



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.02.2021

Pronounced on : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.202 of 2017

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Jebaraj : Petitioner
Vs.

State represented by
The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi District. : Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records from the trial Court and to set aside the order passed by the learned Judicial Magistrate No.II, Thoothukudi District in Cr.M.P.No.196 of 2017, dated 31.01.2017.

For Petitioner : Mrs.A.Banumathy
For Respondent : Ms.S.E.Veronica Vincent,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision case is directed against the order passed in Cr.M.P.No.196 of 2017, dated 31.01.2017 by the learned Judicial Magistrate No.II, Thoothukudi District, dismissing the complaint filed under Section 200 Cr.P.C.

2.One Vivilian, son of the revision petitioner's elder brother, by alleging that the revision petitioner, his wife Tamil Selvi and his son Joward had trespassed into the house of the said Vivilian at about 03.00pm, on 03.01.2015, abused him in filthy language, attacked him and his parents and that they had also caused damages to his pulsar two wheeler and also caused criminal intimidation, lodged a complaint before the Thoothukudi North Police Station. Since no action was taken, the said Vivilian has filed a private complaint before the Court of Judicial Magistrate No.II, Thoothukudi under Section 156(3) Cr.P.C and as per the directions of the learned Judicial Magistrate No.II, Thoothukudi in Cr.M.P.No.1156 of 2016, FIR came to be registered against the revision petitioner, his wife and son in Crime No.444 of 2016 of Thoothukudi North Police Station for the offences punishable under Sections 448, 294(b), 323 and 506(i) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Thereafter, the petitioner's wife has filed a petition in CrI.O.P.(MD)No.17277 of 2016, to quash the FIR in Crime No.444 of 2016, on the file of the respondent police, before



this Court and this Court, after recording the submission of the learned Government Advocate (Criminal Side) that after investigation in Crime No.444 of 2016, the case was closed as 'Mistake of Fact', dismissed the CrI.O.P.(MD)No.17277 of 2016 as infructuous. The revision petitioner has then filed a private complaint under Section 200 Cr.P.C before the Court of the learned Judicial Magistrate No.II, Thoothukudi against the said Vivilian for the offence alleged to have been committed under Section 500 I.P.C. After recording the sworn statement of the revision petitioner/complainant and the statements of four other witnesses and on hearing the petitioner's side, the learned Judicial Magistrate has passed the impugned order dated 31.01.2017 dismissing the complaint by granting liberty to the complainant to file fresh complaint at later stage. Aggrieved by the said order passed in Cr.M.P.No.196 of 2017, dated 31.01.2017, the complainant has come forward with the present revision.

3.The learned counsel for the revision petitioner would contend at the first instance, that the learned Magistrate has written the order and pronounced the same as if, he is taking cognizance of the offence and subsequently, by scoring the earlier written order, passed the impugned order dismissing the complaint. No doubt, on perusal of the original complaint, as rightly pointed out by the learned counsel for the petitioner, the learned Magistrate has written the order by himself and even after signing the said order, scored it and written another order, which is now impugned in the revision.

4.It is pertinent to mention that the learned Magistrate has not attempted to conceal the earlier order by erasing the said order with the help of whitener or using any other method. But generally the Judicial Officers are expected to start writing or dictating the order or judgment, after making necessary preparations and after reaching out the decision and the reasons therefor.

5.In the present case, no doubt, the learned Magistrate has written the earlier order as if he is taking cognizance for the offence, but subsequently the impugned order was passed dismissing the complaint. It is pertinent to note that the learned Magistrate has not passed the orders on merits and more particularly, he has granted liberty to the revision petitioner to file his complaint at a later stage. The revision petitioner has filed his complaint for defamation on the ground that the FIR registered against him and his family members was closed as 'mistake of fact'. The learned Magistrate, by observing that though prosecution has represented before the High Court that the FIR was closed as 'mistake of fact', they have not filed the final report before him and that even if the final report is filed, the complainant therein will have some remedies available under Criminal Procedure Code, came to the conclusion that the complaint filed by the revision petitioner is not maintainable at that stage. As per the directions of this Court,



the learned Additional Public Prosecutor, after getting instructions from the prosecution, would inform that protest petition was not filed and no proceeding is pending in Crime No.444 of 2016, on the file of the respondent Police, before the concerned Court. But it is not known as to whether the learned Magistrate has passed the necessary orders with respect to the referred charge sheet and thereby closed the FIR as 'mistake of fact'. But whatever it is, no protest petition is pending as of now and as rightly contended by the learned Additional Public Prosecutor, the revision petitioner can very well approach the learned Judicial Magistrate and file a complaint as directed by that Court. Since the learned Magistrate has not passed the impugned order on merits and since he himself has granted liberty to the revision petitioner to file his complaint at later stage, the question of setting aside the dismissal order does not arise. Since the learned Magistrate has granted liberty, there is no bar or prohibition for the revision petitioner to file another complaint. Hence, this Court decides that the above revision petition is liable to be dismissed and is dismissed accordingly.

6.In the result, the Criminal Revision Case is dismissed and the revision petitioner is at liberty to file another complaint before the jurisdictional Magistrate Court.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.II,
Thoothukudi District.
- 2.The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.R.C. (MD).No.202 of 2017
09.02.2021

VB (18.02.2021) 3P 4C