

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.23075 of 2019
and
Cr1.M.P.No.12048 of 2019

Mathiazhagan

... Petitioner

Vs

State by
Inspector of Police,
Keevalur Police Station,
Keevalur,
Nagapattinam District.
Crime No.411 of 2018

.... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to direct the learned Judicial Magistrate No.I, Nagapattinam to forward the petition under Section 173 (8) Cr.P.C. for further investigation and file a fresh charge sheet under Section 307 of IPC.

For Petitioner : Mr.B.Mahendra Naidu

For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor.

O R D E R

(through Video Conference)

This Criminal Original Petition has been filed seeking the relief to direct the learned Judicial Magistrate No.I, Nagapattinam to forward the petition which has been filed by the petitioner under Section 173 (8) of Criminal Procedure Code to the respondent police for further investigation and to file a fresh charge sheet in Cr.No.411 of 2018 on the file of the respondent after including the offence under Section 307 of Indian Penal Code.

2.Heard Mr.B.Mahendra Naidu, learned Counsel appearing for the Petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The Petitioner herein is the defacto complainant in Crime Number 411 of 2018 on the file of Inspector of Police, Keevalur Police Station, Nagapattinam. Earlier upon the complaint given against the petitioner and two others, the respondent police herein has registered a case in Crime Number 410 of 2018 against the petitioner and two others for the offence under Sections 294 (b), 323, 324, 307 and (3) & (1) SC ST Act. Now in the above referred case, the respondent police had completed the investigation and filed final report. Further after completing the committal proceedings, the case was now pending on the file of Principal Sessions Judge, Nagapattinam in S.C.No.06 of 2019.

4.On the other hand, upon the complaint given by the petitioner against some proposed accused, the respondent police has registered a case in Crime No.411 of 2018 for the offence under Sections 341, 294 (b), 323, 324 and 506 (ii) of Indian Penal Code and after completion of the investigation they filed a final report before the Judicial Magistrate No.I, Nagapattinam and the same is pending in C.C.No.355 of 2019.

5.In the said circumstances, the petitioner herein approached the learned Judicial Magistrate No.I, Nagapattinam and filed petition under Section 173 (8) of Criminal Procedure Code for the relief of direction, directing the respondent police to file a fresh charge sheet in Crime No.411 of 2018 after adding Section 307 of Indian Penal Code along with other offences which has been mentioned in the final report.

6.The learned Counsel appearing for the petitioner reiterated the averments found in the petition and prayed to allow this application.

7.On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent, on instructions, would submit that in a Judgment reported "2018 1 LW CRL 287", it was held that in respect of further investigation, the Code of Criminal Procedure contemplates that only the Investigation Officer is having the power to ask for further investigation. More than that, in respect of the investigation, the Court cannot direct the Investigation Officer to conduct investigation as directed by this Court. He would specifically submit that investigation is the right having by the Investigation Officer.

8.Now on considering the rival submissions made by the learned Counsel appearing on either sides, it would be relevant to see the Judgment of the Hon'ble Apex Court reported in "2018 1 LW CRL 287" wherein our Hon'ble Apex Court has held that only the investigation officer has got right to file an application under Section 173 (8) of Criminal Procedure Code. More than

that, it is a settled proposition that the Court ordinarily cannot interfere into the investigation conducted by the Investigation Officer. In otherwise, the Court is having power to add or alter the charges under Section 216 of Criminal Procedure Code, only upon considering the materials produced by way of giving evidence by the prosecution witnesses. Therefore, this Court cannot pass any positive order in favour of the petitioner.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. Inspector of Police,
Keevalur Police Station,
Keevalur,
Nagapattinam District.
2. The Judicial Magistrate No. I,
Nagapattinam.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

CrI.O.P.No.23075 of 2019
and
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NRL (CO)
SP (09/12/2020)

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