

(2004) 11 MAD CK 0001

In the Madras High Court

Case No : Criminal Revision Case No. 1814 of 2004

Durai Kannu Naicker

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (2004) 11 MAD CK 0001

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : N. Mohideen Basha, for the Appellant; E. Raja, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above Criminal Revision Case is filed against the order of the learned Judicial Magistrate, Alandur in Crime No.

1082/1997 dated 29.12.2000.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that it is a case which was

originally registered by the respondent police for the commission of offences under sections 420 and 406 IPC in Crime No. 1082/1997. The

respondent having investigated into the said case has referred the same as mistake of fact and has sent intimation to the Court wherein the FIR is

pending. The learned Judicial Magistrate, Alandur on such receipt of the same, has passed an order on 29.12.2000 to the effect that ""FIR is struck

off from the FIR Register as per the request of Inspector"". It is only against this remark offered in the order passed by the learned Judicial

Magistrate, Alandur, the petitioner has filed the above Criminal Revision Case on

certain grounds.

3. Though the police have got every right to file a referred charge sheet, while filing the same, the police are supposed to issue notice to the de

facto complainant. The police have to file RCS along with acknowledgment of the copy of RCS by the de facto complainant, so that, the

complainant would also be in a position to file objection petition in the form of private complaint before the same Magistrate which is the right of

the petitioner guaranteed under law. The petitioner's grievance is that the procedure adopted on the part of the police and the Judicial Magistrate

as well are faulty in which the petitioner is not at all able to understand as to what happened in the case registered on his complaint and therefore,

would testify the validity of the order passed by the learned Magistrate.

4. In the above circumstances, while remarking that the learned Magistrate and the police as well have adopted erroneous procedure in scraping

the FIR which is not at all warranted, this Court is of the view that sufficient time shall be given to the petitioner to file his objections to the RCS

filed on the part of the respondent police in the form of private complaint. The learned Magistrate shall entertain and process the same so as to

conduct the enquiry and decide the matter on merit and in accordance with law. Hence, the following order.

In result,

(i) The above Criminal Revision Case succeeds and the same is allowed.

(ii) The petitioner is permitted to send his objections in the form of private complaint to the RCS filed by the respondent police on the complaint of

the petitioner regarding the case registered in crime No. 1082 of 1997 on the file of the respondent police within a period of 30 days from the date

of receipt of a copy of this order.

(iii) In such event, the Judicial Magistrate, Alandur shall entertain the said complaint and process the same in the manner required under law and

conduct a thorough trial so as to deliver a judgment on merits and in accordance with law with due opportunities of parties to be heard.