



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.03.2021

Delivered On : 16.04.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.569 of 2020

and

Crl.M.P.(MD)Nos.5030 and 5031 of 2020

Sahila .. Petitioner/Petitioner/Accused No.1

Vs.

1.A.Narayanasamy

2.The Superintendent of Police,
Madurai District.

.. Respondents

(R2 impleaded as per order of this Court dated 17.12.2020 in
Crl.M.P.(MD)No.6862 of 2020 in Crl.R.C.(MD)No.569 of 2020 by RTJ)

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.IV (FAC), Madurai, Madurai District in Cr.M.P.No.3459 of 2013 in C.C.No.83 of 2012 vide order dated 02.03.2020 and to set aside the same and consequently stay all further proceedings in C.C.No.83 of 2012 pending on the file of the aforesaid Magistrate till a final report is filed by the Superintendent of Police, Madurai District on the basis of the investigation being conducted upon the respondent's complaint dated 15.01.2007.

For Petitioner : Mr.R.Anand

For 1st Respondent : Mr.S.M.A.Jinnah

For 2nd Respondent:Mr.S.Chandrasekar,Additional Public
Prosecutor

ORDER

This Revision has been filed against the order passed in Cr.M.P.No.3459 of 2013 dated 02.03.2020, on the file of the learned Judicial Magistrate No.IV (FAC), Madurai, Madurai District.

2.The petitioner is A1 in C.C.No.83 of 2012, on the file of the learned Judicial Magistrate No.IV, Madurai. The petitioner and others filed a petition in Cr.M.P.No.3459 of 2013 under Section 210 (1) of Cr.P.C., to stay all further proceedings pertaining to C.C.No.11 of 2008 till a conclusion is arrived by the Superintendent of Police, Madurai District regarding the investigation pending on the complaint of the first respondent dated 15.01.2007. That

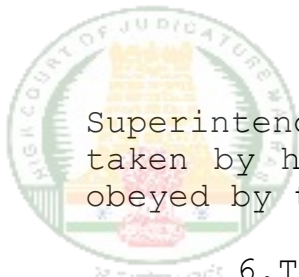


petition was dismissed by the learned Judicial Magistrate No.IV, Madurai. Against the same, the petitioner has preferred this revision.

3.On the side of the petitioner, it is stated that the respondent has admitted that her daughter Parimala forwarded a complaint dated 15.01.2007 to the Superintendent of Police, Madurai District. In CrI.O.P.(MD)No.1968 of 2007, this Court by an order dated 09.04.2007 has directed the Authorities to enquire the same. The learned Judicial Magistrate has to wait till the outcome of the investigation. Ignoring that order, the learned Judicial Magistrate failed to call for the records from the Authority and has taken up the private complaint on file. Thereby, there is a possibility of conflicting decisions. The learned Magistrate can try the private complaint along with the final report of the police under Section 173(2) of Cr.P.C. Since the first respondent has not taken any steps to bring the final decision of the Superintendent of Police to the knowledge of the learned Judicial Magistrate, an inference can be drawn that such report, is in favour of the petitioner. The respondents suppressed the same. In the absence of the final report on the investigation, the learned Judicial Magistrate cannot proceed further and prayed the impugned order to be set aside.

4.On the side of the first respondent, it is stated that the first respondent is a retired Headmaster and the petitioner was a Sub Inspector of Police at that time. The petitioner and two police constables entered into the house of the first respondent and they assaulted the first respondent and his son and then the petitioner registered a false case against the first respondent. The first respondent was taken into illegal custody and he was severely beaten up. The learned Magistrate has noticed the injuries caused to the first respondent and has directed for his treatment. The first respondent has filed a petition before the Human Rights Commission. The Human Rights Commission has awarded compensation for the first respondent. The daughter of the first respondent has sent a complaint to the Chief Minister cell and to the Superintendent of Police. No enquiry was conducted in a proper manner.

5.In Cr.O.P.(MD)No.1968 of 2007, this Court has directed the said Authorities to enquire the complaint given by Parimala, daughter of the first respondent. On 27.07.2007, the Additional Deputy Superintendent of Police enquired the first respondent for name sake. The enquiry was only an eye wash and no action was actually taken against the petitioner. Hence, in the year 2007, the first respondent filed a private complaint under Section 200 of Cr.P.C. On 20.08.2009, the first respondent sent a petition to the Superintendent of Police under the RTI Act to know the status of the enquiry. He received a reply stating that an enquiry was conducted but they were not in a position to inform the result of the enquiry. In CrI.O.P.(MD)No.1968 of 2007, this Court has clearly directed the



Superintendent of Police to communicate in writing the decision taken by him to the first respondent herein. But the order was not obeyed by the Superintendent of Police.

6.The learned counsel for the first respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Sankaran Moitra v. Sadhna Das and another** reported in **(2006) 4 Supreme Court cases 584**, wherein it is stated as follows:

"It is thus clear that before Section 210 can be invoked, the following conditions must be satisfied.

(i)there must be a complaint pending for inquiry or trial;

(ii)investigation by the police must be in progress in relation to the same offence;

(iii)a report must have been made by the police officer under Section 173; and

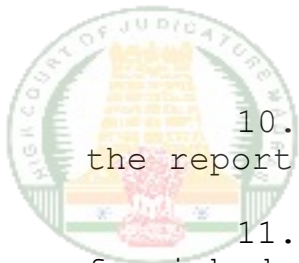
(iv)the Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case."

7.The learned counsel for the first respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of **Shashikant v. Central Bureau of Investigation** reported in **(2007) 1 SCC 630**, wherein it is stated as follows:

"Registration of a case is a sine qua non for starting investigation."

8.It is stated that an inquiry before registering the FIR cannot be taken as investigation under Section 2(h) of Cr.P.C. A report by the police officer under Section 173 of Cr.P.C., can be only given after the registration of a FIR. The petitioner approached this Court in Crl.O.P.(MD)No.4118 of 2009 to quash the private complaint and the same was dismissed by the Court on 19.08.2009. The point raised by the petitioner in this petition is the same in Crl.O.P.(MD)No.4118 of 2009. The first respondent filed a petition on 20.08.2009 under the RTI Act and has received the reply that they were not in a position to inform the result of the enquiry. When there is no FIR, there is no necessity for the learned Magistrate to wait for the report or to call for the records. There is no probability for an enquiry to be pending for the past 13 years. The first respondent is more than 70 years old and he suffered severe custodial torture on the hands of the petitioner and prayed the petition to be dismissed.

9.This Court directed the petitioner to implead the second respondent and to direct the second respondent to furnish the enquiry details. The second respondent has not furnished the enquiry details though sufficient time was granted.



10. On the side of the second respondent, it is stated that the report has to be traced out.

11. Even in the year 2009, the second respondent has not furnished the copy of the enquiry report to the first respondent under the RTI Act. The complaint filed by the first respondent was pending for the past 13 years. Even though this Court has given a direction to conduct the enquiry and to furnish a copy of the report to the first respondent, the second respondent has not chosen to complete the enquiry and to furnish a copy of the result of the enquiry in writing to the first respondent.

12. The copy of the enquiry report was not furnished to the petitioner as directed by this Court in Crl.O.P.(MD)No.1968 of 2007. The first respondent has taken steps to get copy of the enquiry report by filing a petition under the RTI Act. Since no enquiry report was furnished to him, the first respondent was not able to produce any such enquiry report before the trial Court. The petitioner being an Police Officer is in a position to get the copy of the enquiry report but instead of getting a copy and filing the same, the petitioner is blaming the other side for the non production of an enquiry report, which is not in existence. This Court can presume that no enquiry report was ever prepared by the second respondent. When the result of an enquiry could not be informed to the first respondent in the year 2009, there is no possibility for the second respondent to trace out any such enquiry report in the year 2021.

13. There is no FIR registered against the petitioner. When there is no FIR under Section 154 of Cr.P.C., there cannot be an investigation under Section 173 of Cr.P.C. Only when an investigation is pending, the learned Magistrate can invoke Section 210 of Cr.P.C. An order under Section 210 of Cr.P.C., could not be passed, when there is no FIR. Therefore, there is no possibility of conflicting opinions.

14. It is stated that the petitioner has raised the same points in the quash petition in Crl.O.P.(MD)No.4118 of 2009, and that and that the petitioner is re-agitating the same matter. The private complaint is pending for the past 13 years. No FIR is filed by the second respondent. No investigation is pending. When there is no FIR, Section 173(2) of Cr.P.C., is not applicable to this case.

15. In the above circumstance, there is nothing sufficient enough to interfere in the order passed in Cr.M.P.No.3459 of 2013 dated 02.03.2020, on the file of the learned Judicial Magistrate No.IV (FAC), Madurai, Madurai District. Hence, this Criminal Revision Case is dismissed. If at all any enquiry is still pending, the second respondent is hereby directed to close the enquiry subject to the result of the judgment to be passed by the learned



Judicial Magistrate. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

Mrn

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.IV (FAC),
Madurai.
- 2.The Superintendent of Police,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai. 5 Copy

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