

R.Parameswari Vs. State Through the

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Court : Chennai

Decided On : Jan-09-2013

Judge : The Honourable Mr.Justice M.Venugopal

Appellant : R.Parameswari

Respondent : State Through the

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01/2013 CORAM THE HONOURABLE Mr.JUSTICE M.VENUGOPAL Criminal Revision Case (MD) No.532 of 2012 R.Parameswari ... Petitioners Vs State through the Inspector of Police, City Crime Branch (CCB) Madurai City, Madurai. In Crime No.13 of 2012 ... Respondent Prayer Criminal Revision Petition filed under Sections 397 read with 401 of Cr.P.C. to call for the records and set aside the impugned order dated 18.09.2012 passed by the Judicial Magistrate No.1, Madurai in R.C.S.No.224 of 2012 and to direct the Judicial Magistrate No.1, Madurai to issue notice to the Revision Petitioner and to afford opportunity to the Petitioner to raise her objections by filing a protest petition by furnishing the copies of statement of witnesses and other related documents and the investigation report strictly in accordance with law and granting such other and further reliefs. !For Petitioner ... M/s.Farjana Ghousia ^For Respondent ... Mr.P.Kandasamy, G.A. (Crl. Side) :ORDER The Petitioner/Defacto Complainant has filed the instant Criminal Revision Petition as against the order dated 18.09.2012 in R.C.S.No.224 of 2012 passed by the Learned Judicial Magistrate No.1, Madurai. 2.The Learned

Judicial Magistrate, while passing the impugned order in R.C.S.No.224 of 2012 on 18.09.2012 has observed as under: "Final report perused. Notice served on the Defacto complainant by the I.O regarding the final report. As per final, the disputed Will is not available and the case is Civil in nature. Hence, this case is closed as 'AD'. Subject to the complaint U/s 200 Cr.P.C. if any by the Defacto Complainant. Give RCS number." 3.The Revision Petitioner/Defacto Complainant, as an aggrieved person, has challenged the closure of the case as 'Action Dropped' under R.C.S.No.224 of 2012 before this Court in this Revision. 4.The main contention advanced on behalf of the Petitioner/Defacto Complainant is that the Learned Judicial Magistrate No.1, Madurai has closed the case as 'Action Dropped' etc. and the said order has been passed on 18.09.2012, without providing opportunity to the Petitioner/Complainant by giving her notice and hearing her at the time of consideration of the report. In this regard, the Learned counsel relies on the decision of the Hon'ble Supreme Court in Bhagwant Singh Vs. Commissioner of Police and Another reported in 1985(2) SCC 537.at 538, wherein, it is held as under: "In a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. Unnecessary delay on account of the difficulty of effecting service of the notice on the informant cannot be a valid objection against this view because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under Section 173(2) (i). Moreover, the difficulty of service of notice on the informant cannot provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate." 5.He also cites the decision of Hon'ble Supreme Court in Jakia Nasim Ahesan and Another Vs. State of Gujarat and Others reported in (2012) 1 Supreme Court Cases (Cri.) 559 at P 560.wherein, it is laid down that the Court before taking decision on the report, must give notice to the Complainant and furnish copies of statement of witnesses, other related documents and investigation report. 6.Inasmuch as the Petitioner/Defacto

Complainant has not been issued with the notice before taking a decision on the police report by the Learned Judicial Magistrate, this Court opines that the impugned order passed by the Learned Judicial Magistrate dated 18.09.2012 in R.C.S.No.224 of 2012 in closing the case as 'Action Dropped' is clearly unsustainable in the eye of law. As such, this Court interferes with the said order, since the same suffers from impropriety and illegality in the eye of law and to prevent an aberration of justice, this Court sets aside the same. Consequently, the Criminal Original Petition succeeds. 7.In the result, the Criminal Original Petition is allowed and the order dated 18.09.2012 made in R.C.S.No.224 of 2012, passed by the Learned Judicial Magistrate No.1, Madurai is set aside for the reasons assigned in this Revision. The Learned Judicial Magistrate is directed to restore R.C.S.No.224 of 2012 on his file within 10 days from the date of receipt of a copy of this order. Soon after restoring the case to file, the Learned Judicial Magistrate No.1, is further directed to issue notice to Complainant and furnish copies of statements and other related documents and investigation report and to dispose of the matter as expeditiously as possible, of course, by providing opportunity to the concerned parties by following the principles of natural justice. It is open to the Petitioner to raise all factual and legal pleas before the Learned Judicial Magistrate at the time of final hearing of the matter. Arul To 1.Inspector of Police, City Crime Branch (CCB) Madurai City, Madurai. 2.The Judicial Magistrate No.1, Madurai. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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