



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1530 of 2022

and

Crl.M.P.No.18242 of 2022

Sherin Fernandez

... Petitioner

Vs.

1. The State represented by
The Inspector of Police
CB-CID, OCU Police Station-II
Chennai
(Crime No.02/20321)

2.Shiva Sankar Babu

... Respondents

Prayer: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to call for the records in C.C.No.654 of 2022 pending on the file of learned Additional Mahila Court, Chengalpet and to set aside the order of Cognizance passed dated 18.08.2022 passed by the learned Additional Mahila Court, Chengalpet in C.C.No.654 of 2022 dated 18.08.2022.

For Petitioner	: Mr.R.Vivekananthan
For Respondent-1	: Mr.S.Sugendran
	Additional Public Prosecutor



ORDER

This Criminal Revision Case has been filed seeking to set aside the order of cognizance dated 18.08.2022 by the learned Additional Mahila Court, Chengalpet, in C.C.No.654 of 2022.

2. The respondent police registered the case in Crime No.2 of 2021 against the 2nd respondent herein for the offence under Section 354 IPC and Section 4 of TNPHW Act 2002 and after investigation, laid charge sheet before the Additional Mahila Court, Chengalpet, without filing the condone delay petition under Section 473 Cr.P.C. The learned Magistrate without returning the charge sheet, taken the same on file in C.C.No.654 of 2022 on 18.08.2022 and also ordered summon to the accused and P.C. and posted the case to 29.09.2022. Challenging order of taking cognizance of the charge sheet, the defacto complainant has filed the present revision challenging.

3. The learned counsel for the petitioner/defacto complainant would submit that the alleged occurrence took place in the year 2010 and the complaint was given against the 2nd respondent/accused in the year 2021



and subsequently, the case was registered in Crime No.2 of 2021 for the offence under Section 354 IPC and Section 4 of TNPHW Act 2002.

Subsequently, the 2nd respondent/accused had filed a petition before this Court in Crl.O.P.No.23806 of 2021 seeking an order to quash the FIR in Crime No.2 of 2021 in which, the petitioner herein being the defacto complainant was shown as 2nd respondent. Initially, this Court quashed the FIR by order dated 17.10.2022. Subsequently, the petitioner herein/defacto complainant filed a petition before this Court in Crl.M.P.No.16421 of 2022 to recall the order of quashment of FIR passed in Crl.O.P.No.23806 of 2021 dated 17.10.2022 and this Court by order dated 21.11.2022, recalled the earlier order of quashment of FIR dated 17.10.2010 passed in Crl.O.P.No.23806 of 2021 and posted the case for final hearing on 29.11.2021. In the meanwhile, the petitioner/defcto complainant learnt that the respondent police have filed the final report before the jurisdictional Magistrate however, without the petition under Section 473 Cr.P.C. to condone the delay in filing the charge sheet and the jurisdictional Magistrate also, without considering the same, passed an order of cognizance and taken the charge sheet on file in C.C.No.654 of 2021 in a routine manner. The learned counsel for the petitioner/defacto complainant contended that the



learned Magistrate without seeking for the petition under Section 473 Cr.P.C. straight away taken cognizance of the charge sheet in C.C.No.654 of 2022 and ordered summon to the accused/2nd respondent herein. Now the accused/2nd respondent herein, taking advantage of the same, trying to take steps to close the proceedings on technical ground which would prejudicially affect the right of the petitioner/defacto complainant. Admittedly, the petition under Section 473 Cr.P.C. can be invoked at any stage even after framing of charges. However, in order to avoid the the cause of quashment of the case or acquittal of the accused on the ground of technicality, the petitioner/defacto complainant has filed the present revision before this Court to set aside the order of cognizance.

4. Today the matter came up before this Court for admission. Heard the learned counsel for the petitioner. Since, the revision is against the order of taking cognizance, this Court is inclined to dispose of the case at the admission stage itself.

5. A careful perusal of the records shows that the petitioner is the defacto complainant who set the law into motion by filing the complaint



before the 1st respondent police. The 1st respondent police registered the case in Crime No.2 of 2021 against the accused/2nd respondent herein and after investigation, filed the charge sheet as contemplated under Section 173(2) Cr.P.C. The learned Magistrate also taken the charge sheet on file in C.C.No.654 of 2022. Admittedly, the cause of action is said to have arisen in the year 2010, whereas the complaint was given only in the year 2021. Considering the serious nature of offence, the police could have filed the charge sheet along with the petition under Section 473 Cr.P.C. to condone the delay in filing the complaint and charge sheet. However, without filling the said petition, the 1st respondent police have presented the charge sheet straight away to the jurisdictional Magistrate and the jurisdictional Magistrate also without returning the charge sheet or directing the police to file a petition under Section 473 Cr.P.C., taken the charge sheet on file in C.C.No.654 of 2022 and also ordered summon to the accused 2nd respondent.

6. It is settled proposition of law that issuance of summon is not a final order and it is only an interlocutory order and therefore, no revision would lie against any interlocutory order passed by the Magistrate. Further,



as stated by the learned counsel for the petitioner, the petition under Section 473 Cr.P.C. can be filed at any stage of trial and it is for the prosecution to take care of it.

7. Today, when the matter was argued by the learned counsel for the petitioner/defacto complainant, the State Public Prosecutor and the Additional Public Prosecutor who were present before this Court, were also watching the proceedings and hearing the arguments and this Court believes that they would take care of the ground of technicality raised by the petitioner/defacto complainant.

8. As stated above, the petitioner/defacto complainant has challenged only the interlocutory order of taking cognizance of the charge sheet and issuance of summon. Hence, no revision would lie against the interlocutory order passed by the Magistrate.

9. Therefore, the Criminal Revision Case is dismissed at the admission stage itself as not maintainable. Consequently, connected Miscellaneous Petition is closed.

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To

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1. The Additional Mahila Court, Chengalpet

2. The State represented by
The Inspector of Police
CB-CID, OCU Police Station-II
Chennai

3. The Public Prosecutor
High Court of Madras



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P.VELMURUGAN,J.

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