



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CrI.OP(MD)No.943 of 2021 and

CrI.MP(MD)No.430 of 2021

Dr.K.Ramalakshmi

... Petitioner/Petitioner/Defacto Complainant

vs.

The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District-7.

(Crime No.349 of 2010)

... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to set aside the return endorsement made by the Judicial Magistrate No.1, Tirunelveli in an Unnumbered Criminal Miscellaneous Petition in CC.No.177 of 2012 and consequently, direct the Judicial Magistrate No.1, Tirunelveli to take the application on file.

For Petitioner

:Mr.N.Dilip Kumar

For Respondent

:Mr.A.Robinson

Government Advocate(Criminal Side)

O R D E R

This present petition is filed seeking for a direction to call for the records in an unnumbered Criminal Miscellaneous Petition in CC.No.177 of 2012 on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2.The contention of the petitioner is that he is the defacto complainant in Crime No.349 of 2010 of Perumalpuram Police Station, Tirunelveli District and that the Inspector of Police did not conduct proper investigation and however, laid a final report before the learned Judicial Magistrate No.1, Tirunelveli. His main grievance is that the Investigation Officer did not look into all the allegations contained in his complaint. His further contention is that the petition filed by him before the learned Judicial Magistrate No.1, Tirunelveli under Section 173 (2) (8) of the Code of Criminal Procedure praying for a direction to the Inspector of Police for further investigation in Crime No.349 of 2020 was returned by the learned Judicial Magistrate No.1, Tirunelveli on the ground that the petitioner did not have any *locus standi* to file such an application.

3. In the decision in Vinubhai Haribhai Malaviya and others vs. State of Gujarat and Another reported in (2019) 17 SCC 1, the Hon'ble Supreme Court has held that, the Magistrate has power to order further investigation as available under Section 173 (2) of Code of Criminal Procedure and that an exercise of such power is available even at post cognizance stage until trial commences ie.,



charges are framed. It is further held that this power can also be exercised *suo motu* by the Magistrate, depending on the facts of each case.

4. The learned Judge without considering Sections 173 (2) and 173(8) of Code of Criminal Procedure has simply returned the petition filed by the petitioner on the ground that the petitioner does not have any *locus standi* to file such a petition. In the circumstances, the learned Judicial Magistrate No.1, Tirunelveli is directed to take the petition on file and dispose of the said petition within a period of four weeks from the date of receipt of a copy of this order strictly on merits and in accordance with law.

5. With the above observation, the present petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.Judicial magistrate No.I,Tirunelveli

2.The Inspector of Police,

Perumalpuram Police Station, Tirunelveli District-7

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

Copy to

The Registrar Judicial, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-2267[F] dated 27/01/2021)

CrI.OP(MD)No.943 of 2021 and

CrI.MP(MD)No.430 of 2021

TP(CO)

KB(15.02.2021) 2P 6C

<https://hcservices.ecourts.gov.in/hcservices/>