



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.03.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.245 of 2019

V.Gurusamy : Petitioner/De-facto complainant

Vs.

1.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Puliyangudi,
Tirunelveli District. : R1/Complainant /Complainant

2.S.Subbiah : R2/Accused No.1
(R2 impleaded as per the order
of this court, dated 14.11.2019
made in Cr1.MP(MD)No.9506 of
2019 in Cr1.RC(MD)No.245 of 2019)

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the dismissal order, dated 02.04.2018 passed in RCS No.15 of 2018 in Crime No.217 of 2015 on the file of the District Munsif-cum-Judicial Magistrate, Sivagiri, to reopen the Crime No.217 of 2015..

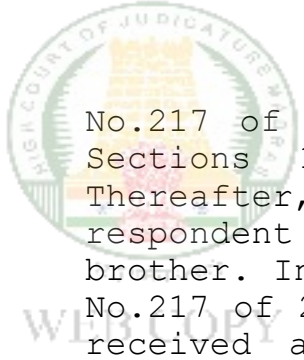
For Petitioner : Mr.S.Arivalagan

For 1st Respondent : Mr.A.P.G Ohm Chairma Prabhu
Government Advocate (Cr1. Side)

O R D E R

This criminal revision is directed against the order passed in RC No.15 of 2018, dated 02.04.2018 by the District Munsif-cum-Judicial Magistrate, Sivagiri.

2.It is the case of the petitioner that he gave a complaint before the 1st respondent police against the accused persons namely S.Subbiah and R.Sankaranarayanan, Revenue Officer of Sivagiri Taluk Office, on 16.01.2015. Since the 1st respondent police has not taken any steps to register the case against the accused persons, the petitioner has approached this court by way of filing Cr1.OP(MD) No.6720 of 2015 to register the case. This court, by order, dated 16.01.2015 directed the 1st respondent police to register the case and based on that, the 1st respondent registered the case in Crime



No.217 of 2015 against the accused persons for the offence under Sections 147, 427, 506(i), 468 and 471 IPC on 09.08.2015. Thereafter, at the instigation of the accused persons, the 1st respondent has filed a false case against the petitioner and his brother. In the meantime, the petitioner came to know that the Crime No.217 of 2015 was closed as "Mistake of Fact" and subsequently, he received a registered post, dated 16.05.2017 from the Judicial Magistrate, Sivagiri. Though the petitioner has received the notice from the Judicial Magistrate, Sivagiri, he filed a protest petition under section 173(8) of Cr.P.C on 04.09.2017. In the meantime, the learned Judicial Magistrate passed the impugned order, dated 02.04.2018 for the non-appearance of the petitioner. Aggrieved by the said order, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.It is mainly argued on the side of the petitioner that there is every chance to succeed in this case and the case was not dismissed on merit by the Judicial Magistrate, Sivagiri.

5.It is seen that the petitioner lodged a complaint on 16.01.2015 against the accused persons and based on the complaint, a case was registered in Crime No.217 of 2015 by the 1st respondent police. The 1st respondent has filed a final report as "Mistake of Fact" before the District Munsif-cum-Judicial Magistrate, Sivagiri and subsequently, notice was issued to the petitioner in RCS No.15 of 2018. Against the said final report, the petitioner has filed a protest petition under Section 173(8) of Cr.P.C before the District Munsif-cum-Judicial Magistrate, Sivagiri. But on 02.04.2018 when the protest petition is taken up for hearing, neither the petitioner nor his counsel appeared before the trial court. Hence, the trial court dismissed the protest petition and closed the FIR.

6.It is to be noted here that while the Judicial Magistrate, Sivagiri dismissing the protest petition for default without any basis and passed a non-speaking order on 02.04.2018 without analysing the evidence on record. Further perusal of the impugned order passed by the learned Judicial Magistrate reveals that he did not discuss about the evidence of witnesses as well as the documents produced on the side of the petitioner. Hence, it is held that the impugned order passed by the trial court is a non-speaking order.

7.For the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside and the learned trial court is directed to dispose of the objection petition filed by the petitioner afresh.

8.In the result, this criminal revision is **allowed**. The impugned order, passed in RCS No.15 of 2018 in Crime No.217 of 2015, dated 02.04.2018 is set aside. The case is remitted back to the trial court namely the learned District Munsif-cum-Judicial



Magistrate, Sivagiri to dispose of the petition in RC No.15 of 2018, afresh in accordance with law, after giving reasonable opportunity to the parties concerned as well as perusing the entire materials on record, within a period of eight weeks from the date of receipt of a copy of this order.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss/er

To,

- 1.The District Munsif-cum-Judicial Magistrate,
Sivagiri.
- 2.The Deputy Superintendent of Police,
Puliyangudi, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.ARIVALAGAN, Advocate (SR-9429[F] dated 02/03/2020)

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02.03.2020

VB (14.09.2020) 3P 5C