



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.08.2021

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.295 of 2021

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Santhi Ramamurthi : Petitioner/Defacto Complainant

Vs.

1.State represented by
The Inspector of Police,
Anti Land Grabbing Special Cell (ALGSC),
Thanjavur.
(Crime No.35 of 2012) : 1st Respondent/Complainant

2.V.Anjalaiammal (Died)

3.V.Rajendran : R2 & R3/Accused

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure, against the order passed by the Judicial Magistrate No.1, Kumbakonam, made in CC No.731 of 2019, dated 19.01.2021.

For Petitioner : Mr.K.Samidurai

For 1st Respondent : Mr.RMS.Sethuraman
Standing Counsel for State
(Crl. Side)

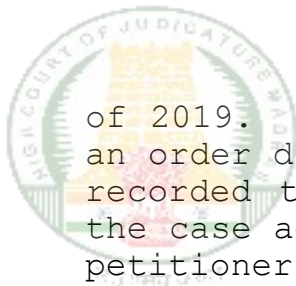
For 2nd Respondent : Abated in Trial Court

For 3rd Respondent : Mr.Deenadhayalan
for Mr.B.Anandan

O R D E R

This Criminal Revision is filed against the order passed by the Judicial Magistrate No.1, Kumbakonam, made in CC No.731 of 2019, dated 19.01.2021.

2.It is seen from the records that the 1st respondent police registered FIR in Crime No.35 of 2012 against the respondents 2 and 3 herein on the ground of forgery committed by them and thereafter, filed a final report against them for offences under sections 120-B, 420, 423, 465, 467, 468 and 471 IPC. The learned Judicial Magistrate No.1, Kumbakonam, took the case on its file as CC No.731



of 2019. But however, on 19.01.2021, the learned Magistrate passed an order discharging the 2nd Accused Rajendran from the case and also recorded that 1st Accused Anjalaiammal was reported to be dead and the case against her stands abated. Aggrieved by the said order, the petitioner/de-facto complainant is before this court.

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3. Heard the learned counsel appearing for the parties and perused the materials available on record.

4. The main contention raised on the side of the petitioner/de-facto complainant is that when the court at the time of taking positive final report as negative final report and in the cases where negative final report is filed and the court is also accepting the same as such the in such cases, the court concerned should issue notice to the de-facto complainant and because of the fact that the version of the de-facto complainant in the FIR and 161 (3) statement is not accepted in total or in part by the police and in such cases, the de-facto complainant is the real aggrieved party, so notice should be issued to the de-facto complainant to hear her grievances and and the non-serving of notice to the petitioner/de-facto complainant vitiated the whole process and hence, the impugned order passed by the trial court is liable to be set aside. For that, the learned counsel appearing for the petitioner/de-facto complainant relied upon the decision in **2011-1-L.W (Crl.) 424 (Madasamy Devar Vs. State & another)**.

5. On the other hand, it is argued on the side of the 1st and 3rd respondents that that as no prima facie case exists, the trial court correctly discharged the accused and hence, the order passed by the trial court is correct and prays for dismissal of the criminal revision.

6. In this case, in the FIR, 4 persons name were shown as accused persons. But in the charge sheet, only two persons were shown as accused. No deletion report was filed on the side of the prosecution, why the remaining persons were deleted. On careful perusal of the judgment reported in **2011-1-L.W. (Crl.) 424 (Madasamy Devar Vs. State and another)**, it has been held in para 10 and 11 as follows:-

10. In Bhagwant Singh's case the Apex Court has observed thus:

"4. 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 Section 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

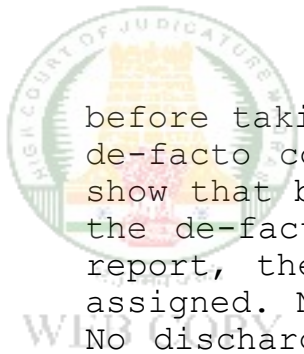


Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there 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. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

11. In the above said C.Ve. Shanmugam's case, the earlier judgment in S.Papaiah's case has been referred to and identical view was taken. In Bagawant Sing's case, the Supreme Court held that accepting final report without notice to the defacto complainant is illegal, when the Judicial Magistrate taken a view that there is no sufficient ground for proceeding against some of the persons in the F.I.R.. Taking cognizance of the offence was held to have been vitiated and the committal of the case to the Court of Sessions for trial and all other consequential proceedings before the Court of Sessions were set aside.

7. In the above ruling, it was stated that when the accused stated in the FIR was deleted, it is the duty of the trial court

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before taking cognizance of the case, notice should be issued to the de-facto complainant. But in this case, no document was filed to show that before taking cognizance of the case, notice was issued to the de-facto complainant. In this case, on the basis of the final report, the trial court taken cognizance and CC No.731 of 2019 was assigned. No copies of the documents were furnished to the accused. No discharge petition was filed by the accused. It is to be noted here that after taking cognizance of the final report filed by the police, the trial court cannot have restored to the pre-cognizance stage and discharged the accused. In this case, the trial court failed to issue notice to the de-facto complainant before taking cognizance and without discharge petition, discharged the accused, which is not correct. Further, without giving reasonable opportunity of hearing to the de-facto complainant, the trial court wrongly discharged the 2nd accused. Hence, it is necessary to interfere into the findings of the trial court.

8.In fine, this Criminal Revision is allowed. The impugned order, dated 19.01.2021 passed in C.C No.731 of 2019 by the Judicial Magistrate No.1, Kumbakonam is set aside.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

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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.1,
Kumbakonam.
- 2.The Inspector of Police,
Anti Land Grabbing Special Cell (ALGSC),
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,

Madurai.

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Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-26186[F] dated 12/08/2021)

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RK (21.09.2021) 5P 7C