



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2021

Pronounced on : 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC (MD) .No. 280 of 2017

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Chellam : Petitioner / Defacto complainant

Vs.

1.The State rep. by
The Inspector of Police,
Asaripallam Police Station,
Kanyakumari District,
(Crime No. 272 of 2015).

2.The State rep. by
The Inspector of Police,
Nesamani Police Station,
Kanyakumari District. : Respondents / Complainants

3.Anish : Respondent / Accused

PRAYER:- Criminal Revision Case filed under Section 397(1) r/w. 401 Cr.P.C., against the order of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District made in CrI.M.P.No. 5933 of 2016, dated 01.12.2016 and consequently set aside the negative final report filed by the 2nd respondent in Crime No.272 of 2015 on the file of the 1st respondent and take up the case on file for further proceeding in accordance with law forth with.

For petitioner : Mr.J. Sankarapandian

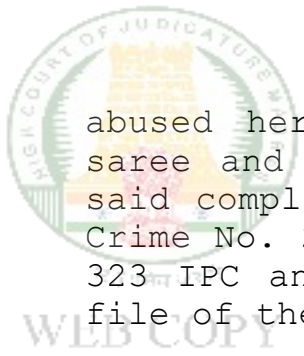
For respondents 1 &2 : Mr.V. Neelakandan,
Additional Public Prosecutor

For R3 : No appearance

ORDER

This Criminal Revision is directed against the order passed in CrI.M.P.No. 5933 of 2016, dated 01.12.2016, on the file of the Court of the Judicial Magistrate No.I, Nagercoil.

2. The revision petitioner is the defacto complainant. She lodged a complaint on 13.08.2015 against the third respondent / accused with the first respondent police alleging that the third respondent on 13.08.2015 at about 10.30 a.m., trespassed into her house and provoked up quarrel with her and during that time, he



abused her in filthy language and attacked her by pulling her saree and thereby, caused simple injury and on the basis of the said complaint, First Information Report came to be registered in Crime No. 272 of 2015 for the offences under Sections 447, 294(b), 323 IPC and Section 4 of Tamil Nadu Women Harassment Act on the file of the first respondent Police.

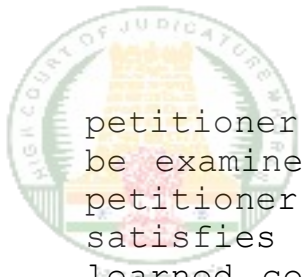
3. It is also not in dispute that the first respondent after completing the investigation has filed a final report referring the case as mistake of fact on 01.09.2015, that the revision petitioner has filed a protest petition and after enquiry, the learned Judicial Magistrate has ordered for further investigation. Thereafter, the second respondent has conducted the investigation and filed a final report referring the case as mistake of act on 16.07.2016. Thereafter, the revision petitioner has again filed a protest petition objecting to the negative report and prayed for setting aside the order of final report and to take the case on file. The learned Judicial Magistrate, after conducting enquiry, has passed the impugned order on 01.12.2016 treating the protest petition filed by the revision petitioner / defacto complainant as a private complaint under Section 200 Cr.P.C., and directed for recording of the sworn statement of the defacto complainant and for submission of list of witnesses. Aggrieved by the said order, the defacto complainant has come forward with the present petition.

4. At the outset, on perusal of the records, this Court is at loss to understand as to why and how the defacto complainant has invoked the revisional jurisdiction of this Court, when the impugned order was only in her favour. But, the learned counsel appearing for the revision petitioner would contend that the learned Magistrate erred in not setting aside the negative final report filed by the second respondent, that the learned Magistrate has failed to appreciate that the investigating officer had acted in a biased manner and he was hand in glove with the accused and the final report was tainted with malafide, that though learned Judicial Magistrate has also failed to appreciate the case of the petitioner, that though eye witnesses came forward to depose, he did not show any interest in recording their statements with a view to support the third respondent, that the trial Court has failed to see that the investigating officer has not produced any treatment certificate or wound certificate from the Medical Practitioner, who was said to have given treatment to the third respondent, that the second respondent has simply put his signature and seal for the materials and statements having been collected and recorded by the first respondent, that the order of the learned Magistrate treating the protest petition as a private complaint instead of setting aside the negative report is illegal and erroneous and that the same is liable to be set aside.



5. The learned Magistrate, on perusing the final report and other materials and in an attempt to answer the grounds raised by the defacto complainant, by observing that non-mentioning of the date and time in the observation mahazar cannot be a ground to reject the final report, as the observation mahazar shall be proved by the examination of the witnesses, that non production of the medical records cannot be a prima facie ground to reject the final report, as the investigating officer has examined the medical officer and recorded the statement under Section 163(1) Cr.P.C., and the evidentiary value can only be decided at the trial, that since the defacto complainant has contended that the witnesses produced by her were not examined by the investigating officer, the defacto complaint shall be given a fair opportunity to prove her allegations by examining her witnesses, passed the impugned order for treating the protest petition as a private complaint under Section 200 Cr.P.C.,

6. The code of the Criminal Procedure does not speak about protest petition. It is an opportunity granted to the victim or informant or the defacto complainant to raise objections against the negative final report filed by the police. When the victim or defacto complainant is not satisfied with the conclusions arrived at by the police in the final report, such person can approach the jurisdictional court and move the petition against the negative final report. To put it in short, the objections filed by the victim or informant or defacto complainant to the negative final report of the police is called as protest petition and it is only a representation made by the victim or complainant. In the case of the filing of the protest petition, the Magistrate will have four options that the Magistrate may agree with the decision of the police and accept the final report and drop the proceedings or that he may take cognizance under Sections 190(1)(b) Cr.P.C., if he is satisfied with the materials produced by the police that there is a sufficient ground to proceed, despite the fact that the police has only filed the negative report or that the Magistrate may order further investigation in case if he is satisfied that the investigation already conducted is not proper or that the Magistrate may proceed to act under Section 200 Cr.P.C., by treating the protest petition as a complaint. In the case on hand, as already pointed out, the learned Magistrate has adopted the 4th option or course by treating the protest petition filed by the defacto complainant under Section 200 Cr.P.C., and directed for enquiry under Section 202 Cr.P.C., But according to the revision petitioner, the learned Magistrate ought to have set aside the negative final report and then ought to have taken the case on file. It is pertinent to mention that the revision petitioner has not at all filed the protest petition in the form of complaint under Section 200 Cr.P.C., Admittedly, the revision



petitioner has not listed out the documents and the witnesses to be examined. It is not the specific the case of the revision petitioner that she had filed the protest petition, which also satisfies the conditions of a complaint. As rightly contended by learned counsel for the respondents 1 and 2, except the negative report filed by the police and the protest petition filed by the revision petitioner, there was no other material available before the Magistrate and as such the question of taking the case on file does not arise at all.

7. Viewing this case from another angle, in case if the learned Judicial Magistrate decided to set aside the final report and in that situation, the Magistrate has no other option but to order reinvestigation or fresh investigation. But it is pertinent to mention that the Criminal Procedure Code does not confer any power on the Magistrate, to order either for fresh investigation or for reinvestigation. Since the Magistrate is not vested with any power for ordering fresh investigation or reinvestigation, it is very much implied that the Magistrate has also no power or jurisdiction for setting aside the negative report filed by the police. As already pointed out, the Magistrate can either accept or reject the same and to proceed with any of the above 4 options available. More over, neither the negative final report nor the conclusions arrived therein, is binding on the learned Magistrate and there is absolutely no bar or prohibition for the Magistrate to proceed to take the case on file, despite the presence of the negative report and no law mandates for setting aside the negative final report before ever proceeding with any of the above last three options available.

8. The Hon'ble Supreme Court, in the Judgement reported in **2019(8) SCC 27** in the case of **Vishnu Kumar Tiwari Vs. The State of Uttar Pradesh** has specifically held that the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. In the present case, as already pointed out, since the protest petition filed by the revision petitioner does not satisfy the conditions and requirements for a complaint under Section 200 Cr.P.C., the learned Magistrate has decided to treat the protest petition as a complaint under Section 200 Cr.P.C., and directed him to comply with the requirements for the complaint by filing the list of witnesses. Since the order of learned Magistrate is fully in favour of the revision petitioner, the present revision came to be filed under misconception. Considering the above, this Court has no other option but to say that the revision petition itself is not maintainable and the same is liable to be dismissed.



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9. In the result, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The Judicial Magistrate No.I, Nagercoil,
Kanyakumari.
- 2.The Inspector of Police,
Asaripallam Police Station,
Kanyakumari District,
3. The Inspector of Police,
Nesamani Police Station,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer,Criminal Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

order made in
CRL.RC (MD) .No. 280 of 2017
30.03.2021

DKS (CO)
TR(23.04.2021) 5P 7C