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Crl.R.C.(MD).No.1251 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2023

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.1251 of 2022

Kottaichami

.. Petitioner/Accused No.1

Vs.

1.The State, represented by
The Inspector of Police,
Pramakudi Town Police Station,
Ramanathapuram District.
(Crime No.390 of 2016)

.. Respondent/Complainant

2.Thenmozhi

.. Respondent / Defacto
Complainant

PRAYER: This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the entire records pertaining to the order taking cognizance dated 27.07.2022 in C.C.No.197 of 2022 by the learned Judicial Magistrate, Pramakudi, Ramanathapuram District and to set aside the same as illegal.

For Petitioner : Mr. R.L.Dhilipan Pandian

For R-1 : Mr. M.Sakthi Kumar
Government Advocate (Crl. Side)

For R-2 : Mr. K.Sakthikumar



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ORDER

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The Criminal Revision Case has been preferred against the order of taking cognizance in C.C.No.197 of 2022 by the Judicial Magistrate Court, Paramakudi, Ramanathapuram District, dated 27.07.2022.

2. Facts in brief:

The second respondent has filed the complaint before the first respondent. But a negative Final Report has been filed by the first respondent. But however, the trial Court though it fit to take cognizance under Section 190(1)(b) of Cr.P.C, took cognizance and numbered the case as C.C.No.197 of 2022 for the offences punishable under Section 323, 336, 506(i) and 4 of TNPHW Act. This petitioner is arrayed as the first accused.

3. Heard both sides. A short point has been raised by the learned counsel for the petitioner. The first point is with regard to the manner of taking cognizance. The order of taking cognizance dated 27.07.2022 is read as under:

“Perused the record. Upon on perusal of the Final Report filed along with statement of the witnesses and other relevant material, this Court forms an opinion that prima facie case is made out as alleged against the



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accused. Thus, this Court is taken cognizance as per section 190(1)(b) of Cr.P.C., for the offence under Sections 323, 363, 506(i) and 4 of TNPHW Act as alleged against the accused. Further, the office to register the case in C.C. Register and issue summon to accused. Call on 14.09.2022.”

4. By pointing out the cryptic order, the learned counsel for the revision petitioner would submit that absolutely there is no indication of application of mind by the trial Court while taking cognizance of the offences, since the negative Final Report has been filed. The trial Court is bound to express the reason for differing with the Final Report. On that ground, taking of cognizance itself is bad under law.

5. No doubt that the cryptic order does not indicate the application of mind by the trial Court. So, on that ground, the matter is liable to be remitted back to the trial Court.

6. The next ground is that taking cognizance is barred by limitation under Section 468 of Cr.P.C. and for that he would submit that it is the case and counter and all the offences mentioned in the trial Court order are punishable below three years. Since the offence said to have taken place on



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25.08.2016 after lapse of seven years, cognizance has been taken. But however, I am not going to that limitation point now. It is the case and counter and in the counter case, Final Report also been filed and bar of limitation may not arise at this stage.

7. This revision stands allowed and the order of taking cognizance is set aside. The matter is remitted back to the trial Court namely learned Judicial Magistrate, Paramakudi, Ramanathapuram District, for fresh consideration in accordance with law.

8. Let the parties appear before the concerned trial Court on **09.02.2023**, on that date, counter case has been posted before the trial Court.

9. With the above direction, this Criminal Revision stands allowed.

30.01.2023

NCC:Yes/No
Index : Yes / No
Internet : Yes / No
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Note : Issue order copy on 08.02.2023



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G.ILANGOVA,N,J.

Indu

To

1. The Inspector of Police,
Pramakudi Town Police Station,
Ramanathapuram District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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30.01.2023