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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2021
PRONOUNCED ON : 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.1002 OF 2015

AND

M.P.NO.1 OF 2015

Jayavel

... Petitioner/De-facto Complainant

Vs.

The State represented by,
The Inspector of Police,
Arani Taluk Police Station,
Thiruvannamalai District,
(Crime No. 308 of 2014)

... Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the order passed by the learned Principal Sessions and District Judge, Thiruvannamalai District, in CrI.M.P.No.2780 of 2015, dated 24.08.2015 in S.C.No.69 of 2015.

For Petitioner : Mr.K.Balu

For Respondent : Mr.R.Vinoth Raja
Government Advocate (CrI.Side)

JUDGMENT

(The case has been heard through Video Conference)

The defacto complainant is the revision petitioner herein.



2.The revision petitioner herein has filed a complaint alleging that his son was brutally murdered and based upon the same, FIR was registered in Crime No.308 of 2014 before the respondent police. In the said complaint, various allegations have been made with regard to previous enmity and also the reason for committing the offence. The alleged complaint is that there was previous enmity between the accused family and petitioner family, regarding the love affair between the girl belongs to Thangaraj family and petitioner's family. It is further alleged that the accused have committed criminal conspiracy and they have executed the same with connivance of each other and brutally murdered the son of the defacto complainant and hence, it is preplanned murder. Further, it is also alleged that the accused namely Thangaraj continuously giving life threats and the present accused by name Velayutham is the close relative of the person named in FIR.

3(a).When such being the case, no notice was issued to the defacto complainant before deleting all the names of the accused persons mentioned in FIR.

3(b).After charge sheet, committal proceedings have been followed and the matter is numbered as PRC.No.18 of 2015 and committed to the Court of Sessions and renumbered as SC.No.69 of 2015. Further, the record reveals the fact that the revision petitioner/defacto complainant has filed a petition in CrI.M.P.No.2780/2015, to order for further investigation as contemplated under Section 173(8) of Cr.P.C., before the learned Sessions Judge, Tiruvannamalai, alleging that when all the five persons mentioned in FIR was deleted in the charge sheet, notice ought to have been given and further stated that there is infact various points with regard to criminal conspiracy and hence the investigating agency deliberately deleted the names of the accused. The learned Judge, on consideration of the submissions, had dismissed the petition and hence, the Criminal Revision Case.

4.Heard respective learned counsels and perused the materials placed on record.

5.The learned counsel for the revision petitioner relied upon the following judgments:



(a).In the decision reported in 1985 (2) SCC 537 - (Bhagwant sing Vs. Commissioner of Police), the Hon'ble Supreme Court has held as follows:

"In a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

The injured person or any relative of the deceased who is not an informant, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to known that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report; the Magistrate is bound to hear him."

(b)In the decision reported in 1997 (7) SCC 614 - Union Public Service Commission Vs. S.Papaiah and others, wherein, the Hon'ble Supreme Court has held as follows:

"In the present case no notice was issued by the Magistrate to the appellant before accepting the final report submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the Court accepting the final report. The issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must"."

(c).Further, in the decision reported in 2010 SCC Online Mad 517 - (C.Ve.Shamugam Vs. The Deputy Superintendent of Police, Tindivanam Sub-Division, Rosanai Police Station, Tindivanam, Villupuram District and others), this Court has held that as follows:

"In the Code of Criminal Procedure, there is no provision impelling the learned Magistrate



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to issue notice to the defacto complainant before accepting the final report of the police where either some of the accused against whom allegations were made in the FIR have been omitted or the entire report is a negative report. The Hon'ble Supreme Court, however, considering the said lacuna in the Code, in Bhagawant Singh's case cited supra (AIR 1985 SC 285) has held that such a notice is absolutely necessary.

There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section 2 (i) of S.173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where Magistrate to whom a report is forwarded under sub-section 2(i) of S.173 decides not to take cognizance of the offence and to drop the proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

It is a settled law as of now that before accepting a final report, where some of the accused, whose names find a place in the FIR, have been omitted, the learned Magistrate must issue notice to the de facto complainant. On receipt of such notice, the de facto complainant has got right to file a petition known as 'protest petition'. Only after hearing him, the learned Magistrate has to pass an order either accepting the final report in its entirety or rejecting the same and to proceed to take cognizance of the offence on the basis of the materials on record and the Court can direct



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further investigation or to treat the protest petition as a complaint in terms of Chapter XV of the Code of Criminal Procedure.

Applying the above law laid down in Bhagwant Singh's case cited supra and followed in the other cases cited supra to the present case, it is crystal that the order of the learned Magistrate accepting the final report without notice to the petitioner is absolutely illegal and the same is, therefore, liable to be set aside. Consequentially, the order of committal of the case to the Court of Sessions for trial and all the consequential proceedings before the Court of Sessions are liable to be set aside.

6(a). The point for consideration is:

Whether the order of taking cognizance, the order of committal and all the consequential proceedings are vitiated for want of service of notice on the petitioner before acceptance of final report is to no long res integra as it settled in the Bhagawant Singh's case, as stated supra, has been settled.

6(b). Admittedly, on the factual matrix of this case all the five names in FIR were deleted in the final report and no notice has been given by the investigation officer as to the dropping of all the accused names in FIR also assumes significance. Besides, one Velayutham, who was shown as accused and he was remanded to Judicial custody and subsequently charge sheet has been filed, whose name is not mentioned in FIR. All the five persons mentioned in FIR have been deleted in the charge sheet.

7. In view of the law laid down in the above said judgements by the Supreme Court and this Court, on the above factual background as narrated, this Court is inclined to allow the revision and the impugned order passed by the learned Sessions Judge, Tiruvannamalai, in Cr.M.P.No.2780 of 2015 in S.C.No.69 of 2015 in Crime No.308 of 2014, dated 24.08.2015, for committal and taking the final report on record, is hereby set aside and the order of committal is also consequently set aside; the order of the learned Judicial Magistrate, Arani, by confirming the order of the learned Sessions Judge,



Tiruvannamalai, is also set aside and the matter is remitted back to learned Judicial Magistrate, Arani, who shall issue notice to the petitioner and an opportunity to file appropriate protest petition or objection and after sufficient opportunity to the petitioner and the names mentioned in FIR viz., accused and other respondents, to make the submissions and thereafter, to pass appropriate orders on the final report. The learned Principal Sessions Judge, Thiruvannamalai is directed to dispatch the case records at the earlier to the learned Judicial Magistrate, Arani, to comply with earlier orders.

8. With the above directions, this Criminal revision Case stands allowed to the limited extent as indicated above. Consequently, connected Miscellaneous Petition stands closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To:

1. The Inspector of Police,
Arani Taluk Police Station,
Thiruvannamalai District.
2. The Principal Sessions and District Judge,
Thiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate,
Arani.

+1cc to Mr.K.Balu, Advocate, S.R.No.43124

Cr1.R.C.No.1002 of 2015
and M.P.No.1 of 2015

VSN-II(CO)
RLP(04/10/2021)