



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Original Jurisdiction

Wednesday, the Twentieth day of April Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL MP(MD) SR No.9735 of 2022
in
CRL OP(MD). No.709 of 2022

Pachaiyappan .. Petitioner/Third party/Sole
Accused

.Vs.

- 1 Anitha, (F/43/2022)
W/o.Vijaya Shankar
Assistant Commissioner
Hindu Religious and Charatible Endowment
Dindigul .. Respondent/Petitioner/ Defacto
Complainant
- 2 The Superintendent of Police
Madurai District Madurai .. Respondent / Respondent/
Respondent
- 3 The Inspector of Police
Saptur Police Station
Madurai District .. Respondent / Respondent/
Complainant
(Crime No. 101/2019)
- 4 The Additional Deputy
Superintendent of Police Investigation Unit For
Crime Against Women Wing(Iucaw) Office of
the Superintendent of Police
Alagarkovil Road Madurai
..Respondent/Respondent/Respondent

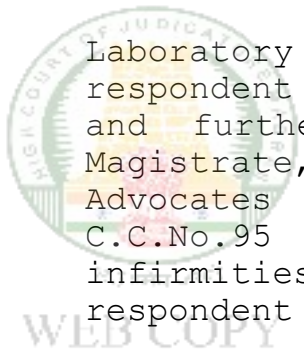
Prayer in CRL MP(MD) SR.9735 of 2022 :-

This Miscellaneous Petition filed under Section 482 of Cr.P.C. to recall the order passed in Crl OP (MD) No.709 of 2022 dated 25.01.2022.

Prayer in CRL OP(MD). 709/ 2022 :

Criminal Original petition is filed under Section 482 of Cr.P.C, to directing re-investigation of the criminal case registered in C.C.No.95 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur in Crime No.101 of 2019 on the file of the second respondent afresh including Forensic

<https://hcservices.ecourts.gov.in/hcservices/>



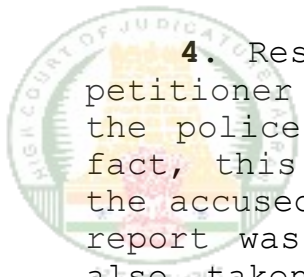
Laboratory Analysis by transferring the investigation to the third respondent herein or any other appropriate investigating authority and further direct the learned District Munsif cum Judicial Magistrate, Peraiyur to permit the petitioner along with her Advocates to examine / peruse the Forensic Report attached with C.C.No.95 of 2021 in Crime No.101 of 2019 to rule-out any infirmities in the said analysis and further direct the first respondent to monitor the investigation.

ORDER:- This Miscellaneous Petition coming under caption for Maintainability in SR Stage, on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.B.N.Raja Mohammed, Advocate for the Petitioner and of Mr.K.R.Laxman, Advocate for the first respondent, and Mr.K.Sakthi Kumar, Government Advocate (Criminal Side) for the second to fourth respondents, this Court made the following order:

The accused in Crime No.101 of 2019 registered on the file of Saptur police station, Madurai District, filed this petition seeking recall of the order dated 25.01.2022 in CrI.O.P.(MD)No.709 of 2022.

2. The victim had filed the said criminal original petition seeking de-novo investigation and change of the investigation officer. After hearing the learned counsel for the victim and the learned Additional Public Prosecutor, I was more than satisfied that the investigation had been done in a shoddy manner and I allowed the said criminal original petition with certain directions. Contending that such an order could not have been passed behind his back, the accused is before me.

3. Section 362 of Cr.P.C. would not come in the way in view of the recent decision of the Hon'ble Supreme Court of India reported in **2022 LiveLaw (SC) 283 (Ganesh Patel V. Umakant Rajoria)**. The Hon'ble Supreme Court in the said decision held that the application for recall of the order is maintainable when seeking a procedural review, and not a substantive review. But as rightly pointed out by the learned counsel appearing for the victim as well as the learned Government Advocate, the issue is squarely covered by the decision of the Hon'ble Supreme Court reported in **CDJ 1999 SC 378 (Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj V. State of Andhra Pradesh)**. The Hon'ble Supreme Court in the said decision had held that even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. It was further held that there is nothing in Section 173(8) of Cr.P.C. to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.



4. Respectfully following the said decision, I hold that the petitioner does not have any right to audience. It is true that if the police had filed final report closing the case as mistake of fact, this Court could not have set aside the same without hearing the accused. That is not the case here. In this case, positive final report was filed against the petitioner herein and cognizance was also taken. The only reason why the de-novo investigation was ordered was because the investigation appeared to have been done in a way so as to favour the accused. Therefore, the question of hearing the accused did not arise. There is no question of invoking the principles of natural justice in such a case. I make it clear that none of the observations made herein will operate to the prejudice of the accused. All the rights of the petitioner are left open. This criminal miscellaneous petition is dismissed at the SR stage itself.

Sd/-

Assistant Registrar (CO)

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/ /2022

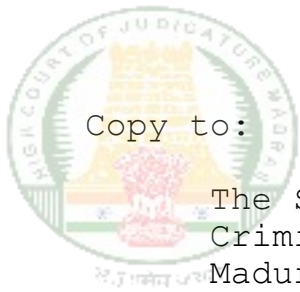
Sub Assistant Registrar(CS)

PMU

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 District Munsif cum Judicial magistrate, Peraiyur
2. The Superintendent of Police
Madurai District Madurai.
3. The Inspector of Police
Saptur Police Station Madurai District.
4. The Additional Deputy Superintendent
of Police Investigation Unit For
Crime Against Women Wing(Iucaw) Office of
the Superintendent of Police,
Alagarkovil Road Madurai.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai



Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

WEB COPY

+1CC to Mr.K.R.Laxman, Advocate, SR.No. 20306 dated 21.04.2022

ORDER DATED : 20/04/2022

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ORDER

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CRL MP(MD) SR No.9735 OF 2022

IN

CRL OP(MD). No.709 of 2022

Giving direction and etc.

as stated within.

KB(10.05.2022) 4P 8C