



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.09.2019

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.2645 of 2017

and

Crl.M.P(MD)No.2020 of 2017

Philip Kumari

... Petitioner

Vs.

1.Selvi

2.Muthaiah Pillai

3.Pappa

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

... Respondents

(R4 suo-motu impleaded as per order
of this Court made in Crl.O.P(MD)No.
2645 of 2017, dated 10.03.2017)

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and set aside the order passed in Cr.M.P.No.5616 of 2016 dated 11.11.2016 on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District by allowing this Criminal Original Petition.

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For Petitioner : Mr.S.Vinayak
For R1 : Died
For R2 & R3 : No Appearance
For R4 : Mr.S.Chandrasekaran
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Court below entertaining the petition filed by the first respondent under Section 156 (3) of Cr.P.C. to register an F.I.R. against the accused person.

2. It is seen from the records that the first respondent is the *defacto* complainant, who had given a complaint to the 4th respondent police on 06.06.2015. Based on the complaint, an F.I.R. came to be registered by the 4th respondent in Crime No.158 of 2015 for an offence under Sections 294, 323 and 506(i) of IPC., and Section 4 of the Tamil Nadu Prevention of Women Harassment Act. The F.I.R. was



registered as against three named accused persons. The 4th respondent conducted the investigation and a final report was filed only as against A1 and A2 and the name of A3 was dropped from the final report.

3. This final report was taken cognizance by the Court below in C.C.No.124 of 2016.

4. When the said proceedings were pending, the first respondent has chosen to file another petition under Section 156 (3), based on the very same allegations and sought for a direction to the police to register an F.I.R. and proceed further in accordance with law.

5. The Court below, while considering the said petition, has failed to consider the fact that the first respondent had already given a complaint and the same resulted in filing of the final report as against A1 and A2 and the same has been taken cognizance in C.C.No.124 of 2016. The Court below, after recording the said fact, has proceeded to entertain the petition under Section 156(3) of Cr.P.C. and has directed the respondent police to register the F.I.R. and file a final report as against all the accused persons.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the 4th respondent.

7. It is seen from the records that the first respondent has died and the death certificate is also enclosed in the case bundle.

8. The procedure adopted by the Court below has really shocked this Court. The Court below has forgotten the rudimentary principles of criminal law. Once the Court has taken cognizance of a final report filed under Section 173 (2) of Cr.P.C., the Court cannot go back and invoke Section 156 (3) of Cr.P.C and direct for investigation all over again in the same case.

9. A Full Bench of this Court had an occasion to consider the issue as to whether a trial Court will have jurisdiction to order for further investigation, after taking cognizance of the final report. The judgment of the Full Bench in **Chinnathambi @ Subramani Vs. State rep. by the Inspector of Police, Vellakovil Police Station, Tirupur District** is reported in **2017 (2) CTC 241**. The Full Bench in the said judgment has categorically held that once a final report is taken cognizance, further investigation can be ordered only on request made by the Investigating Agency and it cannot be done at the instance of anyone else or *suo-motu*. This judgment was followed in **N.Rajeswari and Others Vs. State by Inspector of Police, Vigilance and anti-Corruption, Kancheepuram**, reported in **(2019) 2 MLJ (Crl.) 339**.



10. When the Magistrate does not even have the jurisdiction to order for a further investigating under 173 (8) of Cr.P.C. after taking cognizance of the final report, it is patently illegal for the Magistrate to order for registration of a fresh F.I.R. under Section 156 (3) of Cr.P.C., based on the very same allegations, for which, a final report has already been filed and taken cognizance.

11. The Court below has committed a patent illegality by entertaining the petition and passing orders. The order passed by the Court below goes against the procedure prescribed under the code of Criminal Procedure and the settled principles of law.

12. In view of the above, this Court has no hesitation to interfere with the order passed by the Court below in CrI.M.P.(MD) No.5616 of 2016, dated 11.11.2016 and the same is hereby set aside.

13. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to proceed further and complete the proceedings in C.C.No.124 of 2016, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate, Valliyoor,
Tirunelveli District.
- 2.The Inspector of Police,
Palavur Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**CrI.O.P.No.2645 of 2017
and**

**CrI.M.P (MD) No.2020 of 2017
05.09.2019**

vsd

MK (18.10.2019) 3P 4C

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