



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.09.2019

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

CRL.OP(MD)No. 10619 of 2017

and

Crl.M.P(MD)No. 7285 of 2017

Ani

... Petitioner / Petitioner/
Defacto Complainant

Vs.

The State, represented by
The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.
(Crime No.19 of 2013)

... Respondent/Respondent/
Investigating Officer

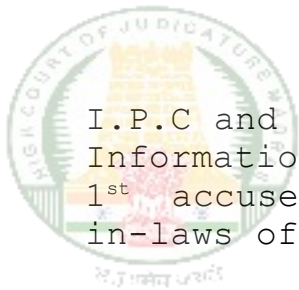
PRAYER: Criminal Original Petition filed under Section 407 of Cr.P.C, to call for the records pertaining to the impugned order passed by the learned Judicial Magistrate No.1, Kuzhithurai in Crl.M.P.No. 4294 of 2016 in C.C.No. 1 of 2014, dated 06.06.2016, set aside the same and direct a responsible Police Officer to make further investigation of the above case in Crime No.19 of 2013 on the file of the respondent police.

For Petitioner : Mr.M. Saravanan
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This petition has been filed seeking to challenge the Order passed by the learned Judicial Magistrate No.1, Kuzhithurai, dismissing the petition filed by the petitioner seeking for further investigation.

2. The petitioner is the defacto complainant. She gave a complaint before the respondent police and based on the said complaint, the respondent police has registered a case in Crime No.19 of 2013 for the offence under Sections 498(A), 420, 406 of



I.P.C and Section 3, 4 & 6 of Dowry Prohibition Act. In the First Information Report, five persons have been shown as accused. The 1st accused is the husband and accused Nos.2 to 5 are the in-laws of the defacto complainant.

3. The respondent proceeded further with the investigation, after the registration of the First Information Report and ultimately, the final report came to be filed before the Court below only as against the 1st accused and the case was dropped as against the Accused Nos.2 to 5. The final report was taken cognizance by the Court below and the case was taken on file in C.C. No.1 of 2014. The Court below has proceeded to frame charges against the 1st accused for the offence under Sections 498 (A), 420, 406 of I.P.C and Section 3, 4 & 6 of Dowry Prohibition Act.

4. At this stage, the petitioner has filed a petition in Crl.MP.No.4294 of 2016, before the Court below seeking for further investigation on the ground that the respondent police had not collected sufficient materials against the accused Nos.2 to 5 and they should have been shown as accused in the final report.

5. The Court below after considering the facts and circumstances of the case and the Law governing the case, came to conclusion that the Court does not have power to order for re-investigation or change the investigation agency. Aggrieved by the same, the present Petition has been filed before this Court.

6. The learned counsel appearing for the petitioner has submitted that the petitioner was not aware about the final report filed by the respondent police by dropping the names of the accused Nos.2 to 5. He further submitted that the petitioner was not given any notice before a negative report was filed in so far as the accused Nos.2 to 5 are concerned. He further submitted that the Court below ought not to have taken cognizance of the final report without giving notice to the petitioner and hearing her objections.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the Court below was right in rejecting the petition filed by the petitioner. He further submitted that the respondent police in the course of investigation, did not find any materials against the accused Nos.2 to 5 and hence, their names were dropped in the final report. He further submitted that the Court below, after taking cognizance of the final report, lacks Jurisdiction to order further investigation under Section 173 (8) of Criminal Procedure Code. To substantiate his submission, the learned Additional Public Prosecutor relied upon the Judgment of the Full Bench of



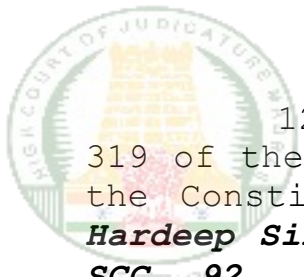
this Court in **Chinnathambi @ Subramani Vs. State represented by the Inspector of Police, Vellakovil Police Station, Tirupur District [Crime No.555 of 2005]** reported in **2017 (2) CTC 241.**

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. There is no dispute regarding the fact that the First Information Report was registered as against five accused persons and the final report was filed only as against the 1st accused, after dropping the names of accused Nos.2 to 5. The plea taken by the respondent police is that no materials were available against the accused Nos.2 to 5 and therefore, their names were dropped. On the other hand, the petitioner has raised the plea that there are sufficient materials against the accused Nos.2 to 5 and the investigation was not conducted properly and therefore, further investigation has to be conducted by a different agency and accused Nos. 2 to 5 must be made as accused by filing further report under Section 173(8) of Criminal Procedure Code.

10. The order passed by the Court below is perfectly in accordance with law. The Trial Court does not have jurisdiction to order for re-investigation or for transferring the investigation to a different agency. In fact, after the Judgement of the Full Bench of this Court, referred supra, the Trial Court does not even have the jurisdiction to order for further investigation, after the final report is taken cognizance. The only exception is where the investigating agency can seek for a further investigation. In the present case, the investigating agency has come up with a specific stand that there are no materials against the accused Nos.2 to 5 and therefore, their names have been dropped.

11. It is true that the petitioner should have been put on notice, when the final report was filed by the respondent police, after dropping the names of accused Nos. 2 to 5. However, to order for a further investigation at this stage, after nearly six years after the First Information Report was registered, will further delay the case. Therefore, this Court is not inclined to order for further investigation in this case. It does not mean that the Court below becomes powerless to add accused Nos.2 to 5 as accused persons. In future, if it is able to get sufficient materials in the course of enquiry/trial, the trial Court can do so under Section 319 of Cr.P.C. It is exactly for this purpose, the Code of Criminal Procedure provides for Section 319 of Criminal Procedure Code. It is an independent power that has been conferred upon the Trial Court to add any person as an accused, based on the materials are collected during the enquiry/trial.



12. The scope of exercising jurisdiction under Section 319 of the Code of Criminal Procedure has been dealt in detail by the Constitution Bench of Hon'ble Supreme Court in the case of **Hardeep Singh Vs. State of Punjab and Others reported in 2014 (3) SCC, 92**. This Judgment has subsequently been reiterated by the Hon'ble Supreme Court in later Judgments reported in 2017(2) Madras Law Weekly (Crl.), 321 and 2019 (2) MLJ (Crl.), Page 191. Therefore, the grievance of the petitioner can be sufficiently met by the Trial Court during the course of enquiry or trial in exercising its jurisdiction under Section 319 of Cr.P.C. by adding any one as accused person, subject to the fulfillment. Of the requirements of Section 319 of Cr.P.C., and for which the Hon'ble Supreme Court has given guidelines in the Judgments referred supra.

13. In view of the above, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the Criminal Original Petition is disposed of with a direction to the Court below to complete the proceedings in C.C. No.1 of 2014, within a period of Four (4) months, from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

KSA

To

1. The Judicial Magistrate Court No.I,
Kuzhithurai.

2. The Inspector of Police,
All Women Police Station,
Marthandam,
Kanyakumari District.

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

+1 CC to M/s.M.SARAVANAN, Advocate (SR-85567[F] dated 06/09/2019)

CRL.OP(MD)No. 10619 of 2017

05.09.2019

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