

(2015) 07 MAD CK 0313

In the Madras High Court

Case No : Criminal R.C. (MD) No. 241 of 2015 and M.P. (MD) No. 1 of 2015

S. Premkumar

APPELLANT

Vs

The Sub-Inspector of Police and Others

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 294(b), 506(i)

Citation : (2015) 2 LW(Cri) 728

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : B. Brijesh Kishore, for the Appellant; P. Kannithevan, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J—The second respondent is the defacto complainant in Cr. No. 568 of 2014, on the file of the first respondent. The said case was registered for the offences under Sections 294(b) and 506(i) I.P.C. and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. On completing the investigation, the first respondent filed a final report on 30.12.2014, referring the case as mistake of fact. It appears that the learned Magistrate issued notice to the second respondent. Accordingly, the second respondent appeared and filed a protest petition. In the said case, the petitioner is one of the accused. The records revealed that the learned Magistrate received that petition on 22.05.2015 and passed the following order on 05.06.2015:

"Issue notice to the concerned PS for re-investigation and produce the charge sheet within one month."

This order of the learned Magistrate is under challenge in this revision.

2. I have heard the learned Counsel for the petitioner, the learned Government Advocate (Crl. Side), appearing for the first respondent and the learned Counsel

appearing for the second respondent. I have also perused the records carefully.

3. The learned Counsel for the petitioner would submit that the learned Magistrate has got no power to order for re-investigation. He would further submit that even further investigation can be ordered only on a petition filed by the police under Section 173(8) of the Criminal Procedure Code and not at the behest of the defacto complainant. For this proposition, the learned Counsel for the petitioner would rely upon the judgment of the Honourable Supreme Court in *Reeta Nag Vs. State of West Bengal and Others*, (2010) CriLJ 2245 : (2009) 11 SCALE 395 : (2009) 9 SCC 129 : (2009) 14 SCR 276 : (2009) 8 UJ 3984 : (2010) AIRSCW 476 . He would further submit that the order of the learned Magistrate is a non-speaking order which does not satisfy the legal requirements. Therefore, according to him, this order is liable to be set aside.

4. The learned Government Advocate (Crl. Side) would submit that the final report was filed by the police only after thorough investigation of the case.

5. The learned Counsel appearing for the second respondent/defacto complainant would submit that the learned Magistrate has got power to order for further investigation. For this proposition, the learned Counsel would rely upon the judgment of the Honourable Supreme Court in *Vinay Tyagi Vs. Irshad Ali @ Deepak and Others*, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 .

6. I have considered the above submissions.

7. As has already been held by the Honourable Supreme Court in *Vinay Tyagi Vs. Irshad Ali @ Deepak and Others*, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 , the learned Magistrate has got no power to order for re-investigation at all. In the case on hand, the learned Magistrate has ordered re-investigation. Therefore, as per law laid down by the Honourable Supreme Court, the impugned order is illegal and without jurisdiction. On that score, the impugned order is liable to be set aside.

8. So far as further investigation is concerned, the Honourable Supreme Court has held in *Reeta Nag Vs. State of West Bengal and Others*, (2010) CriLJ 2245 : (2009) 11 SCALE 395 : (2009) 9 SCC 129 : (2009) 14 SCR 276 : (2009) 8 UJ 3984 : (2010) AIRSCW 476 that further investigation cannot be ordered under Section 173(8) of the Criminal Procedure Code at the behest of the defacto complainant. Regarding that legal proposition also, there can be no doubt. But, at the same time, while considering the protest petition filed as against the negative final report, the learned Magistrate, as per settled law, has got three options, i.e., either to accept the negative report, or to take cognizance of the offences based on the available materials, or to order for further investigation. Ordering further investigation on the protest petition filed by the defacto complainant will be within his jurisdiction. The Magistrate may also treat the

protest petition as a private complaint and proceed further. At any rate, when a protest petition is filed by the defacto complainant as against the negative final report, the Magistrate should meticulously go through the records and pass a detailed speaking order. Even for an administrative order, the Honourable Supreme Court has held that a non-speaking order is not an order in the eye of law and therefore, the same is liable to be set aside. When that is the position for even an administrative order, it is needless to say that a judicial order should be a speaking order, because the Judge can not speak, but the judgment should speak. In the case on hand, the impugned order does not reflect the application of mind of the learned Magistrate, as it is evident that he has not given any reason for passing the impugned order. For these reasons, the impugned order is liable to be set aside and the matter needs to be remanded back to the learned Magistrate for fresh consideration in accordance with law.

9. In the result, the Criminal Revision Case is allowed. The impugned order of the learned Judicial Magistrate No. III, Nagercoil, in CrI. M.P. No. 2833 of 2015, is set aside and the matter is remanded back to the Judicial Magistrate, who shall afford opportunity to the defacto complainant, all the accused in the case and the respondent-Inspector of Police and then, pass a detailed speaking order in accordance with law. Consequently, the connected Miscellaneous Petition is closed.