



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.12.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.832 of 2019

John Gilbert : Revision Petitioner/
De-facto complainant

Vs.

1.Josedifan

2.Babu

: Respondents 1 & 2/ Accused 1 & 2

3.State represented by

The Sub Inspector of Police,

Thuckalay Police Station,

Kanyakumari District.

: 3rd Respondent / Complainant

Prayer: Criminal Revision Petition has been filed under Sections 397 and 401 of Criminal Procedure Code, against the order of the Judicial Magistrate No.1, Padmanabhapuram, Kanyakumari District passed in C.C.No.269 of 2008, dated 14.09.2019.

For Revision Petitioner

: Mr.R.R.Kannan

For 1st Respondent

: Mr.G.Ramanathan

For 2nd Respondent

: No appearance

For 3rd Respondent

: A.P.G.Ohm Chairma Prabhu

Government Advocate (Crl.side)

ORDER

This criminal revision is directed against the order of the Judicial Magistrate No.1, Padmanabhapuram, Kanyakumari District passed in C.C.No.269 of 2008, dated 14.09.2019.

2.It is seen that the 3rd respondent police registered a case in Crime No.311 of 2008 for the alleged offence under sections 324, 379 (NP) and 506(ii) IPC on the basis of the complaint preferred by the petitioner on the ground that when the petitioner and his brother Johny Hansberg were attacked by the respondents 1 and 2 on 19.05.2008 in front of Jegam Hotal at Thikkanamcode. Based on the the charge sheet filed in C.C.No.269 of 2008, the learned Judicial Magistrate No.1, Padmanabhapuram has issued summons to A1 and A2. The 3rd respondent police have produced as many as four witnesses in this case and PW1 to PW4 were examined before the learned Judicial Magistrate No.1, Padmanabhapuram. After recording the evidence of PW1 to PW4, the learned Magistrate passed an order in C.C.No.269 of 2008, dated 14.09.2019 stating that by invoking section 258 of Cr.P.C the further proceedings in this case is dropped. Challenging the order of the learned Judicial Magistrate, the petitioner is before this court.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Heard the learned counsel appearing on either side and



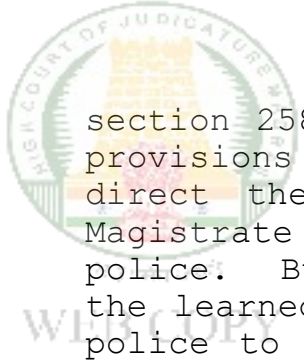
perused the materials available on record.

4. The main contention raised on the side of the revision petitioner/de-facto complainant is that there are provisions available under the Criminal Procedure Code to direct the police to produce the witnesses and it is for the Judicial Magistrate to exercise his power to produce the witnesses by the police and the learned Judicial Magistrate examined four witnesses and for the failure of the police to produce the remaining witnesses, the revision petitioner/de-facto complainant should not be penalised and the reasons given by the learned Judicial Magistrate for dropping the proceedings under section 258 of the Criminal Procedure Code could not be invoked for the simple reason that if IPC offences are dropped on the basis of the reasons that the police could not produce the witnesses, it will become a very bad precedent for foreclosing the criminal cases and thereby the accused will escape from the clutches of law without punishment and the order passed by the learned Judicial Magistrate is against law and prays that the criminal revision has to be allowed.

5. In this case, the 3rd respondent has registered the case in Crime No.11 of 2008 for the alleged offence under sections 324, 379 (N) and 506(ii) IPC on the basis of the complaint given by the petitioner. As per the prosecution case, the nature of the offence is serious in nature and it is a warrant case. Hence, it is to be decided that whether the learned Judicial Magistrate has power to drop the proceedings under section 258 of the Criminal Procedure Code. At this juncture, it is necessary to refer section 258 of the Criminal Procedure, which would run thus:-

"258. Power to stop proceedings in certain cases.-In any summons case instituted otherwise than upon complaint, a Magistrate of the First Class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witness has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."

6. On careful perusal of section 258 of the Code of Criminal Procedure, it is stated that in any summons cases instituted otherwise than upon complaint, a Magistrate of the First Class or, within the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for the reasons to be recorded by him, stop the proceedings at any stage. But in this case, the 3rd respondent registered the case under sections 324 and 506(ii) IPC. The above case is not a summons case, it is a warrant case. Hence, the learned Judicial Magistrate has no power to drop the case under



section 258 of the Code of Criminal Procedure. Further, there are provisions available under the Code of the Criminal Procedure to direct the police to produce the witnesses and it is for the Magistrate to exercise his power to produce the witnesses by the police. But there was no piece of evidence available to show that the learned Judicial Magistrate took necessary steps to direct the police to produce the witnesses. Hence, the order passed by the Judicial Magistrate is against law and it is liable to set aside and accordingly, it is set aside.

7.In fine, this Criminal Revision Petition is **allowed**. The impugned order passed by the trial court is set aside and the matter is remitted back to the trial court and the trial court is directed the police to take steps for producing the witness under the provisions of Cr.P.C and disposed the case, purely on merits and in accordance law within four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

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To,

1.The Judicial Magistrate No.1,
Padmanabhapuram.

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

+1 CC to M/s.RR.KANNAN, Advocate (SR-105853[F] dated 19/12/2019)

+1 CC to M/s.G.RAMANATHAN, Advocate (SR-105843[F]

Crl.RC (MD) No.832 of 2019

19.12.2019

SMA/13/01/2020/3P/5C