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Crl.R.C.No.1430 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1430 of 2022

Rajasekar

...Petitioner-

Vs-

State represented by its
The Inspector of Police,
Eriyur Police Station,
Dharmapuri District.
(Crime No.8/2020)

...Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to call for the records and set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District, in Crl.M.P.No.1114 of 2022 dated 22.08.2022.

For Petitioner : Mr.T.R.Ravi
For Respondent : Mr.S.Sugendran,
Additional Public Prosecutor

ORDER

This criminal revision has been filed by the defacto complainant against the order of the learned District Munsif-cum-Judicial Magistrate, Pennagaram, Dharmapuri District, passed in Crl.M.P.No.1114 of 2022



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dated 22.08.2022.

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2 Based on the complaint given by the petitioner, a case was registered against four persons in Cr.No.8 of 2020 by the respondent police and after investigation, while filing the charge sheet, third accused name was removed, against which, the defacto complainant has filed the petition, which was dismissed and hence the defacto complainant is before this Court with the present revision.

3 Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials.

4 It is the contention of the learned counsel appearing for the petitioner/defacto complainant that even though the defacto complainant mentioned the name of the third accused in the complaint and also in the statement under Section 161 Cr.P.C. and CCTV footage and photos also produced by the defacto complainant, which shows the involvement of the



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third accused also, the respondent police wantonly removed the name of the third accused in the charge sheet and the Court below also without considering the materials dismissed the petition observing that the CCTV footage was not supported with the certificate under Section 65B of the Indian Evidence Act, which warrants interference of this Court.

5 It is seen that the petitioner/defacto complainant mentioned the name of the third accused in the complaint itself and subsequently in the statement under Section 161 Cr.P.C. and also produced CCTV footage to prove the involvement of the third accused in the occurrence. Even though, the respondent police registered case against four persons, while filing final report, removed the name of the third accused. The learned Magistrate also dismissed the petition filed by the petitioner/defacto complainant against the removal of the name of the third accused in the final report observing that the CCTV footage was not supported by the Certificate under Section 65B of the Indian Evidence Act.

6 Once the complaint reveals *prima facie* offence, it is the duty of



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the respondent police to investigate the matter and file charge sheet.

Accordingly, in this matter, the respondent also filed the charge sheet, but removed one of the accused and the Court below also accepted the same by dismissing the petition filed by the defacto complainant, questioning the validity of the materials filed by the defacto complainant. It is settled proposition of law that validity of the document filed by the defacto complainant or the investigating agency can be testified during trial and not at the stage of investigation. Hence, dismissing the petition filed by defacto complainant against the removal of the third accused in the final report by the Court below is perverse.

7 Accordingly, the order dated 22.08.2022 passed in Crl.M.P.No.1114 of 2022 by the learned District Munisf – cum – Judicial Magistrate, Pennagaram, Dharmapuri District, is set aside. The charge sheet is also set aside as far as removal of third accused is concerned and the respondent police is directed to file a fresh charge sheet including the name of the third accused and the learned Magistrate is directed to accept the same and proceed with the matter. If the charge sheet is already taken on



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file, the learned Magistrate is directed to include the name of the third accused in the calender case and proceed further in accordance with law.

8 The Criminal Revision Case is allowed with the above directions.

02.11.2022

Index : Yes/No
Speaking Order/Non Speaking Order
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To

1. District Munsif-cum-Judicial Magistrate,
Pennagaram, Dharmapuri District.
2. The Inspector f Police, Eriyur Police Station,
Dharmapuri District.
3. The Public Prosecutor, High Court of Madras.

P.VELMURUGAN, J.,

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