



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2021

Pronounced on : 10.03.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.264 of 2017

and

CRL.M.P.(MD).No.2345 of 2017

Vellaichamy : Petitioner/Accused

Vs.

1. The Sub Inspector of Police,
East Police Station,
Kovilpatti, Thoothukudi District.

2. Maragathavel : Respondents/Respondents

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the impugned order passed by the Judicial Magistrate No.I, Kovilpatti in Crl.M.P.No.6891 of 2016, dated 27.09.2016 and proceed in accordance with law.

For Petitioner : Mr.M.Iniyavan,
for M/s.Polax Legal Solutions.

For Respondents : Mrs.S.E.Veronica Vincent,
Government Advocate (Crl.Side), for R1.

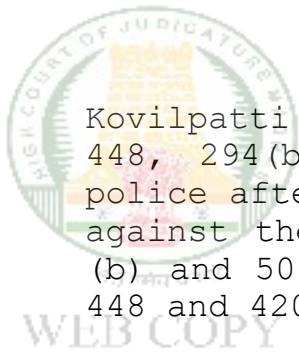
: Mr.D.Srinivasa Raghavan, for R2.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.6891 of 2016 in C.C.No.36 of 2016, dated 27.09.2016, on the file of Court of Judicial Magistrate No.I, Kovilpatti.

2.The revision petitioner is the accused in C.C.No.36 of 2016 on the file of the Court of Judicial Magistrate No.I, Kovilpatti.

3.It is evident from the records that on the basis of the complaint lodged by the second respondent herein with the first respondent, the case came to be registered in Crime No.297 of 2013 of



Kovilpatti Police Station, for the offences punishable under Sections 448, 294(b), 506(ii) and 420 IPC and that the first respondent police after completing the investigation, has filed the final report against the revision petitioner for the offences under Sections 294 (b) and 506(ii) IPC and thereby deleting the offences under Sections 448 and 420 IPC.

4.It is further evident that the learned Magistrate has taken the charge sheet on file in C.C.No.36 of 2016 and ordered issuance of summons to the revision petitioner/accused and that after the appearance of the accused before the Magistrate Court, the second respondent/ defacto complainant has filed a protest petition on 23.08.2016, alleging that though FIR was registered for the offences under Sections 448 and 420 IPC along with the offence under Sections 294(b) and 506(ii) IPC, the Police has conducted the investigation in a partisan manner and filed the charge sheet in favour of the accused by deleting the main offences under Sections 420 and 448 IPC.

5.It is further evident that the learned Magistrate has taken the protest petition on file in Cr.M.P.No.6891 of 2016, and after serving of notice to the Assistant Public Prosecutor Cadre II, the Court has posted the matter to 27.09.2016 for filing of the counter and that since no counter was filed on 27.09.2016, the learned Magistrate has passed the impugned order, sustaining the objections raised by the defacto complainant and ordered to frame charges against the revision petitioner for the offences under Sections 448 and 420 IPC also along with other offences. Aggrieved by the said order, the accused has come forward with the present revision.

6.At the outset, it is pertinent to mention that no law mandates the Court to issue notice to the accused for taking any decision for adding or altering the charges. But it is mandatory on the part of the Court to bring the charges to the notice of the accused and explain the same to the accused. Under the Criminal Procedure Code, the Court has ample power to add a charge or to make alteration in the charge at any stage, but before the pronouncement of judgment.

7.More over, the Court may alter or add to any charge upon its own motion or an application by the prosecution and the only requirement is that there should be some evidence or material for addition or alteration of the charge. To put it in other way, a charge can be added only if there is material before the Court either in the complaint or in the final report or in the evidence to justify the addition or alteration.

8.It is pertinent to note that invoking of Section 216 of Cr.P.C., for framing of additional charges or alteration of the charge, presupposes that charges have already been framed and in case, if the charges are not framed, then the question of invoking Section 216 of Cr.P.C., does not arise.



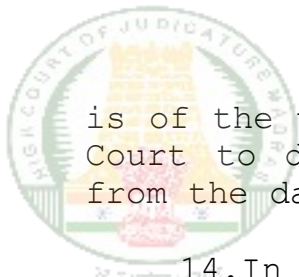
9. In the present case, it is not a case of addition or alteration of charges under Section 216 Cr.P.C. As already pointed out, before framing of the charges, the learned Magistrate has allowed the protest petition filed by the complainant for framing of charges under Section 448 and 420 IPC along with other offences. Though the revision petitioner/accused was very much available before the Court, no notice was given to him with respect to the protest petition filed by the defacto complainant. Though the Criminal Procedure Code does not contemplate any such notice, the principles of natural justice warrant the issuance of notice to the accused. But it is pertinent to mention that after allowing the protest petition, the learned Magistrate has proceeded to frame the charges on the same day, when the impugned order was passed.

10. It is not the case of the revision petitioner/accused that they have raised objections for allowing the protest petition or for framing of charges. It is also not the case of the revision petitioner that the trial Court has considered fresh materials produced by the defacto complainant or by the prosecution for framing of the charges for the offences under Sections 448 and 420 IPC. The defacto complainant in his protest petition has specifically stated that the materials are very much available in the final report itself through the statements recorded so as to attract the offences under Section 448 and 420 IPC and the learned Magistrate has also observed that there are materials available in the charge sheet to frame charges under Section 448 and 420 IPC. Moreover, this Court is informed that the trial was commenced by examining the defacto complainant as P.W.1 and another witness as P.W.2 and that the above said two witnesses are not yet cross examined by the revision petitioner side.

11. Though the revision petitioner, in his revision memorandum, has alleged that the alteration of offences would definitely cause serious consequences in conducting the trial, he has not elaborated anything further. The revision petitioner has nowhere whispered that he was prejudiced in such a way as he was not heard while deciding the protest petition.

12. On considering the entire facts and circumstances, this Court is of the view that passing of the impugned order without hearing the revision petitioner cannot be considered as illegal and it can only be considered as irregular and that remanding of the matter again for de-nova enquiry in the protest petition would not serve any purpose and would not be in the interest of justice. Hence, this Court decides that the revision petition is liable to be dismissed.

13. Considering the facts that the FIR was registered in the year 2013 and charge sheet was filed and the case was taken on file in the year 2016 and that the charges were framed on 27.09.2016, this Court



is of the view that necessary direction is to be issued to the trial Court to dispose of the above case within a period of five months from the date of receipt of a copy of this order.

14. In the result, this Criminal Revision Case is dismissed and the learned learned Judicial Magistrate No.I, Kovilpatti is directed to dispose of the above case within a period of five months from the date of receipt of a copy of this order and the parties are directed to extend their fullest co-operation for the disposal of the case within the time stipulated. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AD-II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS-)

To

1. The Judicial Magistrate No.I,
Kovilpatti.
2. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Copy To:-

The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.SRINIVASA RAGAVAN, Advocate (SR-10420[F] dated 11/03/2021)

+1 CC to M/s.POLAX LEGAL SOLUTIONS, (SR-10785[F] dated 12/03/2021)

DAS

TE : 18/03/2021 : 4P/7C

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CRL.M.P.(MD).No.2345 of 2017
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