



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2019

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C.(MD)No. 327 of 2014

and

M.P.(MD)No.1 of 2014

M.Sankar Anand ... Petitioner/Accused No.1

Vs.

1.The State represented by,
The Deputy Superintendent of Police,
District Crime Branch,
Ramanathapuram District.

2.The Inspector of Police,
District Crime Branch,
Ramanathapuram District.
(Crime No.35 of 2013.

... Respondents/Respondents

3.K.Murugan

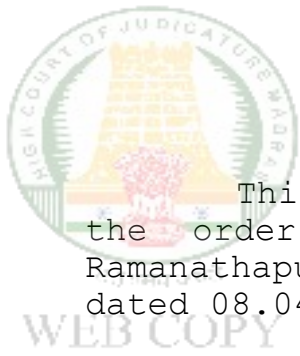
... Respondent/Petitioner

Prayer : This Criminal Revision case is filed under Section 397 r/w 401 Cr.P.C, to call for the records pertaining to the order passed by the learned Judicial Magistrate, No.II, Ramanathapuram, Ramanathapuram District in Cr.M.P.No.629 of 2014 vide his order dated 08.04.2014 in F.I.R in Crime No.35 of 2013 on the file of the 2nd respondent, and set aside the same and consequently direct the above said learned Magistrate to accept the final report filed by the 2nd respondent in connection with the said F.I.R.

For Petitioner : Mr.R.Anand

For R1 & R2 : Ms.S.Barathi
Government Advocate (Crl.Side)

For R3 : No Apparance



ORDER

This Criminal Revision case has been filed challenging the order passed by the learned Judicial Magistrate, No.II, Ramanathapuram, Ramanathapuram District in Cr.M.P.No.629 of 2014 dated 08.04.2014.

2. By the order impugned in this Criminal Revision Case, the learned Judicial Magistrate has ordered further investigation in Cr.No.35 of 2013 on the file of the Deputy Superintendent of Police, District Crime Branch, Ramanathapuram District.

3. The brief facts of the case are that the complaint was lodged in Crime No.35 of 2013 for the offence under Sections 419, 468, 471, 406, 420 and 120 (b) IPC, as against the petitioner herein before the District Crime Branch, Ramanathapuram District, on 21.08.2013. After completing the investigation, the respondent police filed a final report before the concerned judicial Magistrate as "mistake of fact". Aggrieved over the same, the complainant filed an application before the learned Judicial Magistrate, requesting for further investigation in this matter. The learned Judicial Magistrate, No.II, Ramanathapuram, by appreciating the materials on records and applying the decision of Hon'ble Supreme Court reported in **AIR 1985 S.C 1285**, ordered further investigation.

4. This Criminal Revision Case has been filed by the petitioner on the ground that the complainant is not having any sufficient material to file an application seeking for further investigation under Section 123 Cr.P.C and only after the completion of investigation, new materials have been enumerated.

5. In the considered opinion of this Court, when the final report has been filed as 'mistake of fact', the defacto complainant is entitled to file a protest petition before the concerned Magistrate. If any such application is filed, it is open to the Judicial Magistrate to take cognizance on the same, after satisfying himself about the *prima facie* case made out. In this case, on such protest petition, the learned Judicial Magistrate has passed an order for further investigation and subsequent to the order for further investigation, the respondent police has also filed a final report as against the petitioner. As against the final report, the petitioner also filed a quash application and the same is also pending before this Court.

6. In view of the subsequent developments took place in this case and also legal position with regard to the entitlement of the complainant in filing a protest petition against the final report filed as mistake of fact, the learned Judicial Magistrate is right in ordering further investigation and this Court does not find any



illegality or infirmity in the order passed by the learned Judicial Magistrate.

7. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Judicial Magistrate, No.II, Ramanathapuram,
Ramanathapuram District.
2. The Deputy Superintendent of Police,
District Crime Branch,
Ramanathapuram District.
- 3.The Inspector of Police,
District Crime Branch,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C. (MD)No. 327 of 2014

and

M.P. (MD)No.1 of 2014

13.09.2019

KK/SAR/30.10.2019/3P-5C/