, then the Final Report based on faulty investigation should be set aside."

6. Therefore, considering the above facts and circumstances, this Court is of the considered opinion that the investigation conducted by the third respondent is not proper and fair. As such, this Court deem it fit to direct the third respondent to conduct further investigation in Crime No.54 of 2016. Now, new officer is appointed as the Deputy Superintendent of Police, Tirunelveli Rural Sub Division, Thazhayuthu, Tirunelveli District. The third respondent / Deputy Superintendent of Police, Tirunelveli Rural Sub Division, Thazhayuthu, Tirunelveli District is directed to conduct a fresh investigation in Crime No.54 of 2016 and file a final report within a period of eight weeks from the date of receipt of copy of this order.

7. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.



2. Additional Superintendent of Police,
(Prohibition Enforcement Wing) PEW,
Tirunelveli District.
Tirunelveli.

3. Deputy Superintendent of Police,
Tirunelveli Rural Sub Division,
Thazhaiyuthu, Tirunelveli District.
Tirunelveli.

4. The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District,
Tirunelveli.

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

+1 CC to M/s.A.P.DHAS, Advocate SR-92393.

Crl.O.P. (MD)No.14554 of 2019
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