
(2014) 10 MAD CK 0080
In the Madras High Court
Case No : Crl. O.P. (MD). No. 16879 of 2014

M. Lazar

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 157, 161, 162
Penal Code, 1860 (IPC) — Section 294(b), 323, 341, 506(i)

Citation : (2014) 10 MAD CK 0080

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Judgement

P. Devadass, J.—Lazar, the petitioner came forward with this petition to transfer the investigation in Crime No. 222 of 2013 from the second respondent, namely, the Sub-Inspector of Police, Manavalakurichy, Kanyakumari District, to some other good police officer.

2. Lazar's son David married one Shamila, whose brother is de facto complainant Sherlin. As usual between David and Shamila in the beginning there was closeness. The married life between them then was beautiful. But, it did not long last. Subsequently, the spouses have become dead enemies. It is also a fall out of the ego clash.

3. Under the circumstances, David wanted to give good bye to his wife once for all. So, he filed an I.D.O.P. before the District Judge, Kanyakumari District @ Nagercoil for dissolution of their marriage. She also agreed. It is a mutual consent. Strained relationship arose between both the families.

4. In this backdrop of the matter, certain occurrences took place. Sherlin, who is brother-in-law of David alleged that on 22.11.2013 while he was cycling he was beaten by henchmen set up by his sister's husband David. Karungal Police registered a case in Crime No. 648 of 2013 under Sections 341, 294(b), 323 and 506(i) I.P.C. In this case, investigation was completed and final report also has been filed. Petitioner Lazar has become an accused.

5. It is pertinent to note that on the same date of occurrence Lazar, father-in-law of Shamila lodged a complaint with the Manavalakurichy Police Station, alleging that he has been assaulted by the henchmen set up by Shamila's brother and others. Police registered a case in Crime No. 222 of 2013 under Sections 341, 294(b), 323 and 506(i) I.P.C. The present criminal original petition relates to this crime number.

6. The learned counsel for the petitioner submits that the police is one sided. They are helping the opposite side. In the complaint lodged by Sherlin Titus in Crime No. 648 of 2013, police was very haste in completing the investigation. However, they did not do proper investigation in Crime No. 222 of 2013. Under the circumstances, dissatisfied with this lukewarm attitude, petitioner wanted investigation by a good police officer.

7. The learned Government Advocate (Criminal side) would submit that in Crime No. 222 of 2013, investigation has been completed and that it was treated a "Mistake of Fact" (M.F.) and the same will be duly submitted to the concerned Magistrate's Court.

8. The case diary produced and perused.

9. Now every where there is transparency. There cannot be investigation in secrecy. In order to maintain transparency police has to inform the informant the result of the case given by the informant.

10. In the circumstances, as directed, a copy of the negative final report treating the case as "M.F". has been furnished to the learned counsel for the petitioner. Now, in this case stage of the investigation in Crime No. 222 of 2013 is over.

11. So far we have seen the factual matrix. Now, will see the position of law.

12. A complaint of cognizable offence has been reported to a police officer. He has registered a case in Crime No. 222 of 2013. (see Section 154 Cr.P.C.) After registration of the F.I.R, as a legal follow up, the investigation officer must investigate. (See Section 156, 157 Cr.P.C.) The word "investigation" has been explained in Section 2(h) of Cr.P.C. It means "collection of evidence" by a police officer. After collecting the oral evidence (See Section 161 and 162 Cr.P.C.) and seizing of the documents and material objects, if any, medical, scientific and expert evidence, if any, the investigation officer has to arrive at a conclusion and he should put it in the form of a report. It is "Final Report" under Section 173 Cr.P.C. Loosely called as "charge sheet". Such a final report may be "positive", if the investigation reveals commission of certain offences. Some times, such report may be "negative", when from the evidence collected no offence appears to have been committed. It is also called "Final Report". It is also called "Negative Final Report", "Refer Charge Sheet". It takes several forms. "Mistake of Fact", "Mistake of Law", "Accidental Case", "Undeducted", "Accidental Fire", "Action dropped", "Civil Case" so on and so forth. Thus, the commencement of investigation under Section 154 Cr.P.C. concludes under Section 173 Cr.P.C. Thus,

the life of a criminal case in the police station.

13. Thereafter, the criminal case gets a new life in the court. Now, the life of a criminal case begins in the Court. Once positive or negative report has been filed by the investigation officer the Court has to take next step (See Section 190 Cr.P.C.). Therefore, the ball is in the Court.

14. The Magistrate has to play a judicial role. After the filing of the final report, may be positive or negative, the learned Magistrate has certain options. The Magistrate can accept the final report of the Investigation Officer treating it as "M.F." or on perusal of the final report, if he finds commission of any offence, he can ignore the conclusion of the investigation officer and take the case on file and proceed further. It is cognizance. On perusal of the Final Report, if the Magistrate finds on some aspects the Final Report is not clear, inconclusive, in such a case, the Magistrate can give direction to the Investigation Officer to clear those grey areas. But, in doing so, the Magistrate cannot direct the manner of conducting of the investigation. Thus, the Code of Criminal Procedure given a whip to the Magistrates. If that is not there, then the police become tiny despot. The checks and blanches are devised under the Code. Accountability has been devised under the Code. It is accountability of police to the Court. Of course, always to the public also. The first one is live and practical and the other one is philosophical and theoretical.

15. If the learned Magistrate takes cognizance on the negative final report, thereafter, the usual other procedures prescribed under Cr.P.C. will take place, namely, issuance of summons to the accused under Section 204 Cr.P.C, thereafter issuance of copies under 207 Cr.P.C, recording the plea of the accused, production of prosecution evidence and then the fate of the accused (See Sections 255, 248 Cr.P.C).

16. But, if the learned Magistrate opts to accept the negative final report of the investigation officer, he is bound to give notice to the complainant. Such notice is given to the de facto complainant for the purpose of inviting his objections, if any, to the negative final report of the police. This objections are also called "protest petition". Thereafter, the Magistrate shall deal with the matter as a complaint/private case. Now, the police case becomes a private case. (See Sections 200, 202, 203, 204 and 190 Cr.P.C.) These are the courses open to the Magistrate to deal with a negative final report filed by the investigation officer. It is pertinent to note that transparency is also infused from the point of Court also.

17. Now, in the circumstances, the question of transfer of investigation pale into insignificance.

18. In the circumstances, on filing the negative final report in Crime No. 222 of 2013, the learned Judicial Magistrate will follow the procedure indicated in this order in dealing with a negative final report and proceed further in accordance with law.

19. With this direction, this Criminal Original Petition is disposed of.