



CrI.O.P.(MD) No.2828 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2024

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL.O.P (MD) No.2828 of 2024

M.Christ Miller,

... Petitioner

Vs

State represented by
The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari district to expedite the disposal of the CrI M.P No. 1148 of 2023 in C.C No 288 of 2021 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District, within the time frame stipulated by this court.



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For Petitioner : Mr.G.Anto Prince

For R1 & R2 : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking speedy trial in Crl M.P No. 1148 of 2023 in C.C No 288 of 2021, pending on the file of the learned Judicial Magistrate No.II, Kuzhithurai, Kanyakumari District.

2.The petitioner is the defacto complainant in C.C.No.288 of 2021, pending on the file of the learned Judicial Magistrate No.II, Kulithurai.

3.The grievance of the petitioner is that this complaint was lodged by the petitioner in the year 2019 as against two persons that they have cheated the petitioner herein. The investigation agency has deleted the accused No. 2 and filed the final report in the year 2021. While deleting the second accused, neither the respondent police nor the trial Court has issued any notice to the petitioner and the petitioner later came to know that the second accused/Bank Manager has been deleted from the final report. Therefore, the petitioner has filed a petition under Section 178 and 216 Cr.P.C to add



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the accused No.2, who was already omitted by the respondent police in Cr.M.P.No.1148 of 2023. The said application is pending from the year 2023 and therefore, this petitioner seeks early disposal of the Cr.M.P.No. 1148 of 2023.

4.The learned Government Advocate (CrI.Side) submits that the second accused/Bank Manager is no way connected and he is now added as a witness.

5.This Court considered the rival submissions made on either side.

6.The complaint was initially lodged by the petitioner against two persons including the Bank Manager. According to the petitioner, without the knowledge of the second accused, the commission of offence is not at all possible. However, the investigation agency found that the second accused/Bank Manager has not committed any offence, deleted him from the accused column and added him as witness. In the event if the investigation agency is deciding to delete an accused at the time of filing the final report, in all fairness, they ought to have informed the complainant



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about the same. A duty is also cast upon the trial Court to inform the defacto complainant if any of the accused is omitted from the final report.

7.No doubt, if the investigation agency, after investigation, is of the opinion that some of the accused have been wrongfully arrayed, they can very well delete the names of such accused persons, while filing the final report. But, before doing so, as per the settled position of law, they are expected to serve a notice upon the complainant. Even if the investigation agency failed to do so, a duty is cast upon the learned Magistrate, before whom such final report is filed, to issue a notice to the complainant, before taking a call on the final report, as per the decision of the Hon'ble Supreme Court in ***Bhagwat Singh v. Commissioner of Police and another, reported in (1985) 2 SCC 537***, which, admittedly, is not done in the present case on hand.

8. Therefore, this petition is allowed with a direction to the Judicial Magistrate No.II, Kuzhithurai, Kanyakumari, to take a decision on the petitioner's application in the light of the directions issued by the Hon'ble Supreme Court in the case of ***Bhagwat Singh v. Commissioner of Police***



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and another, reported in (1985) 2 SCC 537, within a period of eight weeks,
from the date of receipt of a copy of this order.

03.04.2024

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

LR

To

1.The Judicial Magistrate No.II,
Kuzhithurai, Kanyakumari.

2.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

LR

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