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Crl.O.P.No.22272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.22272 of 2022

1. H. Saravanan
2. H. Dilipkumar

... Petitioners

Vs.

1. State rep.by
The Inspector of Police,
R-8, Vadapalani Police Station,
Vadapalani,
Chennai 600 026.

2. Ilayarani

3. Ramesh @ Kicha Ramesh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the order dated 10.08.2022 passed in Crl.MP.No.12337 of 2022 in Crime No.92 of 2022 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai 600 015, set aside the same.



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For Petitioners : Mr.M.Elumalai

For Respondents : Mr.E.Raj Thilak
Addl.Public Prosecutor for R1
Mr.J.R.Prabakaran for R2 & R3

ORDER

This criminal original petition has been filed to call for the records relating to the order dated 10.08.2022 passed in Crl.MP.No.12337 of 2022 in Crime No.92 of 2022 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai 600 015 and set aside the same.

2. The learned counsel for the petitioners submitted that the first petitioner is the defacto complainant based on his complaint, the respondent police registered a case against the accused persons in Crime No.92 of 2022 for the offences under Sections 465, 467, 468, 471 and 420 of IPC. In that case, the accused persons were granted bail as per order in Crl.MP.No.3573 of 2022 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai. Aggrieved by the bail order, this defacto complainant had filed an application in Crl.MP.No.12337 of 2022 before



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the XVII Metropolitan Magistrate, Saidapet, Chennai for cancellation of bail. The learned trial Judge dismissed the petition by stating that the defacto complainant is not a competent person to file an application for cancellation of bail, only the prosecution alone is competent to file the application for cancellation of bail. He also further submitted that in view of the decision of the Hon'ble Supreme Court in the case of ***Aravindh Mohan Johri and another Vs. State of Uttar Pradesh and another*** reported in (2005) 4 SCC 634, the defacto complainant is competent to file the application for cancellation of bail granted to the accused and hence pleaded to set aside the order.

3. The learned Additional Public Prosecutor for the first respondent submitted that the matter is under investigation and further submitted that while granting bail it was represented that the matter was compromised and the amount has been given to the affected person.

4. Heard both sides and perused the materials available on record.



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5. On perusal of the records, it reveals that the petitioner is the defacto complainant and he lodged a complaint against the accused person before the first respondent and the same was registered as Crime No.92 of 2022 for the offences under Sections 465, 467, 468, 471 and 420 of IPC. In that case, the accused persons moved for bail in Crl.MP.No.3573 of 2022 dated 01.04.2022 before the XVII Metropolitan Magistrate, Erode and bail was granted. The records further reveal that Crl.MP.12337 of 2022 was filed by the defacto complainant for cancelling the bail and the same was dismissed on the ground that the defacto complainant is not a competent person to file an application for cancelling the bail. The Hon'ble Supreme Court as well as this Court in various cases observed that the defacto complainant, in Criminal case, is the competent person to file an application for cancellation of bail granted to the accused. Further, in view of the amendment of the criminal proceedings victim/defacto complainant is permitted to participate and empowered to represent his case in the bail proceedings.

6. Under these circumstances, dismissing the petition filed by the



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petitioner/defacto complainant on the ground that the defacto complainant is not competent is unsustainable. Therefore, the impugned order dated 10.08.2022 passed in Crl.MP.No.12337 of 2022 on the file of XVII Metropolitan Magistrate Court, Saidapet is set aside and the trial Court is directed to restore the application after serving notice to the accused persons and decide the application on merits and in accordance with law.

7. Accordingly, the criminal original petition is allowed.

26.10.2022

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

dpq



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To

1. The Inspector of Police,
R-8, Vadapalani Police Station,
Vadapalani,
Chennai 600 026.
2. The XVII Metropolitan Magistrate,
Saidapet, Chennai 600 015.
3. The Public Prosecutor
High Court of Madras.



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V. SIVAGNANAM, J.

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