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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.R.C. (MD) No. 780 of 2013

and

M.P. (MD) No. 1 of 2013

B.Vasuki

... Petitioner

Vs.

Anbuselvan

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records of the impugned summons dated 23.10.2013 in C.C.No.3 of 2013 issued by the learned Chief Judicial Magistrate, Madurai and set aside the same as illegal.

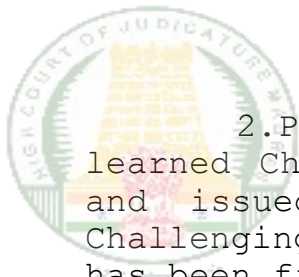
For Petitioner : Mr.J.Selvam

For Respondent : Mr.C.Jeganathan

O R D E R

The respondent herein namely., Anbuselvan filed a private complaint before the learned Chief Judicial Magistrate, Madurai, for prosecuting as many as 12 persons. The petitioner herein was shown as first accused. The complaint was dismissed on 25.01.2012. Challenging the same, the respondent filed Cr1.R.C.(MD)No.72 of 2013 before this Court. By order dated 08.07.2013, the judgment passed by the learned Chief Judicial Magistrate, Madurai was set aside in the following terms:-

"Since the respondents have agitated that the Chief Judicial Magistrate, Maduari, has not taken the mandatory provision of Section 197 Cr.P.C., this Court is of the view to clarify this position before the Magistrate concerned. If any offence is made out, the Magistrate concerned is at liberty to do so. Regarding sanction is concerned, the date of designation and date of occurrence both are simultaneously has to be taken. It is needless to say that if delinquent is ranked less than DSP, no sanction is required. Bearing in this mind, the Trial Court is directed to pass suitable orders in the application. In such a manner, the order of the Chief Judicial Magistrate, Maduari, is set aside and the matter is remitted back to the Jurisdictional Magistrate and he is directed to consider that application and dispose of, without being influenced by the order of this Court."



2. Pursuant to the order of remand made by this Court, the learned Chief Judicial Magistrate, Madurai, took the case on file and issued summons to all the 12 persons shown as accused. Challenging this order dated 23.10.2013, this criminal revision case has been filed.

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3. The order impugned in this criminal revision case will have to be set aside on a short ground. This Court vide order dated 08.07.2013 had directed the learned Chief Judicial Magistrate to consider the application and dispose of it without being influenced by anything stated in the order dated 08.07.2013. A mere look at the observations and reasons set out in paragraph 8 of the order would indicate that the sanction was not required for prosecution of the persons shown as accused. The learned Jurisdictional Magistrate has stated that if the accused is occupying a rank below that of DSP then Section 197 of Cr.P.C., could not be invoked. In the array of accused, the respondents herein included one ASP also. Obviously for prosecuting him sanction was required. But then, the learned Chief Judicial Magistrate had chosen to take cognizance of the offences against all the accused at one go. Even though the earlier order dated 25.01.2012 was set aside by this Court, the matter was remanded for fresh consideration to the learned Chief Judicial Magistrate, Madurai, who proceeded on the footing that he had been directed to take cognizance of the case. Thus, there has been no application of mind. As already pointed out, cognizance could not have been taken against A7 because he was admittedly holding the office of ASP and therefore, the sanction of the Government was required. In this view of the matter, the order impugned in this criminal revision case is set aside and the criminal revision case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To:

The Chief Judicial Magistrate, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2)

+1 CC to Mr. J. SELVAM, Advocate SR-72821.

+1 CC to Mr. VEERA ASSOCIATES, Advocate SR-73073.

Cr1.R.C. (MD) No. 780 of 2013
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