



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.O.P. (MD) .No.15938 of 2020

T.Sathish Kumar ... Petitioner/ Defacto complainant

Vs.

1.The State rep., by
The Commissioner of Police,
Madurai City.

2.State rep., by
The Inspector of Police,
K.Pudur Police Station,
Madurai City.
In Crime No.2577 of 2020

3.Surya @ Suryaprakash

4.Saravanan

5.Malar Kannan

6.Madalai Babu

7.Praveenkumar

... Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Code of Criminal Procedure, to direct the first respondent to transfer the investigation in Crime No.2577 of 2020 on the file of the second respondent to any other Special agency.

For Petitioner : Mr.K.Navaneetharaja

For Respondents : Mr.A.Robinson

Government Advocate (Criminal Side)
for R1 & R2

O R D E R

The present petition is filed by the petitioner under Section 482 of Code of Criminal Procedure seeking for a direction to the first respondent to transfer the investigation in Crime No.2577 of 2020 on the file of the second respondent to any other Special investigating agency.

2.The main contention of the petitioner is that though he sustained grievous injuries, the Police registered First Information Report in Crime No.2577 of 2020 for the offences punishable under



Sections 147, 294(b), 323, 324, 341 and 506(ii) of Indian Penal Code. His further contention is that the second respondent in order to safeguard certain persons omitted the names of those persons and filed an alteration report before the concerned Judicial Magistrate.

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3.Mr.A.Robinson, learned Government Advocate (Criminal side), who accepts notice on behalf of the respondents 1 and 2, on instructions, would submit that investigation in Crime No.2577 of 2020 is already completed and final report is also made ready against two accused for the offences punishable under Sections 294 (b), 323, 341, 326 and 506(i) of Indian Penal Code.

4.It is pertinent to point out that mere disclosure of names of certain persons in First Information Report would not be sufficient to direct the Magistrate to issue summons to those persons. However, at this juncture, it is relevant to extract Section 319 of Code of Criminal procedure:-

"319.Power to proceed against other persons appearing to be guilty of offence.

(1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused. The Court may proceed against such person for the offence which he appears to have committed.

(2)where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3)Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4)Where the Court proceeds against any person under Sub-Section (1) then

(a)the proceedings in respect of such person shall be commenced afresh, and witnesses re-hears:

(b)subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

5.In the decision in **Hardeep Singh Vs., State of Punjab** reported in **AIR 1998 SC 3148**, the Constitution Bench of the Hon'ble Apex Court held that "It is the duty of the Court to do justice by punishing the real culprit" and also observed that "....where the investigation agency for any reason does not array one of the real



culprits as an accused, the Court is not powerless in calling the said accused to face the trial."

6.The petitioner can also file a protest petition in this regard before the concerned Judicial Magistrate and on such filing of protest petition, the Magistrate shall pass orders strictly in accordance with law.

7.With the above observation, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CS-I)

// 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.The Judicial Magistrate No.VI,
Madurai.

2.The Commissioner of Police,
Madurai City.

3.The Inspector of Police,
K.Pudur Police Station,
Madurai City.

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

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