



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.08.2021

CORAM

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

Crl.RC(MD)No.312 of 2021

and

Crl.MP(MD)No.3092 of 2021

WEB COPY

Dr.K.Ramalakshmi

: Petitioner/Petitioner/
De-facto complainant

Vs.

The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District-7
(Crime No.349/2010)

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision filed under sections 397 r/w 401 of the Code of the Criminal Procedure against the order passed by the Judicial Magistrate No.1, Tirunelveli, in Crl.MP No.3007 of 2021 in CC No.177 of 2012 dated 01.04.2021

For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.RMS.Sethuraman
Standing Counsel for State
(Criminal side)

J U D G M E N T

This Criminal Revision is directed against the order passed by the Judicial Magistrate No.1, Tirunelveli, in Crl.MP No.3007 of 2021 in CC No.177 of 2012, dated 01.04.2021.

2.It reveals from the records that the petitioner/de-facto complainant and her husband preferred a complaint before the Commissioner of Police, Tirunelveli, on 29.03.2010 and the same was forwarded to the Assistant Commissioner of Police, Palayamkottai for enquiry and the same was also forwarded to the respondent police for further enquiry. In the complaint, it is stated that the accused persons threatening her and her husband in order to misuse the signed unfilled cheques, pro-notes, stamp papers and plain papers. While so, the petitioner preferred a complaint before the respondent police, on 12.07.2010 and on the basis of the complaint, the respondent police registered a case in Crime No.349 of 2010 and after investigation, filed charge sheet before the Judicial Magistrate No.1, Tirunelveli. In the meantime, the petitioner filed a petition in Crl.MP No.3007 of 2021 in CC No.177 of 2012 to order



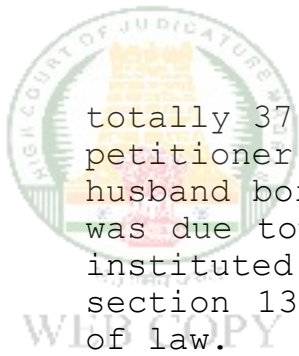
for further investigation in Crime No.349 of 2010 by the respondent police and to submit additional charge sheet. The trial court dismissed the said petition, on 01.04.2021. Challenging the same order, the petitioner is before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that the police party by themselves are also entitled to file a further additional report and if that being the case, the right of the aggrieved informant/complainant seek redress on before the Judicial Magistrate for further investigation of the criminal case because of the omissions by the investigating police authorities beyond any cavil of doubt and there are serious omissions by the police party in the investigation of the criminal case and despite furnishing of specific materials and documents, the police party had not filed a comprehensive final report bringing out the truth and the Court may direct the police to investigate further even after taking cognizance and while conducting of the trial, if defects in the investigation are noticed and the delay on the part of the petitioner in making the request for further investigation is not willful and the application is filed at the belated stage cannot be a reason to reject the claim of the petitioner and in fact, the delay is not attributable to the petitioner and as the victim/complainant received the witness summon only recently from the court and she was earlier submitting representations to the police and there is no intention on the part of the petitioner to delay the trial or protract the proceedings and even a time bound order from this court will take care of such predicament and the petitioner undertakes to cooperate in the early disposal of the case and prays that the criminal revision has to be allowed. In support of his contention, the learned counsel appearing for the petitioner submitted the rulings reported in 2013(5) SCC 762 (Vinay Tyagi Vs. Irshad Ali and others) and 2006(7) SCC 296 (Popular Muthaiah Vs. State).

5. On the other hand, the learned Standing counsel appearing for the respondent/State argued that the trial court after careful perusal of the documents has passed the impugned order and there is no need to interfere into the findings of the trial court.

6. In this case, on the basis of the complaint given by the petitioner, dated 12.09.2020, FIR in Crime No.349 of 2010 was registered for the offence under section 40 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and Section 506(ii) IPC as against two named persons and some unknown persons and after completion of the investigation, final report was filed by the Inspector of Police and the same was taken on file in CC No.177 of 2012 under section 4 of Exorbitant Interest Act and 506(ii) IPC and



totally 37 persons were arrayed as accused in CC No.177 of 2012. The petitioner herself in the complaint admitted that she and her husband borrowed loan from several persons and nearly Rs.87,00,000/- was due towards her money-lenders and due to it, several cases were instituted against her and her husband before various Courts under section 138 of the Negotiable Instruments Act and other provisions of law.

7.Further, in this case, during the year 2012, charge sheet was filed and the Court took the cognizance in CC No.177 of 2012 as against 37 accused and summons were sent to 37 accused for their appearance. Further, the trial court sent summons to this petitioner to adduce her evidence. At this stage, the petitioner filed this petition. No sufficient reasons were stated by this petitioner for delay in filing this petition.

8.The learned standing counsel appearing for the prosecution submitted that the Magistrate has power to order further investigation as contemplated under section 173(2) of Cr.P.C and the power is available even at post cognizance stage I.e., till charges are framed and it is also settled by various judgments of the Hon'ble Apex Court that commencement of trial is not the stage of taking cognizance, but till charges framed and in this case, charges were already framed and the trial has already been commenced and under these circumstances, the petition filed by the petitioner is not maintainable and additional charge sheet is not maintainable and prays that the criminal revision may be dismissed.

9.In this case, charges were framed during the year 2012 and the case is ripe for trial. The learned counsel appearing for the petitioner pointed out the power to order further investigation as contemplated under section 173(2) of Cr.P.C and the power is available even at post cognizance stage I.e., till charges are framed and commencement of trial is not the stage of taking cognizance, but till charges framed and hence, he argued that this petition is maintainable.

10.At this juncture, it is necessary to refer Section 173(2) of Criminal Procedure Code, which would run thus:-

173.Report of police officer on completion of investigation.

(2)(i)As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report of the form prescribed by the State Government stating-



(a) the name of the parties;

(b) the nature of the information;

(c) the name of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170 been attached where investigation relates to an offence under section 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or section 376-E of Indian Penal Code (45 of 1860).

10. Further, on perusal of the ruling reported in 2019 (17) SCC 1 (Vinubhai Haribhai Malaiya and others Vs. State of Gujarat), it has been held that ordering of further investigation after summon of police report under section 173(2) of Cr.P.C at post cognizance stage until trial commences I.e., charges are framed and the power can be exercised *suo moto* by the Magistrate himself depending on the fact of each case. In this case, the Magistrate after perusing the records, took the cognizance. Further, the police has not sought permission from the trial court for further investigation. In this case, the trial court took the cognizance and framed the charges and posted the case for examination of witnesses. Before framing of charges, no permission for further investigation was sought for. The reasons assigned for filing this criminal revision petition is not reasonable. Hence, the trial court correctly came to the conclusion that there is no need for further investigation.

11. In the result, this criminal revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

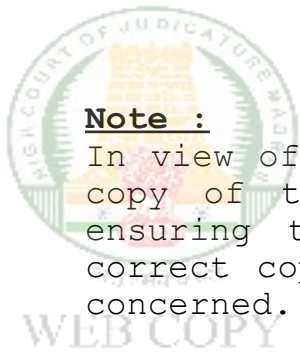
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Sub Assistant Registrar (CS)

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



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,
Tirunelveli.

2.Do through -The Chief Judicial Magistrate,
Tirunelveli.

3.The Inspector of Police, Perumalpuram Police Station,

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-26974[F] dated 23/08/2021)

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RK (13.09.2021) 5P 8C