



Crl.O.P.No.17631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17631 of 2023
and Crl MP Nos.11558 and 11560 of 2023

1. Radhika

.. Petitioner

Vs.

1. The Inspector of Police,
Gingee Police Station,
Villupuram District
(Crime No.2616 of 2020)

2. P. Rajkumar

.. Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Judicial Magistrate, Gingee, Villupuram District in Crl.M.P.No. 510 of 2021 dated 27.02.2023 in so far as it relates to the petitioner herein.

For Petitioners : M/S.T.R. Ravi

For Respondent No.1 : A. Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed challenging the



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order passed by the Court below in Crl MP No.510 of 2021, dated 27.02.2023, adding the petitioner as A4 in the final report.

2. Heard Mr.T.R. Ravi, learned counsel for the petitioner and Mr.A. Damodaran, learned Additional Public Prosecutor, appearing on behalf of 1st respondent.

3. The 1st respondent police registered an FIR in Crime No.2616 of 2020 based on the complaint given by the 2nd respondent. At the time of registration of FIR, there were totally four accused persons and the name of the petitioner was added as A4. The investigation was completed by the 1st respondent and a final report came to be filed before the Court below. At the time of filing the final report, the name of the petitioner / A4 was deleted and the final report was filed only as against three accused persons (A1 to A3).

4. The notice was served on the defacto complainant since the name of one of the accused person has been deleted. The defacto complainant filed a protest petition before the Court below. The Court



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below on considering the materials available, came to the conclusion that the petitioner ought not to have been deleted in the final report and decided to take cognizance of the final report as against all the four accused persons. The Court below passed an order in this regard in Crl MP No.510 of 2021 on 27.02.2023. The same has been put to challenge in this criminal original petition.

5. The submissions were made by the learned counsel for the petitioner on the premise that the petitioner was added in exercise of the power under Section 319 of Cr.PC. This submission in the considered view of this Court, is misconceived.

6. It is an admitted case that the FIR was registered as against four accused persons and the petitioner was ranked as A4 in the FIR. Ultimately, a final report was filed by the respondent police as against three accused persons and the name of the petitioner was dropped. The Apex Court has held that where the name of an accused person is dropped, notice must be given to the defacto complainant to enable the defacto complainant to give their objections. Accordingly, the notice was served on



the defacto complainant and objections were made and the Court below took into consideration the materials available and thought it fit to take cognizance of the final report against all the four accused persons including the petitioner.

7. When a final report is filed before the Court below, the Court below need not have to wait for an objection to be filed by the defacto complainant. If the Court below on going through the materials is satisfied that cognizance should be taken as against all the accused persons, the Court below can always disregard the opinion of the Investigating officer insofar as deleting one of the accused person and take cognizance against all the accused persons. This is in view of the fact that the Court below does not act as a post office and taking cognizance of a final report is a judicial act, which requires application of mind. The filing of objection by the defacto complainant for deleting one of the accused person, only gives a chance to the Court below to once again go through the entire materials and come to a conclusion as to whether the deletion of one of the accused person is sustainable or that the cognizance must be taken as against all the accused persons. The Court below has decided to take cognizance of the



final report as against all the four accused persons. This order passed by the Court below cannot be traced to Section 319 of Cr.PC. The order was passed at the stage of pre-cognizance and the Court has merely satisfied itself that there are *prima facie* materials available as against all the accused persons.

8. If ultimately, the Court below after taking cognizance of the final report against all the accused persons, issues summons to the accused persons and the petitioner /A4 is aggrieved by the same, on the ground that there are no materials against her, it will always be left open to the petitioner /A4 to challenge the proceedings pending before the Court below before the framing of charges. This right will accrue to the petitioner since such challenge is made at the post cognizance stage. This Court thought it fit to clarify this issue based on the facts of the present case.

9. In the light of the above discussion, if the petitioner is aggrieved by the cognizance taken by the Court below as against the petitioner / A4, it is left open to the petitioner to challenge the proceedings in the manner known to law. Except giving this liberty no further orders can



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be passed in this petition.

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10. This Criminal Original petition is disposed of in the above terms. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

1. The Judicial Magistrate, Gingee, Villupuram District
2. The Inspector of Police,
Gingee Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras



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N.ANAND VENKATESH, J

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