



Crl.O.P.(MD)No.10937 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.10937 of 2022

and

Crl.M.P.(MD) No.6907 of 2022

1.B.Mohamed Kalibullah
2.Mohamed Asik

... Petitioners/
Accused 1 & 2

Vs.

P.S.Sharfudeen

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No. 216 of 2016 on the file of the learned Judicial Magistrate No.III, Dindigul and quash the same.

For Petitioners : Mr.M.Sheik Abdullah

For Respondent : Mr.G.Karuppasamy Pandian



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ORDER

This petition has been filed to quash the proceedings in C.C.No.216 of 2016 pending investigation on the file of the learned Judicial Magistrate No.III, Dindigul.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3.The respondent gave a complaint against the petitioner which was taken on file by the Town South Police, Dindigul in Crime No.468 of 2015 for alleged offences under Sections 447 and 506(i) of IPC. After investigation, a closure report was filed as mistake of fact before the learned Judicial Magistrate No.III, Dindigul. The respondent filed a protest petition. The learned Judicial Magistrate decided to deal with the protest petition as a private complaint and took cognizance of the same for offence under Section 506(i) of IPC through order dated 18.10.2016 as against A1 and A2 and dismissed the complaint insofar as A3 and A4 are concerned. Aggrieved by the same, the present quash



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petition has been filed by A1 and A2.

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4.It is not in dispute that initially the case was investigated by the police in Crime No.468 of 2015 and a referred charge sheet was filed before the learned Judicial Magistrate No.III, Dindigul, as mistake of fact. It is now too well settled that the learned Magistrate can act upon the protest petition and issue process to the accused persons or can order for further investigation or can treat it as a private complaint and proceed further.

5.The learned Judicial Magistrate decided to treat the protest petition as a private complaint. At the time of taking cognizance of the same, the learned Judicial Magistrate ought to have applied his mind on the closure report filed by the police and the materials that were collected by the police while filing the closure report. If the learned Judicial Magistrate has not applied his mind on those materials, the very taking of cognizance of the private complaint becomes unsustainable. Useful reference can be made to the judgment of this Court in ***Narayanamma & Others. Vs. Chikka Venkateshaiah***, reported in ***2019 (2) L.W. (Crl.)***



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522. Reference can also made to the judgment in *Alaguthangamani v. Saravanan*, reported in 2022 (4) MLJ (Crl.) 156.

6.This Court had held that when a protest petition is converted into a complaint, the Court has to necessarily apply its mind on the closure report and the statements recorded by the police which forms part of the closure report.

7.The cognizance order passed by the Court below does not reflect any application of mind on the closure report filed by the police and the materials that were filed along with the closure report.

8.In view of the same, this Court has to necessarily interfere with the cognizance order passed by the Court below and accordingly the same is set aside.

9.The matter is remitted back to the file of the learned Judicial Magistrate No.III, Dindigul. The learned Judicial Magistrate shall apply his mind on the closure report and the materials collected by



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the police and which forms part of the closure report and also the grounds taken by the respondent in the protest petition which has now been treated as a private complaint and thereafter, pass an order. This process shall be completed within a period of four weeks from the date of receipt of a copy of this order.

10.In the result, this Criminal Original Petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed.

13.11.2024

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

To

1.The Judicial Magistrate No.III, Dindigul.



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N.ANAND VENKATESH,J.

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