



Crl.R.C.(MD)No.306 of 2024

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Reserved on : 18.09.2024

Pronounced on : 20.12.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.306 of 2024

and

Crl.M.P.(MD)No.3458 of 2024

1.A.Rajesh

2.A.Sumesh

3.Nisha

4.Jayakumari

... Petitioners

Vs.

1.The State of Tamil Nadu rep. by
The Sub-Inspector of Police,
Puthukadai Police Station,
(Crime No.342 of 2022)

2.R.Kavitha

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 12.01.2024 passed by the learned Judicial Magistrate No.II, Kuzhithurai in



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Crl.M.P.No.1779 of 2023 in S.T.C.No.174 of 2024 in Crime No.342 of 2022, set aside the same.

For Petitioners : Mr.B.Sargunam
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For R2 : Mr.J.John Jayakumar

ORDER

The Criminal Revision Petition is directed against the order passed in Crl.M.P.No.1779 of 2023 dated 12.01.2024 on the file of the Judicial Magistrate No.2, Kuzhithurai taking cognizance against the petitioners/accused 1 to 4 and sixth accused.

2. The case of the petitioners is that the second petitioner is a retired Indian Navy person and currently working in a company under the Central Defence Force, that the second petitioner used to come his home town on holidays, that the second respondent lives near the house, where the petitioners live, that the second respondent and two others used to abuse the second petitioner's parents with inappropriate words often regarding the land and also spitting towards the petitioners while coming and going, that on 26.11.2022 at about 07.00 p.m., the second respondent and two



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others came to the door of the second petitioner's house and attacked the petitioners with knives and stones and also threatened to throw them into the sea and that therefore the second petitioner gave a complaint and on that basis, FIR came to be registered in Crime No.341 of 2022 on 15.12.2022 for the alleged offences under Sections 447, 294(b) and 506(2) IPC against three persons including the second respondent. After completing the investigation, charge sheet came to be filed and the same was taken on file in C.C.No.12 of 2023 on the file of the Judicial Magistrate No.II, Kuzhithurai.

3. The case of the second respondent is that her husband is working in abroad, that the first petitioner Rajesh, who lives next door to her, has animosity towards her because she reprimanded him for speaking ill against her, that on 29.11.2022 at about 08.15 p.m., the petitioners and two others entered into the second respondent's house and the first petitioner pulled off the second respondent's saree and attacked her, that the second petitioner stomped on her stomach and others encouraged them to beat her to death, that the first petitioner attempted to stab her with knife and since the second respondent's children screamed, they went away and that on the



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basis of the complaint given by the second respondent, FIR came to be registered in Crime No.342 of 2022 on 15.12.2022 for the alleged offences under Sections 147, 448, 323 and 506(2) IPC on the file of the first respondent police.

4. The first respondent, after conducting investigation with regard to the case in Crime No.342 of 2022, has filed a final report, as the fifth accused Sutharsan alone was involved in the occurrence and that the petitioners/accused 1 to 4 were not at all involved in the commission of the offence and hence, they have also filed a report to delete the petitioners from the above case. The second respondent, after receiving the notice from the concerned Court, has filed a protest petition challenging the deletion of the petitioners in the above case and the said petition was taken on file in Crl.M.P.No.1779 of 2023 and after enquiry, the learned Magistrate has passed the impugned order dated 12.01.2024 by holding that the names of the accused 1 to 4 and 6 were found in the FIR and there existed *prima facie* evidence to proceed against them, ordered to take the case on file against the accused 1 to 4 and 6. Aggrieved by the said order, the present revision came to be filed.



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5. The learned counsel appearing for the petitioners would submit that the accused Sutharsan alone assaulted the second respondent during the occurrence on 29.11.2022 at about 08.15 p.m., that the medical report would reveal that the injury alleged to have been sustained by the second respondent is simple in nature, that the learned Magistrate ought not to have encouraged the intention of the second respondent to take vengeance over a civil dispute and that the second respondent has not approached the learned Magistrate with clean hands.

6. It is evident from the records that the first respondent has filed a final report only against the Sutharsan and that the petitioners 1 to 4 and one Santhya were shown as accused persons, not charge sheeted.

7. As rightly contended by the learned counsel appearing for the petitioners, in the charge sheet, it has been specifically stated that on 29.11.2022 at about 20.15 hours, the accused Sutharsan has trespassed into the house of the second respondent and stomped on her stomach and thereby committed the offences under Sections 448 and 323 IPC and that the case was taken cognizance in S.T.C.No.174 of 2024.



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8. The learned counsel appearing for the second respondent would submit that the second respondent has given statement under Section 161(3) Cr.P.C. before the Sub Inspector of Police reiterating the complaint version but the Inspector of Police has produced further statement of the second respondent as if he had taken another statement from the second respondent, wherein, it was recorded that the second respondent has narrated the occurrence involving the accused Sutharsan and exaggerated version was given involving the other accused, but such a statement was not at all given by the second respondent before the Inspector of Police.

9. As rightly contended by the learned counsel appearing for the second respondent, the second respondent has given a statement under Section 161(3) Cr.P.C. before the Sub Inspector of Police on 15.12.2022 narrating the version given in the complaint but the Inspector of Police has produced another statement as if it is a further statement, wherein, the second respondent had allegedly taken a U-turn and stated that except the accused Sutharsan, no other accused was involved in the occurrence.

10. As rightly contended by the learned counsel appearing for the



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second respondent, the medical officer, who had treated the second respondent, in her statement would say that the second respondent had informed that she was attacked by known two males and two females with hands and after first aid treatment, the second respondent was referred to the Government Medical College Hospital.

11. As already pointed out, the names of the petitioners, one Sutharsan and Santhya find place in the FIR but subsequently, charge sheet came to be filed only against fifth accused and deletion report as against the other accused.

12. The learned counsel appearing for the petitioners would submit that the learned Magistrate has not taken the charge sheet on file before proceeding to decide as to whether the deletion report or the closure report as against the petitioners has to be accepted or not. No doubt, the learned Magistrate, after deciding the protest petition, has passed the impugned order for taking the case on file against the accused 1 to 4 and 6.

13. In a similar fact situation, this Court in ***Selvakani Vs. State***



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represented by Kallikudi Police Station in Crl.R.C.(MD)No.751 of 2024

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dated 29.10.2024 has observed as follows:-

“7. No doubt, as rightly pointed out by the learned counsel appearing for the petitioner, the learned Magistrate has not taken the charge sheet on file before proceeding to decide as to whether the deletion report or closure report as against the petitioner has to be accepted or not. As rightly contended by the learned Government Advocate (Criminal Side), there is no law which mandates the Magistrate to take the charge sheet on file and then to proceed against the deletion report separately and independently. The learned Magistrate, after finding that there existed prima facie case against the petitioner, has taken the case on file as C.C.No.224 of 2024 and ordered for issuance of summons to all the accused including the petitioner. Considering the above, in the absence of any legal mandate, the procedure adopted by the learned Magistrate cannot be found fault with and absolutely there is no illegality or irregularity in the proceedings conducted.

8. The next contention of the petitioner is that the protest petition filed by the second respondent does not contain the necessary particulars which are required for a normal complaint as defined under Section 2(d) Cr.P.C.,



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that there is no list of witnesses annexed along with the protest petition and as such, the same does not satisfy the requirements of a complaint and therefore the said protest petition cannot be treated as a complaint for the purpose of proceeding under Section 200 Cr.P.C. and that since the learned Magistrate has decided to issue summons to the second respondent in the closure report, he is duty bound to follow the procedure contemplated for private complaint.

9. No doubt, as rightly pointed out by the learned counsel appearing for the petitioner, the learned Magistrate has not treated the protest petition as a complaint under Section 200 Cr.P.C., but as rightly contended by the learned Government Advocate (Criminal Side) and the learned counsel appearing for the second respondent, the learned Magistrate, considering the materials available on record and also the objections raised in the protest petition, has come to a finding that there existed prima facie case against the petitioner and on that basis, had taken the case on file in C.C.No.224 of 2024 and ordered for issuance of summons.

*10. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of **Vishnu Kumar Tiwari Vs. State of Uttar Pradesh and***



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another reported in **2019 (5) CTC 603** and the relevant passages are extracted hereunder:-

“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



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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. State AIR 1958 Ori. 11, 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



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the Criminal Procedure Code.

43. We may also notice that in Veerappa and others v. Bhimareddappa 2002 CriLJ 2150 (Karnataka), the High Court of Karnataka observed as follows:

“9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 of the Cr.P.C., but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) of the Cr.P.C. on a complaint. If it were to be so, the protest petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) of the Cr.P.C., and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) of the Cr.P.C. Instead, if it is to be simply styled as a protest petition without containing all



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those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 of the Cr.P.C.”

....

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.”

11. The learned counsel appearing for the petitioner would also rely on the recent decision of the Hon'ble



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Supreme Court in Mukhtar Zaidi Vs. The State of Uttar Pradesh and another reported in 2024 SAR (Cri) 657, wherein, Vishnu Kumar Tiwari's case judgment was referred. In the above decision case, negative final report came to be filed and on that basis, notices were issued to the informant, that the informant filed a protest petition along with affidavits to show that investigation carried out by the investigating officer was not a fair one, that the learned Chief Judicial Magistrate has passed an order rejecting the police report under Section 173(2) Cr.P.C. and further proceeded to take cognizance for the offences under Sections 147, 342, 323, 307 and 506 IPC and under Section 190(1)(b) Cr.P.C. and also directed that the matter would continue as a State case and that when the same was challenged before the High Court, the same was dismissed and challenging the dismissal, an appeal came to be filed before the Hon'ble Supreme Court. The learned Chief Judicial Magistrate had actually taken into consideration the protest petition and also the affidavit filed in support of the protest petition as well as the four affidavits of witnesses filed along with the protest petition and by observing that the investigation conducted by the police was not a fair investigation and that the affidavits filed along with the protest petition made out a prima facie case for taking cognizance, issued summons to the accused.



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12. In the case on hand, the second respondent has only raised her objections to the final report in the protest petition and she has neither annexed any list of witnesses nor any other supporting materials. Since the protest petition was not filed as a complaint as required under Section 2(d) Cr.P.C., the question of the learned Magistrate treating the protest petition as a complaint and to proceed under Section 200 Cr.P.C. does not arise at all. Moreover, the learned Magistrate has only considered the objections raised in the protest petition, that the prosecution has filed the deletion report on the ground that the petitioner was present in the school at the time of occurrence, but the second respondent has raised objection that the occurrence took place after working hours of the school and even as per the prosecution case, the time of occurrence was shown to be after working hours and on that basis, the learned Magistrate has recorded that he found prima facie case against the petitioner. As rightly contended by the learned counsel appearing for the second respondent, in the FIR as well as in the final report, it has been specifically stated that the incident was occurred at 04.45 p.m. on 28.02.2022 and that the prosecution has also produced some materials to show that the school was closed at 04.10 p.m.”



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14. In the present case also, the second respondent has only raised objections to the final report and the deletion report in the protest petition and she has neither annexed any list of witnesses nor any other supporting materials. Admittedly, protest petition was filed not as a complaint as required under Section 2(d) Cr.P.C. and hence, the learned Magistrate has proceeded to consider the petition and passed the impugned order.

15. It is settled law that it is not mandatory that every protest petition must necessarily be treated as a complaint and required to be proceeded under Section 200 Cr.P.C.

16. As rightly observed by the Hon'ble Supreme Court, 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 and in that situation, the protest petition 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



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petition, the case has to become a complaint case.

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17. The learned Magistrate, without treating the protest petition as a complaint, by considering the materials produced by the prosecution in the final report and in the deletion report and taking note of the objections raised by the second respondent in the protest petition, has rightly come to a decision that there existed *prima facie* case against the petitioners and on that basis, ordered for issuance of summons.

18. Considering the above, the impugned order adding the petitioners as accused 1 to 4 and issuance of summons to them 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. As rightly pointed out by the learned Government Advocate (Criminal Side), both the cases in Crime Nos.341 of 2022 and 342 of 2022 are case and case in counter. As per the settled legal position, both the cases are to be tried by the same Court simultaneously.



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20. In the result, this Criminal Revision Petition stands dismissed.

The learned Judicial Magistrate No.II, Kuzhithurai is directed to try both the cases in S.T.C.No.174 of 2024 and C.C.No.12 of 2023 simultaneously following the procedures and guidelines meant for trying the case and case in counter.

20.12.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Judicial Magistrate No.II,
Kuzhithurai.
- 2.The Sub-Inspector of Police,
Puthukadai Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.306 of 2024
and
Crl.M.P.(MD)No.3458 of 2024

Dated : 20.12.2024