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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.629 OF 2021

AND

CRL.M.P.NO.10405 OF 2021

M.Malarvizhi

...Petitioner

Versus

1.The State Rep. by SHO,
C.B.C.I.D. Police Station,
Puducherry.

2.V.Murugan

...Respondents

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 14.12.2020 in CrI.M.P.No.1542 of 2019 in C.C.No.9 of 2017 for further investigation issued by the learned Judicial Magistrate-II, Pondicherry.

For Petitioner : Mr.R.Sreedhar
for M/s Pondy Law Firm

For Respondents : Mr.V.Balamurugan
Public Prosecutor (Pondichery) for R1

O R D E R

This Criminal Revision Case has been filed against the order dated 14.12.2020 passed in CrI.M.P.No.1542 of 2019 in C.C.No.9 of 2017 by the learned Judicial Magistrate-II, Pondicherry.

2.It is the case of the petitioner/defacto complainant that she filed a complaint against the second respondent/accused



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before the first respondent/complainant. The first respondent police registered a case in Crime No.9 of 2014 against the second respondent and five others for the offences under Sections 417 r/w 376, 420, 354(A), 506(i) r/w 34 IPC and Section 66(A) of Information of Technology Act, 2000. After investigation, they have laid a charge sheet before the learned Judicial Magistrate No.II, Puducherry and the same was taken on file in C.C.No.9 of 2017. However, in the charge sheet only the second respondent/accused has been arrayed as an accused and five other accused were deleted from the charge sheet and also altered the Sections from 417 r/w 376, 420, 354(A), 506(i) r/w 34 IPC and Section 66(A) of Information of Technology Act, 2000 to Sections 354(A) and 506(i) IPC. Since the respondent police deliberately altered the Sections in order to save the accused, who is working in their department and also as per the deletion report, five named persons have been deleted in the charge sheet. Since, the second respondent/accused is a police official, the first respondent police has not conducted fair investigation and filed a report under Section 173(2) Cr.P.C. Therefore, the petitioner as a de facto complainant filed a petition under Section 173(8) Cr.P.C for further investigation, which was dismissed by the learned Judicial Magistrate No.II, Puducherry on the ground that the petitioner has not produced any other materials that have been omitted by the investigating agency, for further investigation. Challenging the said order, the petitioner is before this Court by way of this revision.

3.The learned counsel for the petitioner would submit that the second respondent/accused by way of giving false promise of marrying the de facto complainant had sexual intercourse with her from June 2012 onwards and the said fact is very well known by five other accused, who have named in the First Information Report and they have aided the accused. He would further submit that based on the complaint of the de facto complainant and as per the directions of the Director General of Police, Puducherry, the Superintendent of Police (POP) conducted a detailed enquiry and registered First Information Report. However, the first respondent police while laying the charge sheet they discarded the report of the Superintendent of Police (POP) and laid the charge sheet against the second respondent/accused and deleted the five named persons. Since the petitioner/de facto complainant found that there was no fair investigation, she filed a petition under Section 173(8) Cr.P.C.



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The learned Magistrate failed to consider the materials and simply dismissed the petition stating that the petitioner has not established any fresh materials to order for further investigation.

4. Admittedly, the petitioner filed the complaint against the second respondent and five other accused. Since the second respondent is a police official, the Superintendent of Police conducted a preliminary enquiry as per the directions of the Director General of Police, Puducherry and registered the case in Crime No.9 of 2014 against the second respondent and five other accused. After investigation they have laid a charge sheet against the second respondent/accused and deleted the five named persons in the First Information Report. Admittedly, the petitioner has stated that the second respondent promised to marry her and had a illegal intimacy with her from June 2012 and other five accused aided the accused. On investigation it reveals that the other accused have not aware of the said fact and hence, their names were deleted in the charge sheet. However, the petitioner has stated that the first respondent has not conducted fair investigation and in order to help the second respondent, who is working in the said department and hence, she filed a petition under Section 173(8) Cr.P.C for further investigation.

5. On a perusal of the entire records and also the order passed by the learned Magistrate it would reveal that since the petitioner has not furnished any fresh materials to order for further investigation, the learned Magistrate found that except the statement of the de facto complainant no one has known about the same. Though there is no fresh materials produced, Section 173(8) Cr.P.C would not attract. In the absence of fresh materials, if further investigation is ordered, the very same police officials will do the very same exercise and no purpose would be served. Therefore, this Court is of the view that the petitioner can be given an opportunity to give all the particulars during the examination as a witness before the trial Court. During trial, if the learned Magistrate found that some other accused also involved in the case, he can very well exercise the power under Section 319 Cr.P.C and implead the other persons those who have also involved in the commission of the offence.



6. Under these circumstances this Court does not find any merit in the revision and therefore, the same is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is dismissed. However, the petitioner is at liberty to give all particulars before the trial Court, during the trial if the trial Judge found any other accused also involved in the commission of offence, he can exercise its power under Section 319 Cr.P.C in accordance with law.

Sd/-
Deputy Registrar

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate - II,
Pondicherry.
2. The Station House Officer,
C.B.C.I.D. Police Station,
Puducherry.
3. The Director General of Police,
Puducherry.
4. The Public Prosecutor,
Puducherry.

+1cc to M/s. Pondy Law Firm, Advocate SR.No.53701

Cr1.R.C.No.629 of 2021
and
Cr1.M.P.No.10405 of 2021

PCH(CO)
RVM(10/11/2021)