

(2012) 11 MAD CK 0277

Madras High Court (Madurai Bench)

Case No: Criminal R.C. (MD) No. 456 of 2012 and M.P. (MD) No. 1 of 2012

K. Jackuline Sathya Priya

APPELLANT

Vs

Inspector of Police and Others

RESPONDENT

Date of Decision: Nov. 28, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154, 156, 157, 161(3), 167(2)
- Penal Code, 1860 (IPC) - Section 294(b), 420, 498A, 506(i)
- Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 - Section 4

Citation: (2013) 2 MLJ(Cri) 486

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: A. Hariharan, for the Appellant; P. Kandasamy, Government Advocate (Crl. Side) and A. Thiruvadikumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The revision petitioner/de facto complainant has preferred the present Criminal Revision Petition as against the order dated 21.8.2012 in Crl. M.P. No. 5454 of 2012 in Cr. No. 48 of 2011 in C.C. No. 94 of 2012, passed by the Learned Judicial Magistrate No. IV. Tiruchirappalli, in dismissing the petition filed by the Petitioner, praying for further investigation of the case in a proper manner. The Learned Judicial Magistrate No. IV, Tiruchirappalli, while passing orders in Crl. M.P. No. 5454 of 2012 dated 21.8.2012, has many other things observed that the petitioner/de facto complainant has not questioned her statement recorded u/s 161(3) of Cr.P.C. and also a reading of the complaint does not make any allegation against all others and entire allegation is against her husband and mother-in-law and resultantly, dismissed the petition.

2. Assailing the dismissal order of the petition in CrI. M.P. No. 5454 of 2012 in C.C. No. 94 of 2012 dated 21.8.2012, passed by the Learned Judicial Magistrate No. IV, Tiruchirappalli, the learned counsel for the petitioner/de facto complainant urges before this Court that the Learned Judicial Magistrate has failed to appreciate as per the Full Bench decision of the Hon'ble Supreme Court in [Bhagwant Singh Vs. Commissioner of Police and Another](#), wherein, it is observed that in a case, where the Learned Judicial Magistrate, to whom a report is forwarded under sub-section 2 of Section 173 of Cr.P.C. decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Learned Judicial Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

3. The learned counsel for the petitioner contends that the Trial Court has not provided an opportunity of hearing to the petitioner/de facto complainant at the time of consideration of the report before taking the case on file as C.C. No. 94 of 2012 on the basis of the final report submitted by the First Respondent/Police.

4. The specific stand taken by the petitioner/de facto complainant is that in the First Information Report, in Crime No. 48 of 2011 on the file of the First Respondent/Police, a case has been registered for the offences punishable under Sections 420, 294(b), 506(i) of the Indian Penal Code read with Section 4 of Tamil Nadu Prohibition of Women Harassment Act, based on the complaint lodged by the petitioner/de facto complainant against 1. Melvin Leo Alocius, 2. Alangaram, 3. Sebastian, 4. Julie, 5. Nixon, 6. John Britto, 7. John William, 8. Madhalai Arockiaraj, 9. Grace Alphone, 10. Yucresta Melany, 11. Anitta Melvina and 12. Persia Melory, attributing specific overt acts against them.

5. The substance of the plea of the petitioner is that as per Section 173(2) of Cr.P.C., Investigating Officer is obliged to communicate to the informant as to the action taken by him and the report forwarded by him to the Learned Judicial Magistrate.

6. Yet another contention put forward on behalf of the petitioner/de facto complainant is that the First Respondent/Police never recorded the statements of the de facto Complainant and the witnesses produced by her.

7. That apart, it is the submission of the learned counsel for the petitioner/de facto complainant that the Petitioner has sent complaint against the Police to the Higher Officials of the Police and this caused prejudice to the Police and they wanted to favour to the Accused in all possible manner.

8. The learned counsel for the petitioner/de facto complainant projects an argument that Mr. Senthilkumar, Inspector of Police, incharge of the First Respondent Police Station has deleted the names of 10 Accused from the array of the Accused and his alleged report dropping action against 10 named accused is dated 27.11.2011 even before the registration of the First Information Report in Crime No. 48 of 2011.

23.12.2011.

9. It is the strenuous argument of the learned counsel for the petitioner/de facto complainant that the alteration report dated 10.3.2012 submitted by the First Respondent/Inspector of Police, altering the Section of Law from Section 420, 294(b), 506(i) of I.P.C. read with Section 4 of Tamil Nadu Prohibition of Women Harassment Act, to Section 498(A) of I.P.C. has reached the Court of the Learned Judicial Magistrate No. IV, Tiruchirappalli only on 23.4.2012 together with the final report and that the alteration report has not been served on the de facto complainant so as to enable her to file the protest petition before the Learned Judicial Magistrate.

10. According to the learned counsel for the petitioner/de facto complainant, A1 has been arrested and other Accused A2 to A12 have obtained Anticipatory Bail, but, they have not surrendered before the concerned Court and they got an extension order of the Anticipatory Bail and that in the instant case, First Information Report has been filed on 23.12.2011 and that the Section of Law has been altered on 10.3.2012 and that the Police have dropped action against 10 accused and the "Action Dropped Report" dated 27.11.2011 and the "Alteration Report" dated 10.3.2012 have been reached the Court only on 23.4.2012 along with the "Final Report" dated 10.3.2012 and under these circumstances in Law, the petitioner/de facto complainant has a right to know about the fate of his complaint lodged with the Police.

11. To lend support to the contention that the petitioner/complainant (first informant) will have to be provided with an opportunity of being heard before taking the case on file by the Learned Judicial Magistrate, the learned counsel for the petitioner/complainant relies on the decision of the Hon"ble Supreme Court in Bhagwant Sing v. Commissioner of Police (supra), wherein, in paragraph 4, it is laid as follows:

Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two

situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding 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. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, 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 sub-section (2)(i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

12. He also seeks in aid of the decision in [Dr. G. Haridas Vs. State of Kerala and Others](#) whereby and whereunder, it is held thus:

When the investigating agency gives a final report in Court stating that during the course of investigation, it was not revealed that the accused actually committed the offence, the Court is not bound to accept the report of the investigating agency. The Court would definitely go into the materials available on record and either accept the final report given by the police in which it is stated that the accused need not be prosecuted or the Court can differ from the opinion expressed by the investigating agency and proceed to cognizance of the offence. The Court can take cognizance of the offence u/s 190(1)(b), CrI.P.C., even though the investigating agency gave a reference report.

13. The learned counsel for the petitioner/complainant draws the attention of this Court to the decision in [Rajneesh Kumar Singhal Vs. The State \(National Capital Territory of Delhi\)](#), wherein, it is held thus:

The Magistrate is empowered to direct the police to further investigate the matter after the filing of the challan before it and even after taking cognizance of the offence. There is no provision in the Code which bars the Magistrate before whom the report u/s 173(2) of the Code is filed to direct further investigation of the offence even in a case where cognizance has already been taken. All procedural laws are meant to do justice and not to stifle the same. In a given situation where a magistrate finds that the matter requires further investigation in view of the partisan attitude of the police there can be no bar to his directing the investigating agency to conduct further investigation in the case. The magistrate by giving such a direction does not trench upon the jurisdiction of the police who are empowered to further investigate in the matter. The magistrate simply by asking the police to further investigate the matter in a sense is directing it to exercise jurisdiction which has been conferred on the police u/s 173(8) of the Code. Restricting the powers of the Magistrate will adversely affect the administration of justice. Magistracy cannot be made so powerless that it becomes incapable of correcting a wrong and advancing the cause of justice.

14. Also, the learned counsel places reliance on the decision of this Court in [A. Sadasivam Vs. The Director General of Police, Chennai and others](#), at special page 678 in paragraph No. 11, it is laid down as follows:

In the instant case, the Deputy Superintendent of Police, Dindigul Town Sub Division had been investigating. The first accused is his subordinate. The third accused is a senior of the investigating officer's superior's son. Under those circumstances, it is not as if the petitioner's apprehension was unfounded. Further, the charge sheet says that all the accused are absconding. It is ludicrous that the investigating officer could not lay his hand on a person who is working as Head Constable in the Armed Reserve Police and on another person who is practicing as an advocate at Dindigul itself. It cannot be said that they are absconding or that the investigating officer could not trace them. It is quite unfortunate that when the case was transferred to the CBCID police, they have not even moved their little finger towards investigation.

The have been simply sitting with their fingers crossed, stating that final report had already been filed. It appears even the concerned Judicial Magistrate had not looked into the provisions of the law, but simply took cognizance of an offence u/s 498-A I.P.C. in C.C. No. 478 of 1999. I feel, to do justice between the parties and to instill confidence in the public mind, the further investigation is to be ordered in this case. The learned Judicial Magistrate No. II, Dindigul is directed to exercise his powers u/s 173(8) of the Code of Criminal Procedure to direct the Deputy Superintendent of Police, C.B.C.I.D. To hold further investigation and submit final report in three months. This petition is ordered accordingly.

15. Per contra, it is the contention of the Learned Government Advocate (Criminal Side) for the First Respondent/Police that the First Respondent/Police has conducted the investigation on right lines and examined the necessary witnesses and after due enquiry, husband and mother-in-law have been arrayed as Accused in the case and only after proper and diligent investigation, the other 10 Accused in all have not been arrayed as Accused, because of the simple reason that the petitioner/complainant has not spoken anything about other 10 Accused except making allegations against her husband and mother-in-law. Therefore, the First Respondent/Police has rightly arrayed the husband and mother-in-law as Accused in the present case.

16. Repelling the contentions of the learned counsel for the petitioner/complainant, it is the submission of the learned counsel for the Respondents 2 and 3 that the petitioner/complainant, in Law, has no locus-standi to seek reinvestigation of the case as per Code of Criminal Procedure.

17. In support of his contention that the petitioner/complainant has no locus-standi to file CrI. M.P. No. 5454 of 2012 u/s 173(8) of Cr.P.C., praying for re-investigation of the case, the learned counsel for the Respondents 2 and 3 cites the decision of Hon"ble Supreme Court in [Reeta Nag Vs. State of West Bengal and Others](#),), at special page 1005, wherein, it is held thus:

Once a charge-sheet is filed u/s 173(2) Cr.P.C. and either charge is framed or the accused are discharges, the Magistrate may, on the basis of a protest petition, take cognizance of the offence or on the application made by the investigating authorities permit further investigation u/s 173(8) of the Code. The Magistrate cannot suo moto direct a further investigation u/s 173(8) or direct re-investigation of the case, on account of the bar of Section 167(2) of the Code.

18. He also banks on the decision of this Court in [E. Jeevankumar Vs. State and Another](#), at special page 423, wherein at paragraph Nos. 20 to 22, it is observed as under:

20. Sub-section (8) to Section 173 of Cr.P.C. goes thus:

173(8) Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under sub section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

21. The abovesaid provisions enables the Judicial Magistrate to issue order for further investigation in given circumstances. It is nowhere spelt out in Cr.P.C. that the de facto complainant may file application requesting direction from the Court for further investigation or re-investigation. The Court can exercise its jurisdiction only within the realm of the Code. Indisputably, the investigating agency as per sub-section (8) of Section 173, Cr.P.C. can request the Court to grant permission to investigate into the matter further. It does not provide right to the de facto complainant to file such application.

22. Had the legislature intended to provide right to the de facto complainant for asking the Court for re-investigation or further investigation, it would have incorporated required terms in the provision. When the Section does not curtail the powers of the investigating Officer to take up further Investigation, it has not provided any procedure enabling the de facto complainant to take initiative to place request for further investigation. The law does not postulate any power on the Judicial Magistrate to direct further investigation at the behest of the de facto complainant. Code of Criminal Procedure contains exhaustive schemes, elaborately dealing with powers of police and Courts and procedures, in extenso, to be observed by them. When it is not empowered for Judicial Magistrate to order further investigation at the request of the de facto complainant, he cannot assume power to direct the same.

19. Apart from the above, the learned counsel for the Respondents 2 and 3, relies on yet another decision of this Court in [A. Mohan and Others Vs. State and Another](#) wherein, it is held that u/s 173(8) Cr.P.C., the de facto complainant is not entitled to seek further investigation.

20. Countering the submissions of the learned counsel for the Respondents 2 and 3, the learned counsel for the petitioner/de facto complainant submits that if the Learned Judicial Magistrate decides to whom report is forwarded decides not to take cognizance of the offences and to drop the proceedings, there is no sufficient ground for proceeding against some individuals stated in the First Information Report, then the informant is certainly prejudiced, because the Complaint or the Complainant would have been defeated either wholly or in part and therefore, the Learned Judicial Magistrate should have given an opportunity of hearing to the petitioner/complainant at the time of consideration of the report, so that she could

have made her submission to persuade as to the taking of cognizance of the offence and issue process.

21. The prime contention advanced by the learned counsel for the petitioner/complainant is that the Learned Judicial Magistrate No. IV, Tiruchirappalli, before taking the case on file in C.C. No. 94 of 2012, has not provided an opportunity of hearing to the petitioner/complainant.

22. It is true that the Learned Judicial Magistrate is not bound to accept the Final Report (Closure Report), submitted by the Police and if he is of the opinion that the evidence and material collected during investigation justifies prosecution of the Accused, he may not even accept the final report and take cognizance of the offence and summon the Accused, but this does not mean that he would be interfering with the investigation as such. He would be doing so in exercise of the powers conferred by Section 190 of Cr.P.C. The statutory provisions can therefore, absolutely clear that the Court cannot interfere with the investigation as per decision in [Union of India \(UOI\) Vs. Prakash P. Hinduja and Another](#), . As a matter of fact, the Trial Court has no jurisdiction to return the challan for further investigation, though the investigating agency has right to make further investigation and submit supplementary charge-sheet in the manner known to law and in accordance with law as per the decision in [Ashok Kumar Koul Vs. State of Jammu & Kashmir and Another](#),

23. It is to be noted that the Learned Judicial Magistrate is not competent to order further investigation after taking cognizance of the offences and after the appearance of the Accused before him in pursuance of issuance of process except giving formal permission to make further investigation to police when fresh facts come to light (when police informs and seeks permission of the Court) as per decision in [Randhir Singh Rana Vs. The State Being the Delhi Administration](#),

24. An opportunity of hearing or show cause notice is necessary to the Complainant before a complaint case is cancelled or closed as opined by this Court. Where the Learned Judicial Magistrate to whom Report is forwarded u/s 173 of Cr.P.C., decides not to take cognizance of the offence and to drop the proceedings takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, he must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report as per decision in Pancham Singh v. State of Uttar Pradesh, 1988 (2) Crimes 248 (All). Even the rejection of Final Report without assigning any reason is improper, as opined by this Court. When the Police after investigation files a Final Report in Law, a copy of the Final Report is to be given to the informant and an opportunity of Hearing shall also to be given to him/her.

25. Even when the Learned Judicial Magistrate has accepted the representation u/s 173(2) of Cr.P.C. on fresh material, further investigation u/s 173(8) of Cr.P.C. is permissible by the same agency which originally investigated the case. Where

further investigation brings new material, the Learned Judicial Magistrate is not barred from taking cognizance merely because he has accepted the Final Report.

26. Where the police after investigation filed Final Report, a copy of Final Report would be given to the informant and an opportunity of Hearing shall also be given to him as per decision in [Pramod Behl Vs. Shova Maya Ghosh and Others](#),

27. A Protest Petition filed by the informant shall be taken by the Judicial Magistrate and regarded as a continuation of the case filed u/s 173 of Cr.P.C. Where the Final Report is accepted and Protest Petition thereto is rejected, the Learned Judicial Magistrate can still take cognizance upon a complaint or a Protest Petition. On the same or similar allegations of fact, the subsequent complaint is not barred as per decision in [Yasin and Others Vs. Sajjad Husain and Another](#),

28. As far as the present case is concerned, the petitioner/complainant has in her 161(3)C of Cr.P.C. statement implicated her husband and mother-in-law. She has not implicated the other 10 Accused though they have been mentioned in the First Information Report lodged by her. As a matter of fact, the petitioner/complainant has no locus-standi in Law to make a plea for further investigation and in this regard only, it is within the realm and ambit of the First Respondent/Police to ask for reinvestigation based on fresh material which comes on surface. The well established legal position is that even the acceptance of final report will not preclude the Learned Judicial Magistrate from taking cognizance of the offence. Looking at from any angle and in the light of detail, qualitative and quantitative discussions mentioned supra, this Court comes to an inescapable conclusion that the petitioner/complainant has no locus-standi to file Cr. M.P. No. 5454 of 2012 before the Trial Court (praying for further investigation of the case) and as such, the said petition is not maintainable per se in Law. Further, on going through the contents of the order passed by the Learned Judicial Magistrate No. IV, Tiruchirappalli in Cr. M.P. No. 5454 of 2012 dated 21.8.2012, this Court is of the considered opinion that the said order does not suffer from any impropriety or illegality in the eye of Law. Consequently, the Criminal Revision Petition fails. In the result, the criminal revision petition is dismissed. Consequently, the order passed by the Learned Judicial Magistrate No. IV, Tiruchirappalli dated 21.8.2012 in Cr. M.P. No. 5454 of 2012 is affirmed by this Court for the reasons as stated above. Consequently, connected miscellaneous petition is also dismissed. It is made clear that the dismissal of the Criminal Revision Petition will not preclude the Petitioner/Complainant to seek appropriate remedy before the Trial Court, by filing appropriate application in the manner known to law and in accordance with law, if he is so advised.