

1.Mani Vs. State Through:

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Court : Chennai

Decided On : Sep-08-2015

Judge : The Honourable Mrs.Justice S.Vimala

Appellant : 1.Mani

Respondent : State Through:

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 08.09.2015 CORAM THE HONOURABLE MRS.JUSTICE S.VIMALA CrI.R.C.(MD)No.43 of 2015 and M.P.(MD)Nos.1 and 2 of 2015 1.Mani 2.Anbarasan 3.Sekar 4.Santhosh 5.Durairaj ..Petitioners -versus State through: 1.The Inspector of Police, Devakottai Taluk Police Station, in Crime No.331 of 2013, Sivagangai District.

2.Rajaprabhu ..Respondents Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order in P.R.C.No.19 of 2014 dated 14.10.2014 on the file of the Judicial Magistrate, Devakottai.

!For petitioners : Mr.M.Subash Babu ^For respondents : Mr.P.Kandasamy, Govt.Advocate (CrI.Side) for R1 No appearance for R2 This Criminal Revision Case has been filed against the order passed in P.R.C.No.19 of 2014 dated 14.10.2014 on the file of the Judicial Magistrate, Devakottai.

2.The defacto complainant Rajaprabhu, preferred a complaint before the Inspector of Police of Devakottai Police Station alleging that while he was returning from Devakottai along with his friend Baskaran on 09.08.2013 at about 03.50 p.m., the accused Karuppiah and Kottaisamy came in a two-wheeler vehicle and intercepted them; the revision petitioners came there armed with deadly weapons, intimidated him and had beaten him.

3.It is his specific case that he had been admitted at Devakottai Government Hospital and thereafter he was referred to the Karaikudi Government Hospital, where he took treatment in Intensive Care Unit.

4.The Inspector of Police, even though registered the case under Sections 147, 148, 294(b).323 and 307 IPC, against many accused persons, after investigation, laid the final report against only two accused, ie., Kottaisamy and Karuppiah.

So far as the revision petitioners are concerned, there was a finding that they were not involved in the occurrence.

5.Show Cause notice was issued to the defacto complainant, before taking the case on file.

The defacto complainant filed the objection petition.

6.It was contended before the learned Magistrate that exoneration of the revision petitioners from the case by the Investigating Agency was willful, motivated and biased and records have been manipulated for the purpose of exonerating the revision petitioners from the prosecution.

Based on this submission, the Court ordered further investigation.

7.The Court observed that the non-examination of the Doctor at Karaikudi and non-examination of the Observation Mahazar witnesses was not proper and therefore, further investigation has to be done.

Thereafter, charge sheet was filed and in the charge sheet also, the revision petitioners remained exonerated.

8.The defacto complainant again reiterated his claim that the revision petitioners are involved in the occurrence and in support of the same, filed affidavit of the defacto complainant and his parents, viz.

Sulaimani and Gnanambal, alleging involvement of the revision petitioners in the occurrence.

The learned Magistrate, while considering this aspect as to whether there are prima facie materials available against the revision petitioners to take the case on file, came to the conclusion that the case is made out as against the revision petitioners also and ordered issuance of summons.

9.This order is under challenge in this revision petition.

10.The learned Magistrate, while deciding to take the case on file as against the revision petitioners.relied upon the decision reported in (2014) 1 MLJ (Cri) 755 (S.Karunanithi versus Sivananda Rao).wherein it has been held that based upon the statement of witnesses if any case is made out as against the exonerated persons by the prosecution, those exonerated persons can also be added as accused.

11.Perusal of the order passed by the learned Magistrate, would reveal that the following materials have been considered and omissions have been noted.

(1)Section 161(3) Cr.PC.

Statement of the defacto complainant, Rajaprabhu, dated 09.08.2013 implicating the revision petitioners.wherein he has stated that the occurrence was witnessed by his parents; (2)The Additional Statement of Rajaprabhu dated 14.10.2013; (3)The Investigating Officer did not record the statement of the parents, viz.

Kalaimani and Gnanambal, and Baskar who is stated to have accompanied the defacto complainant at the time of incident.

12.Added to that, the learned Magistrate has relied upon the affidavit of the parents of the defacto complainant filed before the Court.

Whether de hors the final report filed by the Police, the Magistrate could have relied upon the affidavit of the parents of the defacto complainant and whether summoning the revision petitioners is legal, is the specific issue raised.

In other words, the contention is that it is impermissible for the Court to consider any material other than the one collected by the Investigating Officer; since the Court has relied upon materials other than those collected by the Investigating Officer, the order summoning the revision petitioners has to be set aside.

13.The decision of the Hon'ble Supreme Court in Sunil Bharti Mittal versus Central Bureau of Investigation, reported in CDJ 2015 SC023 has been relied upon, in support of the contention.

In paragraph-44 of the said judgment, it has been held as follows: ?Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code.

There is no question of applicability of Section 319 of the Code at this stage (See SWIL Ltd.v.State of Delhi ((2001) 6 SCC670.

It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See Union of India v.

Prakash P.Hinduja and another ((2003) 6 SCC195.

Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement.

In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case.

At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.?

14.From the decision referred supra, it is clear that the learned Magistrate is expected to apply his mind on the facts emerging from the investigation alone and not to consider any other material other than that collected by the Investigating Officer.

Therefore, the order passed by the learned Magistrate by relying upon the material other than those collected by the Investigating Officer is liable to be set aside.

Accordingly, the impugned order passed by the learned Judicial Magistrate, Devakottai in P.R.C.No.19 of 2014 dated 14.10.2014, is set aside.

However, as the materials already collected by the investigation also is relied upon in the order, the matter is remanded back to the learned Magistrate with directions to pass orders strictly in accordance with the decision cited supra and in accordance with law.

15.The Criminal Revision Case is ordered, to the extent indicated above.

Consequently, the connected miscellaneous petitions are closed.

To 1.The Inspector of Police, Devakottai Taluk Police Station, Sivagangai District.

2.The Judicial Magistrate, Devakottai.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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