



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.09.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.RC. (MD) No.83 of 2016

D.Rama

.. Petitioner

vs.

1.State rep. by
The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
Cr.No.18 of 2013

2.V.Padmanabhan

3.P.Pushpakala

4.P.Vinothkumar

5.Vijayakumar

.. Respondents

[R.2 to R.5 impleaded as per the order dated 18.02.2016, in Crl.RC. (MD) No.83 of 2016]

PRAYER: Revision filed under Section 397 and 401 of the Criminal Procedure Code to call for the records in connection with the order passed by the learned Judicial Magistrate No.II, Nagercoil, in Cr.M.P.No.3837 of 2014 in C.C.No.150 of 2013, dated 07.01.2016, and quash the same.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.A.Robinson,
Government Advocate (Crl. Side)
for R.1
Mr.Xavier Rajini
for R.2 to R.5

ORDER

The defacto complainant in Crime No.18 of 2013 is before this Court, by way of a criminal revision case, as against the order passed by the learned Judicial Magistrate No.II, Nagercoil, in Cr.M.P.No.3837 of 2014 in C.C.No.150 of 2013, dated 07.01.2016.

2. The petitioner / defacto complainant has lodged a complaint as against her husband and other in-laws before the first respondent



/ Inspector of Police, All Women Police Station, Nagercoil, on 09.04.2013 and the same was registered in Crime No.18 of 2013, as against the respondents 2 to 5, for the offence under Sections 498A, 406 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. The first respondent Police completed the investigation, filed a final report before the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, on 28.05.2013, as against the husband / fourth respondent alone, by omitting the other accused, for the offence under Sections 498A, 406, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

3. The learned Judicial Magistrate has also taken the final report on file in C.C.No.150 of 2013. Thereafter, the petitioner has filed the petition in Cr.M.P.No.3837 of 2014, by way of a protest petition on the ground that though the complaint was lodged as against her husband and other in-laws / respondents 2 to 5, without putting her on notice, the other accused mentioned in the First Information Report were omitted and the final report has been filed behind her back, as against the fourth respondent alone and sought for further investigation. The learned Magistrate, vide the order impugned, has rejected the plea of the petitioner and therefore, she has preferred the instant criminal revision case.

4. Mr.S.Ramasamy, learned Counsel for the petitioner would submit that the complaint was originally registered as against the respondents 2 to 5, but, the investigation agency chose to file the final report as against the husband / fourth respondent alone and omitted all other accused, without giving any valid reasons. In fact, the investigation agency, without conducting any independent investigation, has relied upon the report of the District Social Welfare Officer for such deletion.

5. The learned Counsel would further submit that the petitioner has suffered several injuries, admitted in the Government Hospital, Nagercoil and also took treatment in the Hospital, as an inpatient for about four days. Despite the same, the investigation agency has not collected the Wound Certificate and has not examined the Doctor, who treated her at the Government Hospital, Nagercoil. The investigation has also been carried out in a biased manner, without even examining the petitioner / defacto complainant. Though the petitioner has mentioned about the role played by all the accused, as has been mentioned in the First Information Report, the statements recorded under Section 161(3) Cr.P.C., has been prepared without referring to any such averment and therefore, prays for allowing this petition.

6. Per contra, Mr.Xavier Rajini, learned Counsel for the respondents 2 to 5 would submit that the petitioner, in her own statement before the police, has not made any averment as against the respondent nos.2, 3 & 5 and even before the District Social Welfare Officer, she has not made any averment as against the



respondent nos.2, 3 & 5. Therefore, the first respondent Police has omitted the names of respondents nos.2, 3 & 5 and filed the final report as against the fourth respondent / husband alone.

7. The learned Counsel has also questioned the very locus of the petitioner / defacto complainant to file an application under Section 173(8) Cr.P.C., and by relying upon the decision of the Hon'ble Supreme Court in **Reeta Nag Vs. State of West Bengal and others**, reported in **(2009) 9 SCC 129**, submitted that only Police can file an application under Section 173(8) Cr.P.C., and prayed for dismissal.

8. Heard the learned Counsel appearing for the respective parties and also perused the available materials.

9. Admittedly, on the complaint of this petitioner, a case was registered in Crime No.18 of 2013, as against the respondents 2 to 5 and during the investigation, by referring to the statements recorded under Section 161(3) Cr.P.C., the first respondent Police has filed the final report as against the fourth respondent / husband and deleted the names of other accused, on the ground that the petitioner has not referred anything about the other accused either before the Police or before the District Social Welfare Officer.

10. No doubt, if the investigation agency, after investigation, is of the opinion that some of the accused have been wrongfully arrayed, they can very well delete the names of such accused persons, while filing the final report. But, before doing so, as per the settled position of law, they are expected to serve a notice upon the complainant. Even if the investigation agency failed to do so, a duty is cast upon the learned Magistrate, before whom such final report is filed, to issue a notice to the complainant, before taking a call on the final report, as per the decision of the Hon'ble Supreme Court in **Bhagwat Singh v. Commissioner of Police and another**, reported in **(1985) 2 SCC 537**, which, admittedly, is not done in the present case on hand.

11. Be that as it may, as rightly pointed out by the learned Counsel for the petitioner, the investigation agency has relied upon the statement of the petitioner recorded under Section 161(3) Cr.P.C., and the statement of the petitioner given before the District Social Welfare Officer and deleted the names of the other accused that there is no averment available as against them. It appears, there is no independent investigation in this regard, by the investigation agency. In fact, the petitioner has denied the statement recorded from her under Section 161(3) Cr.P.C., that she has made specific averments as against all the accused, as has been made in the First Information Report, however, the same has not been incorporated in the statement recorded under Section 161(3) Cr.P.C., and it is her further case that the investigation agency has filed



the final report based on the statements of the relatives of the accused alone.

12. It is also to be noted that the petitioner / defacto complainant has also suffered grievous injury, admitted in the Government Hospital, Nagercoil, as inpatient and also took treatment for about four days. However, the final report has been filed without even collecting any documents, such as, Wound Certificate, Accident Register, etc., from the Government Hospital and also without examining the Doctor, who treated the defacto complainant in the Hospital.

13. All these material defects, coupled with the failure on the part of the prosecution in issuing a notice to the complainant before deleting the names of the other accused, would show that the investigation has not been conducted in a fair and impartial manner, which requires interference by the trial Court itself. But the trial Court, without dealing with these issues, has mechanically passed an order rejecting the application filed by the petitioner / defacto complainant, which requires interference by this Court.

14. In **Reeta Nag's** case (supra), relied upon by the learned Counsel for the respondents 2 to 5, the Hon'ble Supreme Court has held as follows:

"26. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant."

15. However, in **Vinay Tyagi Vs. Irshad Ali Alias Deepak and others** reported in (2013) 5 SCC 762, the Hon'ble Supreme Court, while considering the scope of Section 173(8) Cr.P.C, has also considered the decision in **Reeta Nag's** case (supra) and has observed as follows:

"39. The contrary view taken by the Court in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] do not consider the view of this Court expressed in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537]. The decision of the Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC



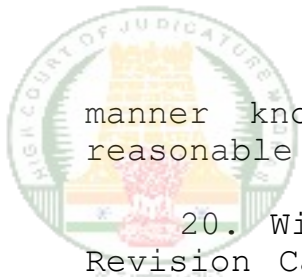
537] in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537], are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129], Ram Naresh [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299] [Ed.: Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361]], besides being different on facts, would have to be examined in light of the principle of stare decisis."

16. It is also brought to the knowledge of this Court that in **Azija Begum v. State of Maharashtra and another**, reported in (2012) 3 SCC 126, wherein, further investigation was ordered by the learned Judicial Magistrate on an application filed by the defacto complainant, the Hon'ble Supreme Court has upheld the order passed by the Magistrate.

17. In view of the foregoing reasonings and discussions and taking note of the aforesaid decisions of the Hon'ble Supreme Court, this Court is of the view that the order of the trial Court cannot be sustained and accordingly, the order passed by the learned Judicial Magistrate No.II, Nagercoil, in Cr.M.P.No.3837 of 2014 in C.C.No.150 of 2013, dated 07.01.2016, is set aside.

18. Considering the manner, in which, the investigation was conducted in this case, this Court deems fit to transfer the investigation and therefore, the Superintendent of Police, Kanyakumari District, is directed to entrust the investigation to some other investigation officer, who shall conduct the further investigation and file the final report, within a period of four months from the date of receipt of a copy of this order. The Superintendent of Police shall also monitor the further investigation in this case.

19. Taking note of the delay occurred in this matter, in view of the order passed by the learned Judicial Magistrate, in Cr.M.P.No.3837 of 2014, that though the final report has been filed in the year 2013, the matter is lying without any progress in the trial, the learned Judicial Magistrate, once the revised final report is filed by the investigation officer after completion of the further investigation, shall proceed with the matter in the



manner known to law and shall dispose of the same, within a reasonable time.

20. With the above observations and directions, this Criminal Revision Case is allowed. Pending miscellaneous petitions, if any, are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.II,
Nagercoil.
 - 2.The Superintendent of Police,
Kanyakumari District.
 - 3.The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
 - 4.The Section Officer, (2 COPIES)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.
 - 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- +1 CC to M/s.S. XAVIER RAJINI, Advocate (SR-16291[F] dated 09/09/2020)

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08.09.2020