

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.24613 of 2019
and
CrI.M.P.Nos.16519 & 13087 of 2019

V.Raja

.. Petitioner

/versus/

1.The State represented by
The Inspector of Police,
District Crime Branch,
Vilupuram.

2.S.S.Rajendran

.. Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order passed by learned Judicial Magistrate-I, Villupuram in CMP No.1635 of 2015 in Cr. No.111 of 2014 dated 02.07.2019 on the file of Judicial Magistrate-I, Villupuram and pass such further or other orders as this Court may deem fit and proper in the above facts and circumstances of the case.

For Petitioner :Mr.B.Vijay

For Respondents:Mr.M.Mohammed Riyaz,

Additional Public Prosecutor for R1

Mr.Sundaravadanam for R2

ORDER

This petition has been filed challenging the order passed by the Court below dated 02.07.2019 in CMP No.1635 of 2015 by including the name of the petitioner as A2 in the final report and issuing summons for the appearance of the petitioner.

2.The 2nd respondent gave a complaint on 11.12.2014 to the effect that he paid a sum of rupees Seventeen Lakhs to A1 who is said to have promised the 2nd respondent that he will get a medical seat for the daughter of the 2nd respondent in a private medical college. It is further alleged in the complaint that A1 went back on his promise and was evading the repayment of the amount to the 2nd respondent. The 2nd respondent was attempting to

get in contact with A1 through phone and no money is said to have been repaid to the 2nd respondent. Till this stage, the petitioner was nowhere in the scene. It is alleged in the complaint that on 14.11.2014, the 2nd respondent received a call from two mobile numbers and the caller identified himself as Raja and that he is an Advocate by profession. It is further alleged that the said Raja guaranteed the petitioner that he will stand as a security and will ensure the repayment of money to the 2nd respondent and further asked 2nd respondent to come to his office on 25.11.2014 at 7 PM and receive the amount. The 2nd respondent in spite of waiting for the repayment of the amount, did not receive any amount and he called the petitioner over phone. It is alleged that the petitioner at that point of time had abused the 2nd respondent and threatened him with dire consequences.

3. On the basis of the above complaint, an FIR came to be registered by the 1st respondent on 18.12.2014 in Crime No.111 of 2014 for the offences under Sections 406, 420, 294(b) and 506 (i) of IPC. In this FIR, only the name of Srinivasan (A1) was shown as an accused.

4. The 2nd respondent filed a petition before the Court below under Section 319 of Cr.P.C. on 18.02.2015 on the ground that the name of the petitioner was not added in the FIR and that his name should be added as an accused. It is not known as to how such a petition is maintainable even before a final report is filed. However, the Court below had directed the respondent police to enquire upon this petition and file a report before the Court.

5. The respondent police conducted the investigation and filed the report before the Court below on 15.06.2019 stating that there are absolutely no materials as against the petitioner to add as an accused in the present case and therefore, his name has been dropped and the report is only filed against A1 for the offences under Sections 406 and 420 of IPC.

6. After the final report was filed before the Court below by the 1st respondent, the Court below issued notice to the 2nd respondent informing that the name of the petitioner has been dropped from the final report. Thereafter, an order came to be passed on 02.07.2019 in CMP.1635 of 2015 adding the petitioner as an accused in the final report and issuing process to the petitioner.

7. Heard Mr.B.Vijay, learned counsel appearing on behalf of the petitioner, Mr.M.Mohammed Riyaz, learned Additional Public Prosecutor appearing on behalf of the 1st respondent and

Mr.Sundaravadanam, learned counsel appearing on behalf of the 2nd respondent.

8.The order passed by the Court below is attacked mainly on the ground that the Court below ought not to have exercised its jurisdiction under Section 319 of Cr.P.C since, there was no evidence before the Court below as the trial is yet to commence in this case. It is further submitted that there was no protest petition filed on the side of the 2nd respondent and in spite of the same, the Court below has revived an application which was filed in the course of investigation under Section 319 of Cr.P.C. and order has been passed in this application. Therefore, it is submitted that the order of the Court below is on the face of it illegal.

9.The procedure adopted by the Court below in adding the petitioner as an accused in this case, is not in accordance with the code of criminal procedure. In the first instance, the Court below ought not to have entertained the application under Section 319 of Cr.P.C at the time of investigation. Till the filing of the final report before the Court, the investigation is within the exclusive domain of the prosecution. Based on the materials collected in the course of the investigation, the prosecution can add or delete the accused persons. The same can be questioned only at the time when the final report is actually filed before the Court. Till then, there is no question of entertaining an application since, there is no case pending before the Court. A criminal case starts before the Court only after a final report is filed before the Court.

10.Where the names of an accused person is dropped in the final report, the same has to be informed to the defacto complainant to enable the defacto complainant to file a protest petition or a complaint before the concerned Court. The law on this issue is well settled by the the judgment of the Hon'ble Supreme Court of India in the cases of Bhagwant Singh vs. Commissioer of Police and Another reported in 1985 SCC Cr1 267 and Gangadhar Janadan Mhatre vs. State of Maharashtra and others reported in 2005 SCC Cr1 404. Useful reference can also be made to the Judgement of this Court in the case of C.Ve.Shanmugam vs. Deputy Superintendent of Police, Tindivanam Sub-Division, Rosanai Police Station, Tindivanam, Villupram District reported in 2010 2 MLJ Cr1 833. It is clear from these judgements that where the names of some of the accused persons are dropped, the Magistrate must issue notice to the defacto complainant and give an opportunity to the defacto complainant to file a protest petition.

11.In the present case, such a notice was issued to the defacto complainant on 24.06.2019 and he was called upon to file

his objections. From the order passed by the Court below, it is seen that the defacto complainant had also filed his objections on 26.06.2019. Unfortunately, while passing the orders, the Court below passes the orders in CMP No.1635 of 2015 which was an application filed by the 2nd respondent at the time of the pendency of the investigation.

12.The Court below while passing the order, unfortunately has not taken into consideration the report that was filed by the 1st respondent on 15.06.2019 and also the statements that were relied upon by the 1st respondent. It was by virtue of this report, the name of the petitioner was removed from the final report.

13.If the objections, given by the 2nd respondent is taken to be a protest petition, it was the duty of the Court below to have considered the objections and also the report of the 1st respondent along with the statements of the witnesses which was relied upon by the 1st respondent. A reading of the order passed by the Court below does not reflect any application of mind and there is no reference to the report filed by the 1st respondent and the statements of the witnesses. While considering the protest petition, the Court is in the process of adding a person as an accused in the case whose name has been dropped in the final report. Therefore, due consideration must be given to all the materials that are collected during the investigation. The Court must deal with those materials and thereafter, give its reasons as to why it was not right on the side of the prosecution to drop the name of the accused person. The said exercise has not been done by the Court below and the Court below has merely relied upon the complaint and the statements of the 2nd respondent and nothing else.

14.In the considered view of this Court, the manner in which the Court below has dealt with the objections (protest petition) of the 2nd respondent requires interference of this Court. Accordingly, the order passed by the Court below dated 02.07.2019 is hereby set aside.

15.The matter is again remanded back to the file of the learned Judicial Magistrate No.I, Villupuram with a direction to consider the entire materials placed before the Court and see if there are any materials as against the petitioner in order to add him as an accused person in the final report. Even though, the Court below is not supposed to write a judgment for acquittal at this stage, there must be a prima facie material available to add someone as an accused person and Court below has to necessarily refer to that prima facie material while passing an order and add a person as an accused person. This exercise shall be done by the Court below and a decision shall

be arrived at, within a period of four weeks from the date of receipt of copy of this order. The Court below shall consider the objections filed by the 2nd respondent as a protest petition and deal with the same.

16. In the result, this criminal original petition is allowed with the above directions. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate-I, Villupuram.
2. The Inspector of Police,
District Crime Branch,
Vilupuram.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Sathish, Advocate, S.R.No. 3463
+2cc to Mr.B.Vijay, Advocate, S.R.No.3300

CrI.O.P.No.24613 of 2019
and CrI.M.P.Nos.16519 & 13087 of 2019

VSN II(CO)
GN(18/02/2021)

WEB COPY