



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

Crl.R.C. (MD)No.548 of 2019

Buvanthiran

: Petitioner

Vs.

1.Regii kumar

2.State through Inspector of Police

Colochel Police Station,

Kanyakumari District.

: Respondents

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the orders passed in Cr.M.P.No.2342 of 2019 dated 23.04.2019 by the learned Magistrate, Eraniel, Kanyakumari District and direct the 2nd Respondent Police to register the complainant of the petitioner and investigate and render justice.

For Petitioner

: Mr.KA.Ramakrishnan

For Respondents

: Mr.N.S.Ramakrishnadoss (for R1)

Ms.M.Anantha Devi

Government Advocate [Criminal Side]

(for R2)

O R D E R

The above criminal revision petition has been filed against the order passed by the learned Judicial Magistrate, Eraniel, Kanyakumari District in Cr.M.P.No.2342 of 2019, dated 23.04.2019, dismissing the petition filed under Section 156(3) Cr.P.C.

2.The learned counsel appearing for the petitioner would submit that the learned Judicial Magistrate has completely erred in dismissing the petition without conducting enquiry as contemplated under Section 200 Cr.P.C. When a petition filed under Section 156(3) Cr.P.C., it is incumbent upon the trial Judge to examine the complaint and the complainant by taking cognizance and also examine any witnesses in support of the complaint and thereafter, he can proceed with the case whether there was any substance in the complaint. Unfortunately, in this case, when the trial Court without following the procedure, without examining the complainant under Section 200 Cr.P.C, and also heard the accused, and dismissed the petition.

3.The learned counsel appearing for the petitioner would submit that the accused was heard, before the Magistrate could



take cognizance of the complaint and the petition was dismissed. Such a procedure is alien to the scheme of the Criminal Procedure Code.

4. On behalf of the accused/respondent, learned counsel Mr. N. S. Ramakrishnadass appeared. According to him, since there was no substance in the complaint, the Magistrate felt that no cognizance could be taken and hence, dismissed the petition.

5. Although this Court is of the considered view that the accused need not be heard before cognizance is taken by the Magistrate under Section 200 Cr.P.C, nevertheless since he was made as a party, he appeared before the Court and made submissions. This Court is perfectly in agreement with the submission made on behalf of the petitioner that when a complaint of this nature is filed under Section 156(3) Cr.P.C, it is imperative on the part of the learned Magistrate to take cognizance of the same by examining the complainant and other witnesses in support of the complaint and only on the basis of such consideration, the Magistrate can decide whether to proceed with the complaint or not and thereafter, cause notice to the accused. If there is no substance in the complaint, it is certainly open to the Magistrate to dismiss the complaint straightaway without having further any recourse to the procedure contemplated under Section 200 Cr.P.C. As rightly contended by the learned counsel for the petitioner, such procedure adopted by the Magistrate by passing the impugned order of dismissal is alien to the scheme of the Criminal Procedure Code and therefore, the same is contrary to the provisions of the Code of Criminal Procedure and liable to be set aside.

6. For the above said reason, the Criminal Revision Petition is allowed and the matter is remanded back to the trial Court for reconsideration of the complaint in terms of Section 200 Cr.P.C. The Trial Court is directed to deal with the complaint in terms of the procedure contemplated under Section 200 Cr.P.C and proceed further with the complaint as deemed fit on such consideration.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Judicial Magistrate, Eraniel,
Kanyakumari District.

2.The Inspector of Police
Colochel Police Station,
Kanyakumari District.

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

+1 CC to M/s.KA.RAMAKRISHNAN, Advocate (SR-86380[F] dated
12/09/2019)

+1 CC to M/s.N.S.RAMAKRISHNA DASS, Advocate (SR-86590[F] dated
13/09/2019)

**ORDER MADE IN
CrI.R.C. (MD)No.548 of 2019**

**Dated:-
12.09.2019.**

KM/ (30.09.2019) 3P 6C