



Crl.R.C.(MD)No.751 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.09.2024

Pronounced on : 29.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.751 of 2024

and

Crl.M.P.(MD)No.8072 of 2024

Selvakani

... Petitioner

Vs.

1.State rep. by
The Inspector of Police,
Kallikudi Police Station,
Madurai District.
(Crime No.41 of 2022)

2.Muthu Rakku

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records and set aside the order passed by the Court of Judicial Magistrate, Tirumangalam, Madurai District in Crl.M.P.No. 5785 of 2022 on 08.05.2024 and allow this Criminal Revision Petition.



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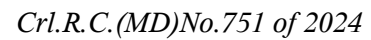
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For Petitioner : Mr.M.Jothi Basu
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For R2 : Mr.P.Veerapandi

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.5785 of 2022 in C.C.No.224 of 2024 dated 25.03.2024 on the file of the Judicial Magistrate Court, Tirumangalam.

2. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.41 of 2022 against 9 persons including the petitioner for the alleged offences under Sections 147,148, 294(b), 323, 324 and 506(2) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002. The first respondent, after completing the investigation, has filed a final report against 8 persons and also filed a report deleting the petitioner/9th accused from the above case before the jurisdictional Court. The learned Magistrate, after receipt of the charge sheet as well as the deletion report, has issued notice to the second respondent. The second respondent has entered into appearance and filed a



3. The learned counsel appearing for the petitioner would submit that although the petitioner has been arrayed as 8th accused in the FIR registered in Crime No.41 of 2022, during investigation the investigating officer, after finding that the petitioner was not at all available at the place of occurrence, has filed the charge sheet only against 8 accused and also submitted a closure report deleting the petitioner from the above case, that once a closure report has been filed under Section 190 Cr.P.C., 1973, it is the duty of the Court to apply its mind to take cognizance of the case and ordered for issuance of summons to the accused, that if any closure report has been submitted, it is the duty of the Court to issue summons to the defacto complainant and after hearing the objections of the defacto complainant, the Court has to decide as to whether the closure report has to be accepted.



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or not, that if two reports one charge sheet against some of the accused and other one closure report against some of the accused have filed, then it is the duty of the Court to treat and consider both the reports separately and independently and that the learned Magistrate, in the present case without taking the charge sheet on file, has chosen to issue summons to the second respondent and after filing of the protest petition filed by the second respondent, the learned Magistrate has passed the impugned order for adding the petitioner as 9th accused and converting the Crl.M.P.No. 5785 of 2022 as C.C.No.224 of 2024 and directed to issue summons to all the accused and as such, the procedure adopted by the learned Magistrate is illegal and liable to be set aside.

4. The learned counsel appearing for the petitioner would further contend that in the protest petition, the complainant has to satisfy the requirements of a complaint as defined in Section 2(d) Cr.P.C., that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) Cr.P.C., that if the protest petition has been filed without containing all the necessary particulars, it cannot be constituted as a complaint filed under Section 200 Cr.P.C. and



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that the learned Magistrate only if the protest petition fulfils the requirements of a complaint, can treat the protest petition as a complaint and deal with the same as required under Sections 200 r/w 202 Cr.P.C.

5. The learned counsel appearing for the petitioner would further submit that the present case in Crime No.41 of 2022 and the case in Crime No.40 of 2022 are case and case in counter, that the sixth accused in the present case has lodged a complaint and on that basis, FIR came to be registered in Crime No.40 of 2022 and the said case is now pending before the Mahila Court, Madurai in S.C.No.11 of 2024 and that since both are case and case in counter, both cases should be tried jointly.

6. It is evident from the records that the learned Magistrate, after filing of the charge sheet as well as the report deleting the petitioner as accused, has issued notice to the second respondent and after filing of the protest petition filed by the second respondent, the same was taken on file in Crl.M.P.No.5785 of 2022.

7. No doubt, as rightly pointed out by the learned counsel appearing



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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., 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



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



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“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



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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 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



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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 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



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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 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



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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.

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



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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.

13. The second respondent has filed a counter affidavit stating that even according to the version of the Headmaster of the school, the petitioner was in the school till 04.10 p.m., but the occurrence took place around 04.45 p.m., that the distance between the school and the occurrence place is quite short, that therefore the conclusion of the first respondent that the petitioner was not available at the occurrence place on



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the ground of alibi cannot be accepted and that there is no valid ground to raise for setting aside the impugned order passed by the learned Magistrate.

14. As per the settled legal position, above referred, 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.

15. 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 petition the case has to become a complaint case.

16. The learned Magistrate, without treating the protest petition as a



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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 petitioner and on that basis, ordered for issuance of summons.

17. Considering the above, the impugned order adding the petitioner as 9th accused and for issuance of summons to her cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

18. It is not in dispute that on the basis of the complaint given by the sixth accused, counter FIR came to be registered in Crime No.40 of 2022 for the offences under Sections 147, 148, 294(b), 323, 324, 307 and 506(2) IPC r/w Section 4 of TN Prohibition of Harassment of Women Act and that after completing the investigation, charge sheet came to be filed and the case is pending in S.C.No.11 of 2024 on the file of the Mahila Court, Madurai.



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19. As rightly contended by the learned counsel appearing for the petitioner, if both cases in Crime Nos.40 of 2022 and 41 of 2022 are case and case in counter, it is settled law that both the cases are to be tried by the same Court. As already pointed out, the present case in C.C.No.224 of 2024 is pending on the file of the Judicial Magistrate, Tirumangalam, whereas, the counter case is pending in S.C.No.11 of 2024 on the file of the Mahila Court, Madurai. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Sudhir and others Vs. State of Madhya Pradesh and others*** reported in ***AIR 2001 SC 826***, wherein, the Hon'ble Apex Court in the situation like this, directed the Magistrate to exercise special power conferred on him by virtue of Section 323 Cr.P.C. and he has to commit the case in counter, which is pending on his file to the Sessions Court and the relevant passages are extracted hereunder:-

“13. How to implement the said scheme in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Sessions, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The



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magistrate before whom the former case reaches has no escape from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter XVIII of the Code. Though, the next case cannot be committed in accordance with Section 209 of the Code, the magistrate has, nevertheless, power to commit the case to the court of Sessions, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:

"If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of chapter XVIII shall apply to the commitment so made."

14. The above section does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a



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magistrate has committed a case on account of his legislative compulsion by Section 209, its cross case, having no offence exclusively triable by the Sessions Court, must appear to the magistrate as one which ought to be tried by the same Court of Sessions. We have already adverted to the sturdy reasons why it should be so. Hence the magistrate can exercise the special power conferred on him by virtue of Section 323 of the Code when he commits the cross case also to the Court of Sessions. Commitment under Section 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII.”

20. Considering the above, the learned Judicial Magistrate is to be directed to follow the dictum laid down by the Hon'ble Supreme Court for committing the case in counter which is pending on his file.

21. In the result, this Criminal Original Petition stands dismissed. The learned Judicial Magistrate, Tirumangalam is directed to follow the dictum laid down by the Hon'ble Supreme Court in ***Sudhir and others Vs. State of Madhya Pradesh and others*** reported in ***AIR 2001 SC 826*** and



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commit the case in C.C.No.224 of 2024 to the file of the Mahila Court, Madurai, where S.C.No.11 of 2024 is pending. Consequently, connected Miscellaneous Petition is closed.

29.10.2024

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

To

1. The Judicial Magistrate,
Tirumangalam, Madurai District.
- 2.The Inspector of Police,
Kallikudi Police Station,
Madurai 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.751 of 2024
and
Crl.M.P.(MD)No.8072 of 2024

Dated : 29.10.2024