



WEB COPY

CRL.R.C.(MD).No.165 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.04.2023

Delivered on : 02.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.165 of 2023

and

CRL.M.P(MD)Nos.2363 and 2365 of 2023

Santhanakumar

: Petitioner / Sole Accused

Vs.

1.The State rep.

The Inspector of Police,
Pasuvanthanai Police Station,
Thoothukudi District.
Crime No.31 of 2018.

2.K.Murugeswari

: 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Revision Petitions have been filed under Section 397 (1) r/w 401 of Cr.P.C, to call for the records pertaining to the order dated, 19.03.2021 taking cognizance of the petition on its file in C.C.No.696 of 2021 on the file of the District Munsif cum Judicial Magistrate Court, Ottapidaram and set aside the same.

(calender case number amended as per order dated 24.02.2023 in CrI.M.P. (MD)No.3331 of 2023 in CrI.R.C(MD)No.165 of 2023)



For Petitioner : Mr.C.Mayilvahana Rajendran,
For 1st Respondent : Mr.SS.Madhavan,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Case is directed against the order, dated 19.03.2021 in C.C.No.696 of 2022 on the file of the learned District Munsif cum Judicial Magistrate, Ottappidaram, taking cognizance of the case.

2. The petitioner is the sole accused in C.C.No.696 of 2022, on the file of the Court of District Munsif cum Judicial Magistrate, Ottapidaram. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.31 of 2018 on 13.05.2018 against the petitioner herein for the offences under Sections 294(b), 354 and 506(i) IPC. The first respondent, after completing the investigation, has laid a final report, dated 27.05.2018, referring the matter as mistake of fact. After receipt of RCS notice, the second respondent has filed an objection petition under Section 173(8) of code of Civil Procedure, seeking further investigation to be conducted by some other police station or to take the said objection petition as a private complaint and to proceed further.



3. The learned Judicial Magistrate has passed the impugned order, dated 19.03.2021, rejecting the police report and ordered for taking cognizance of the case for the alleged offence under Section 354(A)(f)(ii) IPC and for issuance of summons to the petitioner/accused.

4. The learned counsel for the petitioner would submit that the learned Judicial Magistrate, in case of filing a final report under Section 173(2) of Cr.P.C, stating that no offence has been made out against the accused, has to adopt or follow any one of the three courses available; (i) that the Magistrate may accept the report which was filed by the Police, in which case the proceedings would stand closed; (ii) that the Magistrate may not accept the report and may take cognizance in the matter on the basis of the said final report, which was filed by the police; (iii) that if the Magistrate is not satisfied by the investigation under taken by the police, he may direct further investigation in the matter; that the learned Magistrate in the above case without following the above procedure has taken the petition filed under Section 173(8) of Cr.P.C as a private complaint, which is legally unsustainable; that though the learned Magistrate can convert the protest petition into a private complaint, the second respondent, in the case on hand has not filed a protest petition and he filed an objection petition under Section 173(8) of Cr.P.C, seeking further investigation; that the learned Magistrate has not considered the closure report filed by the first respondent and



the statements recorded by him during the course of investigation and that therefore, the order taking cognizance is liable to be set aside.

WEB COPY

5. It is evident from the records that though cognizance was taken in C.C.No.81 of 2021 by the learned Judicial Magistrate No.II, Kovilpatti, subsequently, after constitution of the Court of Judicial Magistrate, Ottapidaram, the case in C.C.No.81 of 2021 has been transferred and the same was taken on file in C.C.No.696 of 2022 on the file of the Judicial Magistrate Court, Ottapidaram.

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the learned Judicial Magistrate has conducted enquiry under Section 202 Cr.P.C by recording the statements of the complainant and other witnesses produced by the complainant and also considering the police report filed by the Police along with the statements of witnesses recorded under Section 161 Cr.P.C and that by giving a finding that there existed a *prima facie* case to proceed against the petitioner/accused, ordered to take cognizance of the case for the alleged offence under Section 354(A)(f)(ii) IPC.

7. No doubt, as rightly pointed out by the learned counsel for the petitioner, the second respondent, after the receipt of RCS notice has filed an



objection petition under Section 173(8) Cr.P.C, but as rightly pointed by the learned Government Advocate (Criminal Side), the second respondent though invoked Section 173(8) Cr.P.C has sought for the alternative relief of taking the objection petition as a private complaint and to proceed further and that therefore, the order taking cognizance is very much proper and legal and is liable to be sustained.

8. The main contention of the learned counsel for the petitioner is that though the Magistrate can convert the protest petition into a private complaint, the second respondent in the present case has not filed any protest petition and as such, the very conversion of petition filed under Section 173(8) Cr.P.C into a private complaint and taking cognizance of the offences and issuance of process under Section 204 Cr.P.C is legally unsustainable.

9. As already pointed out, though the second respondent has allegedly invoked Section 173(8) of Cr.P.C, he has specifically mentioned the same as a protest petition and sought prayer for further investigation by some other police station or to take the protest petition as a private complaint and to proceed further. A cursory perusal of the protest petition filed under Section 173(8) Cr.P.C, would reveal that he has raised objections for filing a negative report and is only a protest petition. Hence, the above objections of the petitioner, which is devoid of substance, is liable for rejection.



10. The learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in **Ramswaroop Soni vs. State of Madhya Pradesh and another** reported in (2020) 18 SCC 327 and the relevant passage is extracted hereunder :

“The law is well-settled that in case a final report is filed under Section 173(2) Cr.P.C. stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

(b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police.

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories.”

11. It is necessary to refer the decision of this Court in **Ranjith Soundarrajan Vs. State represented by the Inspector of Police, District Crime Branch, Dindigul and another** reported in 2021(2) MWN Criminal 155, wherein this Court has dealt with the courses open to the Magistrate on the receipt of the protest petition and the relevant passages are extracted herein :



WEB COPY

“9. There is no provision in the Criminal Procedure Code, which speaks about the protest petition. Generally, the objections filed to the negative report filed by the police are called as the protest petitions and the same is permitted to be filed by the informant or the defacto complainant in two category of cases.

10. In the first category, the informant or the defacto complainant files a complaint before the police directly and the police, after investigation files a final report with negative finding in the form of referred charge sheet and in such case, on receiving the notice, the informant or complainant can file the protest petition, objecting to the decision taken by the police.

11. In the second category, the defacto complainant files a complaint before the Court of Judicial Magistrate and the learned Magistrate without taking cognizance directly, forwards the same to the police under Section 156(3) Cr.P.C and the police, after registering the case and completing the investigation files a negative report, then also the defacto complainant on getting the notice, is entitled to file a protest petition.

12. In the first category of cases, the Magistrate will have three options that the Magistrate may agree with the decision of the police and accept the final report and drop the proceedings or that he may take cognizance under Section 190(1) (b) of Cr.P.C, if he is satisfied with the materials produced by the police, that there is sufficient ground to proceed, despite the fact that the police has only filed the negative report or that the Magistrate may order for further investigation, in case if he is satisfied that the investigation already conducted is not proper.

13. In the 2nd category of cases, the Magistrate can adopt the above three courses and in addition to that, an another course is



available to the Magistrate that he may proceed to act under Section 200 and 202 Cr.P.C, upon considering the original complaint or by treating the protest petition as the complaint.

14. In the present case, as already pointed out, the revision petitioner has directly filed the complaint before the first respondent police and after filing of the negative report, he filed the protest petition. It is evident from the impugned order, that the protest petition was filed by the revision petitioner on 29.08.2013 and the same was taken on file on 26.09.2013, that the defacto complainant was absent on 13.07.2016 till 05.30. pm and there was no representation for him on that day and that the learned Magistrate by observing that there was no progress on the side of the defacto complainant and after perusing the entire records and also the final report filed by the police, has closed the protest petition and also the FIR in Crime No. 48 of 2010 as 'mistake of fact'.

15. The main contention of the revision petitioner is that his protest petition ought to have been taken as a private complaint under Section 190 r/w 200 Cr.P.C and ought to have been proceeded in accordance with law. At this juncture, it is necessary to refer the decision of the Honourable Supreme Court in Vishnu Kumar Tiwari Vs. State of Uttar Pradesh reported in (2019) 8 SCC 27.

“41. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the



procedure prescribed under Section 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

42. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In Mahabir Prasad Agarwala v. State¹⁰, a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in Qasim and others v. The State and others¹¹, 10 AIR 1958 Ori. 11 11 1984 CrLJ 1677 a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows:

“4. ... In the case of Abhinandan Jha MANU/SC/0054/1967 (supra) also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as complaint whether it satisfies the conditions of the



complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under Section 200 Cr.P.C. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case.” In the present case, no doubt, the revision petitioner in his protest petition has listed out the documents and the witnesses to be examined. As rightly contended by the learned Government Advocate (Criminal Side), the Magistrate is vested with the discretion either to treat the protest petition as a complaint under Section 200 Cr.P.C and proceed in accordance with law, or the Magistrate can close the protest petition by giving liberty to the informant or defacto complainant to file a private complaint.

16. The Hon'ble Supreme Court in the above decision, has specifically held that the Magistrate could not be compelled to take



cognizance by treating the protest petition as complaint. Hence the main contention of the revision petitioner that the learned Magistrate ought to have treated the protest petition as complaint under Section 190 r/w 200 Cr.P.C is devoid of merits and the same is liable for rejection.”

12. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in Vishnu Kumar Tiwari vs State of Uttar Pradesh through, Secretary Home, Civil Secretariat Lucknow and another reported in 2019 3 MWN (Criminal) 197, wherein it has been held as follows :

“45. If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report.”



13. In the case on hand, no doubt, the second respondent has not listed out the documents and the witnesses to be examined. As per observation of the Hon'ble Supreme Court that they are not suggesting any form, the way in which the protest petition filed without the list of witnesses, the same cannot be treated as fatal and there is absolutely no bar or prohibition for treating the protest petition as a complaint and to proceed under Section 200 and 202 Cr.P.C. But as already pointed out, the defacto complainant has produced some witnesses and their statements came to be recorded as P.W.2 to P.W.4 in addition to the statement of the defacto complainant as P.W.1. This Court in ***R.V.S.Veeramani and others Vs. Varadharajan*** reported in ***Manu/TN/6472/2022 in Crl.O.P. (MD)No.3605 of 2019***, has observed that it is not necessary for a Judicial Magistrate to pass an elaborate order while taking cognizance and the only requirement is that he has to record his satisfaction that there existed *prima facie* case to proceed against the accused and the relevant passages are extracted hereunder:

“13. The learned Counsel for the petitioners would submit that the procedure adopted by the learned Magistrate while taking cognizance of the case is not only improper but also is illegal and that the learned Magistrate has not followed the procedure contemplated for considering the protest petition and for taking cognizance of the case on the basis of the protest petition. The learned Counsel has relied on the decision of this Court in Alaguthangamani and two others Vs. Saravanan (Crl.O.P.(MD)No.



7740 of 2019, dated 29.04.2022), wherein this Court has held as follows:

WEB COPY

“18. The learned Counsel for the petitioners has relied on the judgment of this Court in **Narayanamma and Others Vs. Chikka Venkateshaiah** reported in (2019)4 MLJ (Crl.) 616 and the learned Judge of this Court after referring various decisions, has held as follows:

“20. It is clear from the above judgments that if the learned Magistrate wants to convert the protest petition into a private complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the closure report filed by the police and the statements recorded by the police during the course of investigation. This exercise has not been done by the Court below, while converting the protest petition in to a private complaint and taking cognizance of the same.”

19. In the case on hand, the learned Magistrate has not even whispered anything about the negative report filed by the police and the statements recorded by them during the course of investigation. Generally, while taking cognizance of a private complaint, after conducting enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate is expected not to pass any elaborate order, but he is duty bound to record his satisfaction that there are prima facie materials to proceed against the accused. 20. In the present case, the learned Magistrate has passed two pages order in Tamil in Cr.M.P.No.2913 of 2019, dated 07.03.2019, found available in the photocopy of the



material parts of the records in C.C.No.89 of 2019 and Cr.M.P.No. 2913 of 2019 submitted before this Court. But the learned Magistrate, in the notes papers, has passed the following docket order:

“ Complainant present. Records perused. Taken on file under Sections 447, 351, 294(b), 427, 506(ii) and 120(b) I.P.C. Issue summons to accused on payment of process fee.” As rightly pointed out by the learned Counsel for the petitioners, the learned Magistrate has not at all recorded her satisfaction about the existence of prima facie materials to proceed. Moreover, the learned Magistrate has given a one line finding that a perusal of the evidence of the defacto complainant and his witness would reveal that the occurrence was true. It is pertinent to note that the Magistrate is not expected to record such a finding at the time of taking cognizance of the case and he has to record his satisfaction that there existed prima facie case to proceed against the accused. As rightly contended by the learned Counsel for the petitioners, by giving such a finding, the learned Magistrate has exceeded his jurisdiction while taking cognizance of the case.”

14. In the present case, the learned Judicial Magistrate has considered the protest petition, earlier orders passed by the Magistrate and the final reports filed by the Inspectors of Police, Manapparai Police Station. The learned Magistrate has specifically observed that the reports filed by the police are not satisfactory and they appeared to be of evading in nature and the investigation was not properly done in consonance with the earlier orders of the



learned Magistrate. No doubt, the learned Magistrate has recorded the sworn statement of the complainant.

WEB COPY

15. Considering the order of the learned Magistrate dated 28.12.2018, it is clearly evident that the learned Magistrate has treated the protest petition as a private complaint, recording the sworn statement of the complainant and after considering the two negative reports filed by the police, has passed the impugned order of taking cognizance of the case. No doubt, the learned Magistrate is not expected to pass an elaborate order and the only requirement is that he has to record his satisfaction that there existed prima facie case to proceed against the accused.

16. In the case on hand, the learned Magistrate has recorded his satisfaction that there are prima facie materials to proceed against the accused. On perusing the protest petition, the negative reports filed by the police and other records, this Court is of the clear view that the order of the learned Magistrate, taking cognizance of the case against the petitioners, as there are prima facie materials to proceed against the accused, cannot be found fault with.”

14. In the case on hand, the main case of the defacto complainant is that six months prior to the occurrence, the accused who was working as a Police Constable in Naraikinaru Police Station came to the house of the defacto complainant in a drunken mode at about 06.00 pm and asked her to share her bed



with him; that subsequently on the same day, at about mid night 12.00 O' clock, he had knocked the door of the defacto complainant's house and when the same was opened, the petitioner/accused had abused the defacto complainant in filthy language, dragged her hand and asked her to share her bed with him; that since the defacto complainant had shouted, he ran away from that place; that though oral complaint was given to the Pasuvanthanai Police Station, the Councillor Muniayasamy and some others had requested her not to prefer any complaint and the matter would be settled amicably; that on 10.05.2018 at about 09.15 pm., when the defacto complainant went to Government Hospital for treatment along with her children, the petitioner/accused who came to the same hospital with his wife, had abused the complainant in filthy language and that when the same was questioned by one Sankarashwari, he had attacked the said Sankarashwari with chappals; that at about 11.30 a.m, on 10.05.20218 when the defacto complainant and her children were in relative's house, the accused knocked the door and abused her in filthy language and dragged her hand; that when the complainant and her children had started shouting by threatening a big stone, the accused ran away from that place and that on the basis of the complaint given by the defacto complainant, the present FIR in Crime No. 31 of 2018 came to be registered.

15. As rightly pointed out by the learned Government Advocate (Criminal Side), the defacto complainant and her children in their statements recorded



under Section 161 Cr.P.C, had narrated about the first incident and that except the defacto complainant, others had stated that they were informed about the second occurrence, but in the statements recorded before the Court, they have specifically narrated about the alleged incidents.

16. It is pertinent to note that the petitioner/accused is none other than the police constable previously attached to the Naraikinary Police Station. Though FIR came to be registered for the offence under Sections 294(b), 354 and 506(i) IPC, subsequently, negative report came to be filed. In the final report, the first respondent had narrated about the earlier occurrence, but according to them, the incident allegedly occurred on 10.05.2018 was not true and no such incident had occurred and that the complaint was lodged after three days with exaggeration .

17. As rightly observed by the learned Magistrate, the first respondent in the final report has stated that the complaint was given at the instigation of some persons to take revenge against the petitioner/accused, but they have not elaborated anything further. The first respondent has not furnished the particulars about the persons at whose instigation, the complaint was lodged.

18. Considering the negative report and the statements of the witnesses recorded under Section 161 Cr.P.C and also the objections raised in the protest



petition and also the sworn statement of the complainant and the statements of other witnesses, the learned Magistrate, by observing that there existed a motive and disputes between the complainant and the petitioner/accused and that there existed *prima facie* case against the petitioner/accused for the alleged offence under Section 354(A)(f)(ii) IPC, has rightly taken cognizance for the said offence and ordered issuance of summons and as such, the order taking cognizance cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

19. In the result, the Criminal Revision is dismissed. Consequently, connected Miscellaneous Petitions are closed.

02.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

das

To

1.The District Munsif cum Judicial Magistrate,
Ottappidaram.

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



WEB COPY

CRL.R.C.(MD).No.165 of



K.MURALI SHANKAR, J.

das

Pre-delivery order made in
CRL.R.C.(MD).No.165 of 2023

02.06.2023