



Crl.R.C.No.1795 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2025

PRONOUNCED ON : 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1795 of 2024
and Crl.M.P.No.14711 of 2024

S.Anbu ... Petitioner/A4

Vs.

1. The State
Rep. by the Inspector of Police,
MKB Nagar Police Station,
Pulianthope District.
Tamil Nadu. ... 1st Respondent/complainant

2. G.Jayapal ... 2nd Respondent/Defacto complainant

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to call for the records relating to the order dated 20.12.2021 passed in Crl.M.P.No.11959 of 2021 in CC No.9497 of 2021 pending before the learned X Metropolitan Magistrate, Egmore, Chennai and set aside the same by allowing the Revision Petition.

For Petitioner : Mr.S.Praveennath

For Respondents : Mr.S.Udaya Kumar (for R1)
Government Advocate (Crl.Side)



WEB COPY



CrI.R.C.No.1795 of 2024

Mr.B.Venugopal (for R2)



WEB COPY

ORDER

The Criminal Revision challenges the order dated 20.12.2021 passed by the learned X Metropolitan Magistrate, Egmore, Chennai, taking cognizance of offences under Sections 120-B, 109 and 420 of the IPC, against the petitioner who was arrayed as A4 in the FIR.

2. The *defacto complainant*/2nd respondent herein had lodged a complaint alleging that he was introduced to A1 by A2, who was employed as a Typist in Tamil Nadu Textile Department; that A1 informed him that State Government is inviting applications for providing jobs for youth, who were below poverty line and she assured that she would obtain a job, for which the *defacto complainant* has to pay Rs.1 Lakh, as a security deposit; that believing the words of A1, the *defacto complainant* and about 34 others paid Rs.1 Lakh each to A1; that A1 neither returned the amount nor obtained a job as promised; and that A3 to A6 are related to A1 and when the *defacto complainant* approached them through telephone, they apologised for the delay and assured that A1 would either get a job or return the amount. The petitioner was arrayed as A4 in the FIR.



3. An FIR was registered in Cr.No.124 of 2020 on the direction of the learned Magistrate under Section 156(3) of the Cr.P.C., on 25.02.2020 for the offences under Sections 120(b), 465, 467, 468, 471, 109 and 420 of the IPC.

4. On investigation, the 1st respondent filed a final report against A1 and A2 and deleted the names of the petitioner/A4, A3, A5 and A6. Aggrieved by the said deletion the *defacto complainant*, the 2nd respondent herein filed a protest petition stating that the 1st respondent had erroneously deleted A3 to A6 from the final report, though there were allegations against them. The 1st respondent objected to the said petition on the ground that the investigation did not reveal the involvement of the petitioner and the other accused and hence, they were deleted from the final report and that the protest petition is without any merits and sought for dismissal.

5. The learned X Metropolitan Magistrate, Egmore, Chennai, considered the rival submissions and held that the final report did not contain sufficient materials to issue summons to A3 to A6 and that if



evidence is let in during the course of trial, they could be summoned under Section 319 of the Cr.P.C. The learned Magistrate also directed further investigation by the 1st respondent to ascertain if the accused including the petitioner who were deleted from the final report, were involved in the offence. It appears that the 1st respondent had filed a further report reiterating their findings in the earlier report.

6. The learned Magistrate therefore, treated the protest petition as a complaint under Section 200 of the Cr.P.C., and examined seven witnesses produced on the side of the *defacto complainant* and found that under Section 210(2) of the Cr.P.C., the learned Magistrate is empowered to try the complaint case and the case arising out of a police report as both the cases are instituted on the police report and relied upon the judgment of the Hon'ble Supreme Court in ***Sankaran Motira v. Sadhana Das & Another***, reported in **(2006) 4 SCC 584** and further found that the *defacto complainant* has made out a *prima facie* case, took cognizance of the offences against the accused A3 to A6.



7. Mr.Praveennath, the learned counsel for the petitioner/A4 would submit that neither Section 210(2) of the Cr.P.C., nor the judgment of the Hon'ble Supreme Court is applicable to the facts of the case; that the report and the further report filed by the 1st respondent police would clearly show that A3 to A6 were not involved in the offence and the procedure followed by the learned Magistrate by trying the protest petition as a complaint under Section 200 of the Cr.P.C., is not justified and contrary to the provisions of the Code of Criminal Procedure; and hence, prayed for setting aside the order.

8. Mr.S.Udaya Kumar, the learned Government Advocate (Crl.Side) and Mr.B.Venugopal, the learned counsel for the *defacto complainant*/2nd respondent submitted that the materials produced by the *defacto complainant* revealed that the petitioner along with the other accused deleted were also involved in the alleged offence; and that the Magistrate was therefore justified in taking cognizance of the offence even as against the petitioner and others and therefore, prayed for dismissal of the revision.



9. Heard the learned counsel on either side and perused the materials available on record.

10. When the protest petition was initially filed, the learned Magistrate vide order dated 30.06.2021 had directed the 1st respondent to conduct further investigation and file a report. The 1st respondent on further investigation filed a report reiterating the findings in their earlier report. The learned Magistrate thereafter, treating the protest petition as a complaint and by following the procedure under Section 200 of the Cr.P.C., had examined all the witnesses produced on the side of the *defacto complainant*. The learned Magistrate thereafter, applied Section 210(2) of the Cr.P.C., to hold that the Magistrate can try the complaint case and the case arising out of a police report, as if both the cases were instituted on the police report and considering the materials produced by the *defacto complainant* during enquiry under Section 200 of the Cr.P.C., took cognizance of the offence against A3 to A6.

11. It is well settled that the protest petition can be treated as a



complaint only if it fulfils the requirement of a complaint and then deal with the same under Section 200 r/w 202 of the Cr.P.C. This position was reiterated by the Hon'ble Supreme Court in ***Vishnu Kumar Tiwari vs. State of Uttar Pradesh***, reported in **(2019) 8 SCC 27** and the relevant paragraph reads as follows:

“46. 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.”

12. However, the question in this case is not whether the protest petition satisfies the requirements of Section 200 of the Cr.P.C. This is a case where a police report has already been filed and cognizance has been taken of the offence under Sections 120B, 109 and 420 of the IPC against A1 and A2. The question is whether the provisions of Section 210(2) of the Cr.P.C., can be applied to summon additional accused.



WEB COPY 13. Section 210 of the Cr.P.C., reads as follows:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

14. The above would show that in order to invoke Section 210 of the Cr.P.C., there must be a complaint pending for enquiry or trial and also an investigation must be in progress in relation to the same offence and the



further condition is that the Magistrate must have already taken cognizance of an offence against the persons who are accused in the complaint case.

However, in this case, a final report was already filed and there was no complaint pending at that stage. The protest petition was treated as a complaint and the accused named in the protest petition were sought to be summoned by treating the complaint case as one to be tried along with the police report. This procedure is not in accordance with Section 210 of the Cr.P.C., and therefore the learned Magistrate ought not to have invoked Section 210 Cr.P.C., to summon additional accused on the basis of the protest petition. This Court is of the view that the learned Magistrate ought to have seen that the judgment of the Hon'ble Supreme Court in ***Sankaran Motira's case*** [cited supra] would not be applicable to the facts of this case. The first condition that the complaint must be pending and the police report must be filed later, has not been satisfied in this case. Therefore, this Court is of the view that the impugned order by relying upon Section 210 of the Cr.P.C., cannot be sustained.

15. Accordingly, the order dated 20.12.2021 passed by the learned X



Crl.R.C.No.1795 of 2024

Metropolitan Magistrate, Egmore, Chennai, taking cognizance of offences under Sections 120-B, 109 and 420 of the IPC, against the petitioner who was arrayed as A4 in the FIR, is set aside. It is made clear that the cognizance taken by the learned Magistrate for the offences under Sections 120B, 109 and 420 of the IPC against A1 and A2, is confirmed and if during the course of trial, it appears from the evidence that any other person has committed the offence, it is open to the learned Magistrate to summon the said person, under Section 319 of the Cr.P.C.

16. With the above observations, the Criminal Revision Case stands allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

05.02.2025

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

ars



WEB COPY

To



Crl.R.C.No.1795 of 2024

SUNDER MOHAN, J.

ars

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Inspector of Police,
MKB Nagar Police Station,
Pulianthope District.
Tamil Nadu.
- 3.The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.1795 of 2024



WEB COPY



CrI.R.C.No.1795 of 2024

05.02.2025