



Crl.R.C.No.211 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.211 of 2020

and

Crl.M.P.No.1534 of 2020

1. S.Pugazhenth
2. R.B.Rajkumar
Petitioners

..

Vs.

1.State Rep.by
The Inspector of Police,
Law & Order,
N3-Muthialpet Police Station,
Chennai-600 001.

2.B.V.Suresh Kumar

(R2 impleaded as per order dated 11.03.2020
in Crl.M.P.No.2165/20 in Crl.R.C.No.211/2020)

..Respondents

PRAYER : Criminal Revision Case has been filed under sections 397(1) read with 401 of Criminal Procedure Code to call for the records and set aside the order dated passed in Crl.M.P.No.3947 of 2018 on 08.11.2019 on the file of the learned XVI Metropolitan Magistrate at G.T., Chennai.



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For Petitioner : Mr.M.Krishnamoorthy
For R1 : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)
For R2 : Mr.R.Sathiyamurthy

ORDER

This Criminal Revision Case has been filed challenging the impugned order dated 08.11.2019 passed in Crl.M.P No.3947/2018 by the learned XVI Metropolitan Magistrate, George Town, Chennai.

2. On 29.05.2012, one Mr.B.V.Sureshkumar, a practising Advocate has given a complaint to the Muthialpet Police Station alleging that a Nissan Micro car (Navy blue colour) bearing Registration No.TN 09BH 0345 was parked opposite to his house, where he used to park the car, is causing nuisance and ingress for taking his car. Therefore, he questioned the driver and owner of the car, there was scuffle. The person used filthy language and assaulted along with his accomplice and had caused grievous injury to the *de facto* complainant and his brother. Thus,



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the complaint was registered in Crime No.890 of 2012 under Sections 341 & 323 I.P.C. After nearly 6 years, the police has filed a Final Report. It appears that the Final Report was only filed after the *de facto* complainant approaching the Court for direction. Thereafter, has closed the complainant case on the ground of limitation. When the Final Report filed and taken on file by the learned Magistrate, the *de facto* complainant has filed a petition under Section 173 (a) of Cr.P.C., for further investigation. The said consideration was positively considered by the learned Magistrate and the order was passed by the learned Magistrate on 08.11.2019 to conduct further investigation and to file Additional Report within 15 days. The said order is impugned in this Criminal Revision Case filed by the accused 1 and 2.

3. When the matter came up for admission, this Court on 17.01.2018 directed the respondent to complete the investigation in Crime No.890 of 2012 pending on its file and file a Final Report as expeditiously as possible. However, the respondent police unable to proceed further in view of the fact that the legal issue regarding Section



173 Cr.P.C., particularly, the right of the *de facto* complainant to seek further investigation under Section 173(8) of Cr.P.C., being subjudiced before the Hon'ble Supreme Court in view of the reference to the larger bench after the judgment of ***Reeta Nag Vs. State of West Bengal*** and Others **2009(9) SCC 129**, wherein, the Hon'ble Supreme Court has held that private complainant has no right to invoke Section 173(8) Cr.P.C. Thus, it is made clear that unless and until the larger bench of the Hon'ble Supreme Court reverse the findings of ***Reeta Nag*** case and hold that the *de facto* complainant can seek further investigation under Section 173(8) Cr.P.C, the prayer of the petitioner cannot be considered and the order of the learned Judicial Magistrate dated 08.11.2019 will not survive.

4. Therefore, this Court is of the opinion that Criminal Revision Case No.211 of 2020 be disposed of with a direction that the respondent police shall take note of the fact primarily whether they are liable to conduct further investigation pursuant to the request of the *de facto* complainant, which should depend upon the out come of the decision of the larger bench of the Hon'ble Supreme Court. In the light of



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the judgment rendered in ***Reeta Nag Vs. State of West Bengal and Others***, the Hon'ble Supreme Court in ***Jagdish Paini Vs. Nikita Prakash Paini & Ors in S.L.P.No.3806 of 2018*** dated 07.05.2018 had referred the matter to the larger bench and this issue is still pending. That apart, the respondent police would also take note of the fact that if the *de facto* complainant is entitled to invoke Section 173(8) Cr.P.C.. then also whether subjective improvement in the complaint after six years is worthy for investigation is to be decided and accordingly the Final Report has to be filed. Consequently, the connected Criminal Miscellaneous Petition is closed.

06.03.2023

Internet : Yes/No

Index: Yes/No

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To

1. The XVI Metropolitan Magistrate, George Town, Chennai.
2. The Inspector of Police,
Law & Order,
N3-Muthialpet Police Station,
Chennai-600 001.



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Dr.G.JAYACHANDRAN, J.

rpl

3. The Public Prosecutor,
High Court of Madras, Chennai.

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