



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.4554 of 2020

Sikkendar

... Petitioner/Defacto Complainant

-vs-

1.The Superintendent of Police,
Madurai District.

2.The Inspector of Police,
Melur Police Station,
Madurai District.

... Respondents / Complainants

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records and to set aside the order dated 08.09.2018 passed in Crime No.117 of 2017 by the Judicial Magistrate, Melur, and to direct the second respondent police to conduct reinvestigation of the same in the nature.

For Petitioner : Mr.S.Sukumar

For Respondents: Mr.A.Robinson

Government Advocate (Crl.side)

O R D E R

The petitioner is the defacto complainant in Crime No.117 of 2017 registered on the file of the second respondent for the offences under Section 279 and 337 of IPC. The case of the defacto complainant is that the accused Ramanatha Sethupathi, S/o. Chinnannan of Arittapatti, due to his rash driving of two wheeler, caused an accident and that the complainant's brother Abuthaheer suffered serious head injury. In fact, Ramanatha Sethupathy is also said to have suffered some injury. The occurrence had taken place on 01.02.2017. The learned Judicial Magistrate, Melur, by invoking Section 468 of Cr.P.C, had closed the case since charge sheet was not filed within the prescribed period. The Magistrate had endorsed that cognizance stood barred as on 01.02.2018. Challenging the same this Criminal Original Petition has been filed.

2.When the matter was taken up for hearing, the learned Government Advocate submitted that the second respondent had prepared a final report, closing the case as mistake of fact. In fact, the final report is dated 27.03.2017.

3.I went through the contents of the same. It appears that according to the investigation, the accused was riding the bike bearing registration No.TN 59 BV 0617 Hero Splendor Plus. But then, the petitioner herein is said to have falsely given the number TN 59 BU 8494. It is possible that in order to make an insurance claim, the vehicle could have been substituted. The fact remains that the accident had taken place. Therefore, the second respondent was



bound to have filed an appropriate final report and erred in closing the case as mistake of fact.

4. Section 473 of Cr.P.C., provides for condonation of delay, if the final report is not filed in time. I am of the view that it is a case in which the said provision will be invoked. If the investigation officer caused the delay and did not file the final report in time, the complainant cannot suffer. It is easy for the Court to invoke Section 468 of Cr.P.C., and hold that the cognizance is barred. But one has to take note of the consequences. When the victim is not a party to the delay, the victim cannot suffer.

5. Therefore, the order passed by the learned Judicial Magistrate, Melur, barring the cognizance is set aside and this Criminal Original Petition is allowed and the second respondent is directed to file an appropriate final report along with a petition under Section 473 of Cr.P.C., within a period of two weeks from the date of receipt of a copy of this order.

6. In the very nature of things, the accused will have to be put on notice. Therefore, the learned Judicial Magistrate, Melur, will notify the accused and take a decision without being influenced in any manner by this order. In other words, the order of this Court will not cause prejudice to the accused also.

7. With this observation, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pnn

To

1. The Judicial Magistrate, Melur, Madurai District.
2. The Superintendent of Police, Madurai District.
3. The Inspector of Police, Melur Police Station, Madurai District.
4. Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-11705[F] dated 13/03/2020)

Crl.O.P. (MD)No.4554 of 2020

SMA/24/03/2020/2P/6C