



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.9 of 2022

and

Crl.M.P(MD)Nos.135 & 136 of 2022

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R.Kalaiselvi ... Petitioner/5th Respondent

Vs.

1.State,
Represented by,
The Inspector of Police,
Karur Town Police Station.
Crime No.968 of 2020. ... 1st Respondent/Complainant

2.Balusamy ... 2nd Respondent/
Defacto Complainant

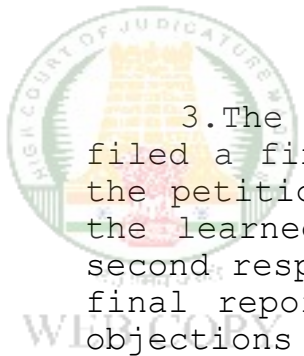
PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order passed in C.M.P.No.1469 of 2020 on the file of the learned Judicial Magistrate No.1, Karur.

For Petitioner	: Mr.K.Suresh
For R - 1	: Ms.M.Aasha
	Government Advocate (Crl. Side)
For R - 2	: Mr.A.Thiyagarajan

ORDER

This Criminal Revision is directed as against the order passed in C.M.P.No.1469 of 2020 on the file of the learned Judicial Magistrate No.1, Karur, dated 06.09.2021, thereby issued summons to the petitioner.

2.The second respondent lodged a complaint alleging that he owned lands in Survey No.215/A/13 and in respect of the said property, there is a civil suit pending between the first accused and the second respondent in O.S.No.500 of 2019 before the civil Court. While pending the suit, the second respondent permitted one Kuppusamy for grazing his cattle and on 16.08.2020, for which the first accused scolded him and the same was objected by the second respondent. Thereafter, A.1 to A.5 trespassed into his house and threatened him and also damaged the PVC pipe in his house. In pursuant to the same, the second respondent lodged a complaint on 17.08.2020 and the same has been registered in Crime No.968 of 2020 for the offences under Sections 147, 448, 427 and 506(ii) of I.P.C as against all the accused persons.



3.The first respondent, after completion of investigation, filed a final report as against A.1 to A.4 and deleted the name of the petitioner in the final report. On receipt of the final report, the learned Judicial Magistrate No.I, Karur, issued notice to the second respondent with regard to deletion of the petitioner from the final report. On receipt of the same, the second respondent filed objections and the learned Magistrate mechanically, without giving any opportunity to the petitioner accepted the objection and issued summons to the petitioner for the reason that the petitioner's name already found in the F.I.R and without any reason, the first respondent deleted the name of the petitioner from the final report.

4.The learned counsel appearing for the petitioner would submit that the petitioner is working as a PG Teacher at Sigugadambur Village and she was not at all present on the alleged date of occurrence. The statement of the defacto complainant and other supporting witnesses recorded under Section 161(3) of Cr.P.C revealed that the petitioner was not present at the time of occurrence and she never indulged in any illegalities as alleged by the second respondent. Therefore, the first respondent rightly deleted the petitioner's name from the final report and filed the final report only as against A.1 to A.4. He further submitted that except the objection from the second respondent, no other documents have been produced before the learned Magistrate in support of his contention to substantiate the charges as against the petitioner. The learned Magistrate only because of the petitioner's name found in the F.I.R, issued summons as against the petitioner herein.

5.The learned counsel appearing for the second respondent would submit that the statement recorded from the second respondent and the other witnesses initially stated about the participation of the petitioner in the crime. Even then, the first respondent colluded with the accused persons wantonly deleted the name of the petitioner from the final report. But the learned Magistrate rightly issued notice to the second respondent and on receipt of the same, the second respondent raised objections. It was duly considered and had taken cognizance as against the petitioner for the offences under Sections 147, 448, 427 and 506(ii) of I.P.C and issued summons to the petitioner. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in the case of **Vishnu Kumar Tiwari Vs. State of Uttar Pradesh and another reported in (2019) 8 SCC 27**, wherein the Honourable Apex Court held as follows:-

"27.It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer

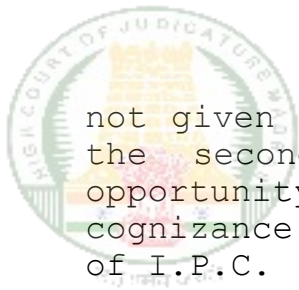


may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down."

6. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

7. On a perusal of the records revealed that the petitioner is arraigned as fifth accused in Crime No.968 of 2020 for the offences under Sections 147, 448, 427 and 506(ii) of I.P.C. The crux of the allegation is that all the accused persons have trespassed into the house of the second respondent and threatened him and they have also damaged the PVC pipes in his house. On a perusal of the statement recorded under Section 161(3) of Cr.P.C, the second respondent stated that he wrongly mentioned the name of the petitioner as if she was also present at the time of occurrence. The other witnesses also stated the same as if the petitioner was not present at the time of occurrence. In fact, no other materials are available to implead the petitioner as an accused. Therefore, the first respondent filed the final report only as against A.1 to A.4 and deleted the name of the petitioner. On receipt of the final report, the learned Magistrate issued notice to the second respondent with regard to deletion of the name of the petitioner herein in the F.I.R. On receipt of the same, the second respondent raised objections in C.M.P.No.1469 of 2020. On a perusal of the objections revealed that the accused persons filed anticipatory bail application, in which the first respondent submitted that the petitioner's name has been deleted in the final report. The first respondent colluded with accused persons and wantonly deleted the name of the petitioner and as such, directed the learned Magistrate to issue summons to the petitioner. Therefore, except this bald objection, there is absolutely no material to bring the charges as against the petitioner produced by the second respondent as well as the first respondent. The learned Magistrate mechanically had taken cognizance as against the petitioner only for the reason that her name was found in the F.I.R.

8. That apart, when the petitioner's name was deleted by the first respondent from the final report and when the learned Magistrate considering the objections raised by the second respondent on deletion of the petitioner's name, the petitioner ought to have been given an opportunity of hearing before taking cognizance against the petitioner. Admittedly, the petitioner was



not given an opportunity while considering the objections raised by the second respondent. The learned Magistrate without giving opportunity of hearing to the petitioner, mechanically had taken cognizance for the offences under Sections 147, 448, 427 and 506(ii) of I.P.C.

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9. In this regard, the learned counsel appearing for the petitioner relied on the Judgment of this Court in **S.Karunanithi Vs. Sivananda Rao and other reported in 2014 (1) LW (Crl) 509** and this Court held as follows:-

"28. In the case before us, based on the materials, considering the complaint and statement of witnesses, the Investigation Officer formed the opinion that it is a false case. Thus he filed his report accordingly before the learned Magistrate. It is a negative final report. Thereafter, the learned Magistrate disagreed with the conclusion of the Investigation Officer and took cognizance thereon. If the materials presented discloses commission of an offence, the learned Magistrate can disagree with the conclusion of the Investigation Officer and take action accordingly or if it so demands he can direct further investigation. But, if he elects to accept the report of the Investigation Officer closing the case, he must issue notice to the complainant, receive his objection, if any. Such 'objection petition' is also known as 'protest petition'. It is a protest by the defacto complainant to the conclusion arrived at by the Investigation Officer. Thereafter, the learned Magistrate has to treat the protest petition as a complaint and follow the complaint procedure and if he finds any prima facie case, he can take cognizance under Section 190(1)(a) Cr.P.C.

.....

31. It is well settled that the Magistrate can disagree with the negative final report filed by the Investigation Officer and take cognizance thereon, if there are materials to do so. But, before doing so, he must see whether there is any ground to proceed further. He must apply his judicial mind and then take decision. We have already stated that taking cognizance as against a person, has serious consequence. If it is not properly exercised, it will militate against Article 21, Constitution of India. Any order as against law is an illegal order. An order by the learned Magistrate directing a person to face a criminal case without applying his judicial mind is an illegal order. This is what the nature of the order passed by the learned Magistrate No. II, Krishnagiri in C.C. No. 27



of 2011. It will not stand the scrutiny of law. It is unsustainable in law."

The above Judgment is squarely applicable to the case on hand and the cognizance taken by the learned Magistrate cannot be sustained as against the petitioner.

10. In view of the same, the order passed in C.M.P.No.1469 of 2020 on the file of the learned Judicial Magistrate No.1, Karur is set aside and this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Judicial Magistrate No.1,
Karur.

2. The Inspector of Police,
Karur Town Police Station.

Copy to

The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.A.THİYAGARAJAN, Advocate (SR-15518[F] dated
31/03/2022)

+1 CC to M/s.K.SURESH, Advocate (SR-15934[F] dated 01/04/2022)

Cr1.R.C(MD)No.9 of 2022
30.03.2022

SB(CO)

KB(25.04.2022) 5P 6C