

(1991) 12 MAD CK 0014

In the Madras High Court

Case No : Criminal R.C. No. 342 of 1987 and Criminal R.P. No. 335 of 1987

Palanisami @ Kaithambi and Velusami alias Champion

Date of Decision : 16-12-1991

Acts Referred:

Citation : (1992) LW(Cri) 231

Hon'ble Judges : Swamidurai, J

Bench : Single Bench

Advocate : K. Manoharan, for the Appellant; R.M. Kannappa Rajendran, Government Advocate (Criminal Side), for the Respondent

Final Decision : Allowed

Judgement

Swamidurai, J.—The petitioners aggrieved with the order made by the learned sub Divisional Judicial Magistrate, Pollachi in proceedings

dated 6.5.1987 under S.173 Cr.P.C. in RCS.No.141/85 in CrI. No. 156/85 of Gomangalam Police Station, have filed this revision.

2. Learned Magistrate has accepted the final report dated 8.4.1987 given by the Police under S.173 Cr.P.C. in Cr. No. 157/85 and registered

under Ss.341, 323, 324 and 506 (2), I.P.C. In this crime number, the facts of the case are as follows: The complainant Palanisamy and Velusami

on 11.9.1985 at about 11.30 p.m. at Pudupalayam village were assaulted by the accused Shanmughasundaram and others and on receipt of a

written complaint from Palanisami, a case was registered in Cr.No.166/85 under Ss.147, 148, 324 and 323, I.P.C. and on the same date on a

report given by Shanmughasundaram, a case was registered in Cr.No.157/85 under Ss.147, 148, 324 and 323, I.P.C. The accused are K.P.

Ramasami, Palanisami, Chinnasami, Rangasami, Periasami, Sivanandam, Duraisami, Palanisami, Thangavel, Krishnasami, Kanakaraj and

Champion alias Velusami. In this case, after investigation the police have filed charge sheet in C.C.No.584/86 in the court of the learned Sub

Divisional Judicial Magistrate, Pollachi. In Cr.No.156/85, the police filed a report under S.173, Cr.P.C. to the court stating that was a mistake of

fact and dropped further action in the same. Lower court accepted the report filed by the police under S.173, Cr.P.C. In the report submitted by

the police under S.173, Cr.P.C. no enclosure has been filed by the police before the lower court for its consideration. Apart from that, the police

have stated that there is no eye witness mentioned in the F.I.R. relating to Cr.No.156/85 is filed in this revision and two witnesses have been cited

and they are Thangavelu, son of Ramasami and Nachimuthu, son of Karuppusami Gounder. Therefore, the report of the police that no eye witness

has been referred to in the F.I.R. is not correct.

3. Learned counsel for the petitioner relied upon the judgment reported in Ramasubbu, K. v. State 87 L.W.Crl. 79. In that case learned Judge

(K.M. Natarajan, J.) held as follows:

In the instant case, the investigating officer after making investigation by examining as many as ten witnesses referred the case as "mistake of fact"

and submitted a report to this effect to the court and the Magistrate has also accepted the same and ordered recorded as mistake of fact. The said

order is a judicial order. If really the prosecution was aggrieved by the said order and wants to reopen the case, they should have agitated the

matter and challenged the said order passed by the Magistrate and then after obtaining necessary order from the higher forum, reinvestigated the

case. The present case is different from cases where originally charge-sheet was filed against accused and subsequently revised charge sheet was

filed on getting fresh materials.

That case was relied on by the learned counsel for the petitioner for the proposition that the order passed by the learned Magistrate on the report

filed under S.173 Cr.P.C. is a judicial order. Further before passing such an order, the complainant should be heard. In this case, the lower court

has not followed this procedure. Learned Magistrate has not applied his mind and passed the order and no materials are placed before the learned

Magistrate before passing this impugned order. Therefore, the order of the lower court is " illegal and it is not in accordance with law.

4. It is submitted by the learned counsel for the petitioner and it is also admitted by the learned Public Prosecutor that the case in Cr.No.157/85

has been taken on file by the learned Magistrate in C.C.No.584/86 on receipt of charge sheet from the police. The procedure adopted by the

investigating officer is not proper and the order of the lower court made in Cr.No.157/85 cannot be sustained as stated above.

5. In the result, the Inspector of Police, Law and Order Udumalpet is directed to reinvestigate Cr. Nos. 156/85 and 157/85 following order 588-

A of the Police Standing Order and proceed with the case according to law. The revision petition is accordingly allowed.