

Crl.R.C.(MD)No.1299 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 13.02.2025

Pronounced on : 26.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1299 of 2024
and
Crl.M.P(MD).No.13224 of 2024
Against
C.C.No.553 of 2024

Dorothis Manimuthu .. Petitioner/De-facto Complainant

Vs.

The State of Tamil Nadu
rep.by the Inspector of Police,
District Crime Branch,
Thoothukudi.

.. Respondent/Complainant

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S./397 r/w 401 of Cr.P.C, to call for the records pertaining to the impugned docket order dated 25.09.2024 passed by the Judicial Magistrate Court-IV, Thoothukudi in C.C.No.553 of 2024 and to set aside the same and to direct the Judicial Magistrate Court – IV, Thoothukudi to provide an opportunity to the petitioner to file the protest petition insofar as leaving the name of said Muneeswari wife of Jayakumar while filing the charge sheet.



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Crl.R.C.(MD)No.1299 of 2024

For Petitioner : Mr.M.P.Senthil

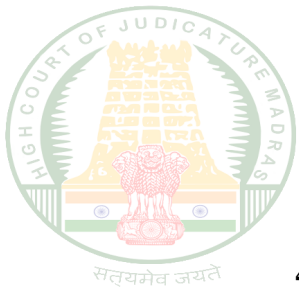
For Respondent : Ms.M.Aasha,
Government Advocate (Crl. Side)

ORDER

The Criminal Revision Case is directed against the order dated 25.09.2024, taking cognizance of the case in CC.No.553/2024 on the file of the Court of the Judicial Magistrate No.IV, Tuticorin.

2. On the basis of the complaint lodged by the petitioner, an FIR came to be registered in Cr.No.23/2021 on 11.08.2021 against the fifteen (15) persons for the alleged offences under Sections 120 (B), 417, 420, 466, 468, 471, 166 (A) & 34 of IPC.

3. The Respondent-Police after completing the investigation has filed a final report, against thirteen (13) persons for the alleged offences under Sections 120 (B), 417, 420, 466, 468, 471, 166 (A) & 34 of IPC. The Respondent Police in the final report has deleted the Accused Nos. 1,4,8,9,10,11,12 and 14 shown in the FIR but included six (6) other accused who were not named in the FIR.



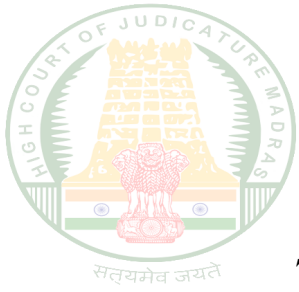
Crl.R.C.(MD)No.1299 of 2024

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4. The learned Judicial Magistrate, after receipt of the final report sent a notice dated 22.08.2024 to the petitioner/de-facto complainant, calling upon him to offer his objections with regard to the deletion and inclusion of the accused, and directed him to appear on 06.09.2024.

5. It is evident from the records that the learned Judicial Magistrate has sent a letter dated 09.09.2024 to the Respondent-Police directing them to add the first accused Santhanamari wife of Murugesan shown in the FIR and file additional charge-sheet and in pursuance of the same, the Sub-Inspector of Police has submitted a letter to the learned Judicial Magistrate stating that since the first accused Santhanamari wife of Murugesan was already reported dead, they have deleted the said accused from the charge-sheet.

6. The learned Judicial Magistrate has passed the impugned order dated 25.09.2024 taking cognizance of the case for the offences under Section 120(B), 420, 468, 471, 465 and 109 of IPC, 1860 as against the charge-sheeted accused in CC.No.553/2021 and ordered for issuance of summons to them.

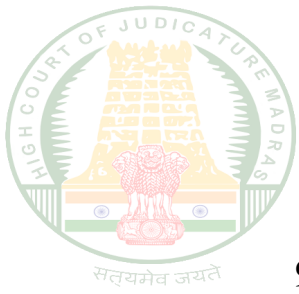


Crl.R.C.(MD)No.1299 of 2024

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7. The learned counsel appearing for the petitioner would mainly contend that the petitioner has entered into appearance before the learned Judicial Magistrate on 06.09.2024, in pursuance of the notice received and raised objections to the final report, that the learned Judicial Magistrate adjourned the matter to 09.09.2024 and thereafter to 25.09.2021 on which date, the impugned order came to be passed, that the petitioner was not given any opportunity to file protest petition, that the learned Judicial Magistrate without considering the objections raised and without any sort of any enquiry, has mechanically directed to add the name of the first accused Santhanamari wife of **Murugesan who was already reported dead.**

8. As rightly contended by the learned counsel for the petitioner, the learned Judicial Magistrate in the letters sent to the Respondent-Police has observed that the defendant complainant entered into appearance and raised objections for the deletion of the accused, but neither considered nor decided the objections raised by the petitioner.



Crl.R.C.(MD)No.1299 of 2024

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9. The learned Judicial Magistrate has not assigned any reason for rejecting the objections and for addition of the first accused alone. It is not the case of the respondent that the learned Judicial Magistrate before issuing the letter dated 09.09.2024 has passed any order with regard to the deletion of the accused in the charge-sheet. As rightly contended by the learned counsel for the petitioner, though the eight accused named in the FIR was deleted in the charge-sheet, the petitioner was not given any opportunity to file the protest petition, instead the learned Judicial Magistrate, by sending a letter dated on 09.09.2024, has then proceeded to pass the impugned order, taking cognizance.

10. Since the learned Judicial Magistrate has not considered the reasons for deletion of eight accused in the charge-sheet and the objections raised by the defendant/complainant, the impugned communication dated 09.09.2024 sent to the Respondent-Police cannot legally be sustained and also the consequent order taking cognizance of the case.

11. It is pertinent to note that the learned Judicial Magistrate has only used rubber stamp mode for passing the impugned order taking



Crl.R.C.(MD)No.1299 of 2024

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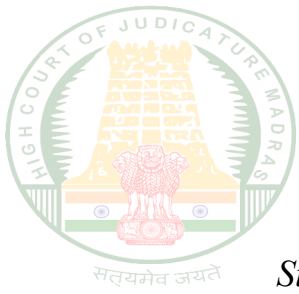
cognizance, by filling up the provisions of law, case number and the date.

This Court has again and again reiterated the legal position that order taking cognizance is a Judicial Act, which requires application of mind and the Court below must give some reasons for taking cognizance and that they cannot pass a rubber stamp order.

12. At this juncture it is necessary to refer the judgment of this Court in M/s.Osmed Formulations Pvt. Ltd. Vs. The Tamil Nadu State in Crl.OP.No.16250 of 2023 dated 21.07.2023 wherein the Hon'ble Supreme Court's decision in **Pawan Kumar Sharma Vs. State of Uttaranchal** in Crl. Appeal No. 1692 of 2007(ASLP (Crl.) No. 4701 of 2007, was referred to and the Hon'ble Apex Court has dealt with the said issue and the relevant passages are extracted hereunder: -

“There exists a strange practice. The Magistrate take cognizance of offence and issue summons in terms of Section 202 of the Code of Criminal Procedure on “rubber stamped” orders.

A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal



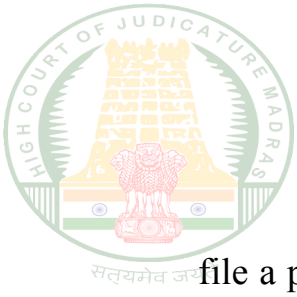
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Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made. Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the IPC.

In State of Karnataka v. Pastor P. Raju (2006) 6 SCC 728, this Court has clearly made out a distinction between an order taking CRL. O.P. No.1544/2018 cognizance of an offence and an order of issuance of process stating:

“13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out.”

13. Considering the legal position referred above, the impugned order can only be termed as a rubber stamp order and the learned Judicial Magistrate without recording his satisfaction, has sent the communication and passed the impugned order and as such, the same are illegal. Hence, this Court has no other option but to set aside the communication dated 09.09.2024 and the consequent order dated 25.09.2024 taking cognizance on this case. Consequently, the petitioner is to be given an opportunity to



Crl.R.C.(MD)No.1299 of 2024

WEB COPY

file a protest petition, and the learned Judicial Magistrate is to be directed to consider the same and then to pass order in accordance with law.

14. In the result, this Criminal Revision Case is allowed and the impugned order dated 25.09.2024 taking cognizance is set aside. The petitioner is directed to file a protest petition before the learned Judicial Magistrate within a period of fifteen (15) days from the date of receipt of this order and on the receipt of fresh petition, the learned Judicial Magistrate is directed to conduct necessary enquiry and to pass orders in accordance with law. Consequently, connected misceallenous petition is also closed.

26.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
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Crl.R.C.(MD)No.1299 of 2024

To

1. The Judicial Magistrate Court – IV,
Thoothukudi.
- 2.The Inspector of Police,
District Crime Branch,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court.
Madurai.



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Crl.R.C.(MD)No.1299 of 2024

K.MURALI SHANKAR,J.

nst

**Pre-Delivery Order made in
Crl.R.C.(MD)No.1299 of 2024**

Dated: 26.02.2025