

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 18.08.2021****CORAM****THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI****Crl.RC(MD)No.384 of 2021**

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Thankabai

: Petitioner / Petitioner /
De-facto Complainant

Vs.

The State of Tamilnadu
Rep. by the Sub Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.
(Crime No.101 of 2017)

: Respondent / Respondent /
Complainant

Prayer: Criminal Revision filed under sections 397 r/w 401 of the Code of the Criminal Procedure against the order passed in Crl.M.No.7083 of 2018 in RC No.23 of 2018, dated 30.09.2020 on the file of the Judicial Magistrate No.2, Kuzhithurai.

For Petitioner	:	Mr.K.Vamanan
For Respondent	:	Mr.RMS.Sethuraman Standing Counsel for Government (Crl. Side)

J U D G M E N T

This criminal revision is directed against the order passed in Crl.M.No.7083 of 2018 in RC No.23 of 2018, dated 30.09.2020 on the file of the Judicial Magistrate No.2, Kuzhithurai.

2.It is the case of the petitioner that based on the complaint given by him, the respondent police registered a case in Crime No.101 of 2017 for the offence under section 294(b), 323, 506(ii) IPC r/w section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. The respondent police, after investigation has filed a final report before the Judicial Magistrate No.2, Kuzhithurai, as "Mistake of Fact" and the same is taken on file as RC No.23 of 2018. The learned Judicial Magistrate, accepted the final report and issued notice to the petitioner/de-facto complainant. The petitioner, after receiving the refer notice in RC No.23 of 2018 on the file of the Judicial Magistrate No.2, Kuzhithurai, filed protest petition in Crl.MP No.7023 of 2019. However, the learned Judicial Magistrate, closed the FIR as 'Mistake of Fact', on 30.09.2020. Hence, the



petitioner is before this court.

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

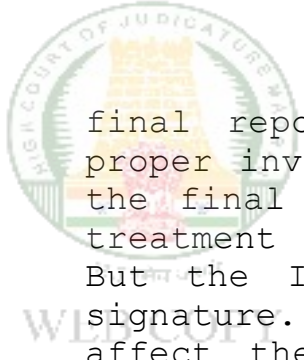
4. The main contention raised on the side of the petitioner/de-facto complainant is that without conducting proper investigation, the respondent police filed a final report before the Judicial Magistrate as 'Mistake of Fact' and therefore, the final report is suspicious and hence, the final report filed by the respondent is not proper and hence, the learned Judicial Magistrate ought to have refused the final report and order for further investigation and prays that the criminal revision has to be allowed.

5. On the other hand, the learned Standing counsel appearing for the State/respondent submitted that the learned Magistrate correctly passed the order and prays for dismissal of the criminal revision.

6. In this case, it is admitted fact that there was civil dispute between the de-facto complainant and the accused. The contention of the respondent is that only the son of the de-facto complainant assaulted the accused and for that, the accused gave the complaint and on the basis of the complaint, criminal case in Crime No.100 of 2017 was registered and to defeat the above case, the petitioner falsely gave the complaint against the accused and after due investigation, the case was closed as 'Mistake of Fact' and hence, it is not necessary to set aside the order passed by the learned Judicial Magistrate.

7. Further, on the side of the respondent, it is argued that when the respondent tried to serve the RCS notice, it was refused by the petitioner/de-facto complainant and hence, it was affixed on the door of the petitioner and then, she filed objection to the RCS Notice. On perusal of the order passed by the trial court, it is stated that there was civil dispute between the accused and the de-facto complainant and after due enquiry only, the respondent filed the final report. In respect of the civil dispute, the petitioner/de-facto complainant has every right to get remedy before the civil forum. Further, prior to the occurrence, the accused gave the complaint against the son of the petitioner stating that the son of the petitioner assaulted him and in this regard, the case was registered in Crime No.100 of 2017. Hence, the trial court correctly came to the conclusion that to defeat the case in Crime No.100 of 2017, the petitioner gave the complaint in Crime No.101 of 2017 as against the accused.

8. Further, the learned counsel appearing for the petitioner submitted that the Investigating Officer received the 161(3) statement of the Doctor, who gave treatment on 27.04.2017, but the



final report was filed on 26.04.2017 and hence, there was no proper investigation done by the investigation officer and hence, the final report cannot be accepted. But the Doctor, who gave treatment to the injured gave the AR copy on 26.04.2017 itself. But the Investigating Officer wrongly put the date under his signature. It is only a clerical mistake and it will not in anyway affect the case. It is to be noted that only after giving reasonable opportunity to the petitioner/de-facto complainant, the impugned order was passed on merits. Further, after perusing the records, the trial court correctly accepted the final report and closed the case. Hence, it is held that it is not necessary to interfere into the findings given by the trial court

9. In the result, this criminal revision is dismissed.

Sd/-

Assistant Registrar (CS III)

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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.2,
Kuzhithurai.
2. The Sub Inspector of Police,
Puthukadai Police Station,
Puthukadai,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.RC (MD) No.384 of 2021
18.08.2021

NSN (CO)