



Crl.O.P.No.26684 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2022

PRONOUNCED ON: 07.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.26684 of 2022

A.Sekar

...

Petitioner

/vs/

The State by
Inspector of Police,
Pudhupattinam Police Station,
Sirkali Taluk,
Mayiladuthurai District.

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to set aside the order of taking cognizance by the Learned Judicial Magistrate, Sirkali in C.C.No.215 of 2020 dated 16.03.2020 and permit the petitioner to file protest petition in accordance with the provision u/s 173(8) Cr.P.C.

For Petitioner

...

Mr.A.Natarajan
Senior Counsel
for Mr.A.Madhumathi

For Respondent

...

Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

This criminal original petition has been filed to set aside the order of taking cognizance by the Learned Judicial Magistrate, Sirkali in C.C.No.215 of 2020 dated 16.03.2020 and permit the petitioner to file protest petition in accordance with the provision u/s 173(8) Cr.P.C.

2.The learned counsel for the petitioner submits that the petitioner is one of the witnesses in C.C.No.215 of 2020 on the file of the Judicial Magistrate Court, Sirkali. The petitioner and the defacto complainant Mr.A.P.Panneer (died) having Aqua Farm both are adjacent Farm. On 01.09.2019 night, both of them had put shrimp in their ponds. On the next day i.e. 02.09.2019 at about 11.00 am. a group of known persons came to their farm and forcibly broken the ponds of A.P.Panneer as well as the petitioner and drained water from the ponds and causing huge loss to them. Hence, A.P.Panneer lodged a complaint to the respondent police and a case has been registered against 13 accused persons in Crime No.148 of 2019 for the offences punishable under Sections 147, 294(b), 352, 427 & 506(i)



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IPC. After investigation, while filing final report, the respondent police dropped two named accused persons namely Ethiraj S/o.Chinnapillai and Kumar S/o.Kottaiyan, without notice to the defacto complainant. The Court also taking cognizance against the other persons without notice to the defacto complainant, which was against the settled principles of law laid down by the Hon'ble Supreme Court in ***Union Public Service Commission Vs. S.Papaiah*** reported in ***MANU/SC/2297/1997***. Further contended that though the petitioner is not a defacto complainant, he is also one of the victims, in this case, is entitled to have a notice before dropping the FIR named persons and to support his right, he relied upon the judgment of the Hon'ble Supreme Court in ***2022 LiveLaw (SC) 376 (Jagjeet Singh & Ors Vs. Ashish Mishra @ Monu & Anr.)***. Thus, pleaded to set aside the order of taking cognizance by the learned Judicial Magistrate, Sirkali in C.C.No.215 of 2020 and to file protest petition.

3.The learned Additional Public Prosecutor appearing for the respondents contend that the petitioner is a witness in C.C.No.215 of 2020. During the course of investigation, the respondent police found that the



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two named persons Ethiraj and Kumar were not involved in this case as stated by the defacto complainant. Hence, their names were dropped while filing the final report. Further, contend that the petitioner not being the defacto complainant, not entitled to claim notice of dropping of a persons named in the FIR. Therefore, pleaded to dismiss the criminal original petition.

4.I have considered the submission made by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondent.

5.A perusal of records, the fact reveals that one A.P.Panneer had lodged a complaint with the respondent police with regard to the occurrence took place on 02.09.2019 about the damaging of Aqua Farm and caused huge loss. Admittedly, this petitioner is one of the witnesses in C.C.No.215 of 2020 and he also gave a statement before the police with regard to the occurrence took place on 02.09.2019. This is not disputed that the defacto complainant A.P.Panneer died on 20.08.2020 and the



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persons namely Ethiraj S/o.Chinnapillai and Kumar S/o Kottaiyan were named in the complaint given by the complainant A.P.Panneer. While filing final report, these two persons' name were dropped by the police for the reason that on investigation, the police found these two persons were not involved in the crime. Now, the question is, the petitioner being a witness is entitled to legal notice with regard to dropping of FIR named persons before filing final report as well as notice from the Court before taking cognizance.

6.No doubt, the law mandates that informant is entitled to notice when the report comes up for consideration by the Magistrate. It is settled by the Hon'ble Supreme Court in ***Bhagwant Singh Vs. Commissioner of Police and Ors*** reported in ***MANU/SC/0063/1985***. In Bhagwant Singh case, the position is cleared and para – 5 of the case is as follows:

“5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice



when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also



observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relative the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.”

7. In view of the above decision, the Magistrate is not bound to give notice other than the informant but any victim has locus to appear before the Magistrate and may make his submission with regard to the crime. In this case also, the petitioner as a witness and affected person/victim, he can approach the Magistrate Court and file an application under Section 319 Cr.P.C. to implead the left out accused persons, for that purpose taking cognizance need not be quashed. Therefore, I find no reason to interfere with the order of taking cognizance dated 16.03.2020 in C.C.No.215 of 2020 on the file of the Judicial Magistrate, Sirkali. The judgment relied on



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by the learned counsel for the petitioner is not in support of the contention of the learned counsel for the petitioner. Accordingly, the criminal original petition is dismissed.

Index : Yes/No
Internet : Yes/No
sms

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To

1. Inspector of Police,
Pudhupattinam Police Station,
Sirkali Taluk,
Mayiladuthurai District.

2. The Public Prosecutor,
High Court, Madras.



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V.SIVAGNANAM,J.

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Pre-delivery order made in
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