



Crl.R.C.(MD).No.495 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Saraswathi

... Petitioner

Vs.

1. The State,
Rep. by the Inspector of Police,
Vasudevanallur Police Station,
Vasudevanallur,
Tirunelveli District.
(Crime No.117/2017)

2. Sorimuthu

... Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the learned District Munsif cum Judicial Magistrate, Sivagiri in R.C.S.No.116 of 2018 and set aside the order dated 31.10.2018.

For Petitioner : Mr.P.Balamurugan

For Respondents : Mr. E.Antony Sahaya Prabahar,
Additional Public Prosecutor for R1

: Mr.M.U.Shameem John for R2



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ORDER

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The petitioner herein has filed this criminal revision case against the order passed by the learned District Munsif-cum-Judicial Magistrate, Sivagiri, in R.C.S.No.116 of 2018, dated 31.10.2018.

2.The defacto complainant is the revision petitioner. She lodged a complaint before the respondent police against the second respondent with allegation that the second respondent assaulted her by abusing her caste name and also criminally intimidated her. Hence, the first respondent police registered the case for the offences under Sections 294(b), 506(1), 4, 3(1)(r), 3(1)(s), 3(2) (va) of SC/ST POA Act, in Crime No.117 of 2017. The first respondent police, after conducting the investigation filed the negative report, before the learned District Munsif cum Judicial Magistrate, Sivagiri.

3.The petitioner filed the protest petition with prayer that the negative report filed by the investigating agency is liable to be set aside and suitable orders for further investigation is to be ordered. The said request was declined by the Learned Judicial Magistrate on the ground that the court has no jurisdiction and also observed that the petitioner has remedy of filing private complaint.



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4.The Learned counsel for the petitioner submitted that the Learned Judicial Magistrate has no reason to hold that he has no jurisdiction. The Learned Judicial Magistrate ought to have entertained the petition and ordered further investigation.

5.The Learned counsel for the 2nd respondent submitted that the Learned Judicial Magistrate has no jurisdiction to order for further investigation and hence he rightly dismissed the petition. The Learned Judicial Magistrate also granted liberty to file private complaint and hence the petitioner's grievance is misconceived and therefore, he seeks for dismissal of the revision.

6. This court considered the rival submission made on either side and also perused the records.

7. Whether the Learned Judicial Magistrate is correct in not entertaining the petitioner's claim of further investigation rejecting the negative report filed by the investigating agency in RCS No. 116 of 2018 dated 31.10.2018.



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8. Before the Schedule Caste /Schedule Tribes (Prevention of Atrocities) Act 1989 as amended by the Schedule Caste /Schedule Tribes (Prevention of Atrocities) Act 2015 (Act 1 of 2016), the procedure prescribed was that the investigating agency after completion of the investigation should file final report before the Learned Judicial Magistrate and the Learned Judicial Magistrate would commit the case under Section 193 of Cr.P.C., to the special court constituted to try the offence. Now there is no such requirement. In this case occurrence took place on 19.10.2016. Therefore, the petitioner made a complaint and the same was not taken on file and thereafter he filed the petition in Crl.M.P.No. 1953 of 2017 before the Learned Judicial Magistrate under section 156 (3) of Cr.P.C. and thereafter the FIR was registered only on 22.05.2017 in Crime No. 117 of 2017. The said investigation was conducted and negative report was filed before the Learned Judicial Magistrate. Therefore, the petitioner filed protest petition with following two prayers :

8.1. To reject the negative report and direct the investigating agency to conduct further investigation.

8.2. If the learned Magistrate is not pleased to accept the above prayer, to treat the protest petition as a private complaint and proceed further by examining the complainant and his witnesses.



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9. In the petition he stated that as per the new Act, 2015, the investigating agency ought to have completed investigation within 60 days from the date of registration of the case. Further, he alleged that investigation has not been done in fair manner. The Learned Judicial Magistrate has held that he has no jurisdiction to entertain the prayer of the petitioner. In the considerable opinion of this court the order of the Learned Judicial Magistrate that he has no jurisdiction to entertain the prayer of the petitioner is correct but dismissing the petition accepting the final report is not correct. When he held that he has no jurisdiction to entertain the prayer of the petitioner, he ought to have returned the final report filed by the investigating agency with direction to file the same before this Special Court. Therefore, this Court is inclined to dispose the revision with the direction to the learned District Munsif cum Judicial Magistrate, Sivagiri, to transfer the negative report filed in RCS No. 116 of 2018 to the Special Court for Trial under SC/ST (POA) Act Cases, Tenkasi, along with the protest petition within one month from the date of receipt of this order and the Learned Special Judge is directed to act as per the parameters laid down by the Hon'ble Supreme Court in the case of ***Bhagwant singh vs. Commissioner of Police*** reported in ***1985 (2) SCC 537***.



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10. Accordingly, Criminal Revision Case is allowed with the following direction:

1. The order passed by the learned District Munsif cum Judicial Magistrate, Sivagiri, in R.C.S.No.116 of 2018 dated 31.10.2018, is set aside.
2. The learned District Munsif cum Judicial Magistrate, Sivagiri, is hereby directed to transmit the RCS No. 116 of 2018 to the Special Court for Trial under SC/ST (POA) Act Cases, Tenkasi, along with the protest petition within a period of one month from the date of receipt of this Court of the order.
3. Upon the receipt of the said report, the Learned Special Judge is directed to act as per the parameters laid down by the judgment of the Hon'ble Supreme Court in the case of Bhagwant singh vs. Commissioner of Police reported in 1985 (2) SCC 537 upon giving opportunity to the petitioner within two months thereafter.

27.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1. The District Munsif cum Judicial Magistrate,
Sivagiri.
2. The Trial under SC/ST (POA) Act Cases,
Tenkasi.
3. The Inspector of Police,
Vasudevanallur Police Station,
Vasudevanallur, Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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