



Crl.R.C.No.1567 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.R.C.No.1567 of 2023

Gowriammal

... Petitioner

Vs.

1.State rep. by
The Sub Inspector of Police,
M4, Thuduyalur Police Station,
Coimbatore.

2.Subbaian
3.Sakkaraiappan

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 02.08.2023 made in Crl.M.P.No.34190 of 2023 on the file of the Judicial Magistrate No.I, Coimbatore and consequently direct the respondent police or any other investigating agency to investigate the case and file final report.

For Petitioner : Mr.R.Manoharan

For R1 : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

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This Criminal Revision Case is filed to set aside the order dated 02.08.2023 made in Crl.M.P.No.34190 of 2023 on the file of the Judicial Magistrate No.I, Coimbatore.

2. The learned counsel for the petitioner submitted that the petitioner is the defacto complainant had lodged a complaint to the respondent police. Since there was no action, the petitioner had filed a petition under Section 153 Cr.P.C., before the learned Magistrate Court and thereafter, F.I.R., in Crime No.461 of 2012 was registered on 01.08.2012 against Subbaian, Sakkaraiappan and Alamathal. Alamathal is no more, hence she is not arrayed as respondent. The 1st respondent police after investigation had filed a closure report as 'Mistake of Facts' in R.C.S.No.46 of 2012 and the lower Court by order dated 21.01.2016 had accepted the closure report. The petitioner was not served with any notice, hence not aware of the same. Thereafter, he had made a representation to the learned Judicial Magistrate No.I, Coimbatore to entertain the petitioner's protest petition. The learned Judicial Magistrate No.I, Coimbatore by order dated 02.08.2023 dismissed



the petitioner's petition recording that already the case has been closed as 'Mistake of Facts' on 21.01.2016. Hence it cannot be reviewed or set aside its own order. Against which, the present revision case is filed.

3. The contention of the petitioner is that the petitioner's husband brother Samiappan passed away on 26.10.1998 and Samiappan's mother Venkitammal on 16.12.2000. After the demise, a forged document has been created and joint memo dated 07.08.2002 filed by the parties as so Samiappan and Venkitammal have signed and affixed their thumb impression and same was produced before this Court in A.S.No.558 of 1991, which is false and forged and it needs further investigation, but the Investigating Officer had filed a closure report for the reason that the petitioner had not produced the supportive documents of the alleged forged document during enquiry. Hence it has been closed, which is not proper.

4. He further submitted that the R.C.S.No.6 of 2016, no notice was served to the petitioner, but in the adjudication, it is recorded that final report filed by the Sub Inspector of Police stating that the same may be closed as 'Mistake of Facts' submitted with records. Issue notice to the



defacto complainant, call on 21.01.2016. On 04.01.2016, it has been recorded that there is no representation for the defacto complainant. Hence this case is closed by 'Mistake of Facts'. Acceptance of the closure report is not proper. In view of the same, the impugned order is to be set aside by giving opportunity to the petitioner to file his protest petition and consider the case on merits and thereafter, appropriate orders can be passed.

5. The learned Additional Public Prosecutor for the respondent police, at the last hearing date was directed to find whether there is any proof for serving of the notice to the petitioner either personally or through Court. On perusal of the C.D., file, today he fairly submitted that nothing to show that the notice was served to the petitioner. The learned counsel for the private respondent submitted that he has filed typed set and submitted that the contention of the petitioner on the facts and merits are not sustainable. In any event the petitioner's contention cannot be accepted and he further submitted that this Court in A.S.No.558 of 1991, memo was recorded in the presence of the petitioner and at that time they have not raised any objection and now with ulterior motive raised objection.



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6. The learned counsel for the petitioner refused the same submits that death certificate a public document which is annexed in typed set that Samiappan and Vekatammal are no more on the date of filing Memo in A.S.No.558 of 1991. For which, the respondent has no answer. This Court without going to merits of the contention and rival contention finding that no notice served on the petitioner and the endorsement made by the trial Court adjudication is also not proper. In view of the same, the impugned order passed by the trial Court is set aside. The petitioner is directed to appear before the trial Court along with the copy of this order and also file his protest petition. The trial Court not to take any technicality on delay consider the protest petition on merits if requires other party can be heard and pass orders on merits.

7. With the above directions, this Criminal Revision Case is allowed.

20.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
rpl



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To



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M.NIRMAL KUMAR, J.

rpl

1.The Judicial Magistrate No.I, Coimbatore.

2.The Sub Inspector of Police,
M4, Thuduyalur Police Station,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

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