

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.270 of 2015

M.P.No.1 of 2015

Krishnamani

.. Petitioner

Vs

State, rep., by its
Inspector of Police,
Central Crime Branch,
Team 9A, Vepery,
Chennai-7.

.. Respondent

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code to set aside the order, dated 07.10.2014, passed in M.P.No.775 of 2014, on the file of the Metropolitan Magistrate No.3, George Town, Chennai.

For Petitioner : Mr.A.Sirajudeen

O R D E R

Being aggrieved by the order in M.P.No.775 of 2014, dated 07.10.2014, on the file of the Metropolitan Magistrate No.3, George Town, Chennai, dismissing the protest petition, the present criminal revision case has been filed.

2. Material on record discloses that on the complaint of the petitioner, a case in Cr.No.288 of 2009, on the file of B1 North Beach Police Station, Chennai, has been registered under Sections 403, 406, 467 and 471 IPC. As per the complaint, dated 23.05.2009, the complainant is a member of the Young Men Indian Association (YMIA), an organisation established by Dr.Anne Besant, for the purpose of social service. Mr.R.Ramachandran and Mr.K.Venkatesan, were the then Secretary and Chairman of the Association, having its head office at No.66, Armenian Street, Mannady, Chennai-1. The association has a commercial complex at No.49, 2nd Line Beach Road, Chennai-1. The second building is situated just about 300 meters away from the first building. In the year 2006, the Office Bearers decided to shift the activities from the head office to a portion of NIB Building, situated in 2nd Line Beach Road. Hence, they repaired and renovated the NIB building and spent a sum of Rs.1,34,668/-, for the

said purpose. After such repair and renovation, they spent Rs.49,845/- for the purpose of shifting. There were two statutes of Dr.Anne Besant in the building, where the Head Office is located. In the year 2008, the Office Bearers decided to shift the statutes. No civil work was necessary for shifting. By using a mini auto, statutes could be shifted. Expenditure for shifting and other works would not have caused more than Rs.20,000/-. There were no other movables including furnitures to be shifted. However, both the Secretary and Chairman of the Association have fabricated false receipts and vouchers and took away an amount of Rs.1,30,000/-, from the credit of YMIA towards, shifting and reinstallations of the statutes. They also misappropriated a sum of Rs.25,000/- for shifting of the library books and furnitures. Accounts have been written, as if, they did some civil work, for a sum of Rs.9,000/-. They put up an ordinary tiles in a space of 225 Sq.Ft., and withdrew, Rs.1,20,300/-. But the maximum expenses could be, at the rate of Rs.11,250/- only. Thus, by preparing false vouchers and bills, they have misappropriated a sum of Rs.2,52,550/-. Thus, a complaint has been preferred.

3. Material on record further discloses that pursuant to the directions in Crl.O.P.No.15306 of 2010, a case in Cr.No.288 of 2009, has been transferred to the Central Crime Branch. Earlier, previous Investigation Officer, has examined the complainant, Tr.K.Krishnamani and Witnesses, K.Arasu, Jayakumar, conducted an enquiry and recorded their statements. After transferring the case from the file of B1 North Police Station to Central Crime Branch, Chennai, the Sub-Inspector of Police, Central Crime Branch, EDF. II Wing, Team IX A, Egmore, Chennai, has examined witnesses, Jayaraman, Ashok Kumar, Venkataraman, Deenadayalan, K.Subadh, D.Babu and Govdindarajan and recorded their statements. After perusal of the complaint, statements recorded and the documents produced, the Sub-Inspector of Police, has observed that the defacto complainant became a member of the association in the year 1991 and due to certain alleged activities, detrimental to the interests of the Association, his membership was not renewed and that he was denied membership from 1991 onwards. He has also filed a suit in O.S.No.7277 of 2009, before the VI Assistant City Civil Court, Chennai. By observing that the defacto complainant could not produce any documentary evidence about the accusation, the counter petitioners, the Sub-Inspector of Police has referred the case as mistake of fact. Thus, he has submitted a report, dated 17.12.2012, before the 6th Assistant Sessions Court, Chennai, with a prayer to close the case, as mistake of fact.

4. Prior to that, RC notice has been served in Reference No.327/RC/CCB/2012, dated 11.12.2012. Being aggrieved by the same, the petitioner has filed M.P.No.775 of 2014, for a direction to pass an order, ignoring the closure report and consequently, prayed for a further investigation by the respondent in Cr.No.288 of 2009, on the file of B-1 Police Station, Chennai or in the alternative, take the protest petition as complaint, under Section 200 Cr.P.C.

5. Apart from the complaint, dated 23.05.2009, the petitioner has stated that as per the bye-laws of the society, a Committee, by name, "Building Committee", has been constituted and any proposal, regarding maintenance, repair, renovation, etc., of the building, has to be placed before this committee. However, this matter has not been placed before the said Committee. Therefore, according to him, the intention to misappropriate the funds, is apparent. In M.P.No.775 of 2014, the defacto complainant has further averred that the Investigating Officer ought to have examined the Engineer and persons doing business in tiles and also to prepare an observation mahazar, insofar as the actual work done, in widening the entrance of the building, extent of tiles laid, quality of the tiles laid, etc., and to have seized the records, relating to the expenses incurred and also examined the transporters, who have shifted the statutes and obtained statements from the persons, who had quoted a lower price for doing the work.

6. The petitioner has also contended that the accused persons are influential persons in the society and that the police has succumbed to the same. In the said petition, a fresh accusation has been made against the former Director General of Police, Mr.Nataraj that, under his influence, the respondent has closed the investigation.

7. Material on record further discloses that the said protest petition has been opposed on the grounds that if at all, the petitioner had any grievance over the shifting, he should have placed his submissions before the Board. None of the members of the Association have made any allegation. The averments made against the former Director General of Police is baseless. As there were no proper documents, the petitioner has not chosen to file any private complaint. Contending that no proper reasons have been assigned in the protest petition, arguments have been made for dismissal of the said petition.

8. Upon considering the averments and materials available on record, the learned Metropolitan Magistrate No.3, George Town, Chennai, has observed that the Central Crime Branch Police, on investigation, has found that the petitioner has been removed from the membership and that a suit in O.S.No.7277 of 2009 has been filed on the file of the VI Assistant City Civil Court, Chennai.

9. According to the Police, after 2009, the membership of the petitioner has not been renewed. No documents have been filed by the petitioner, when he preferred a complaint to the Police. Even when the petitioner has filed M.P.No.775 of 2014, under Section 173 Cr.P.C., no document has been filed. On the allegation that the Police had not properly conducted the investigation, the learned Magistrate has found that 11 witnesses have been examined. No

document has been filed by the petitioner, to prove that the statutes weighted 300kgs.

10. The learned Magistrate has further observed that statutes have been shifted in the year 2008 itself. There were notices issued to the petitioner on 30.12.2008, in which, it has been referred that on 29.12.2008, the petitioner over phone, abused one Mr.Veeramuthu and Committee Head, Venkatesan and that he has been suspended. Being aggrieved by the same, a suit in O.S.No.7272 of 2009 has been filed before the 6th Assistant City Civil Judge, Chennai. Thus, the original complaint before the Police, has been given on 23.05.2009, after the receipt of the notice, dated 30.12.2008.

11. The Police has also categorically stated that on the accusation made, no document has been filed. Upon considering the entire materials on record, the learned Judicial Magistrate has also observed that if there was any bona fide intention, the defacto complainant could have mentioned the exact date and time of the allegation. But no document has been filed. He has further observed that only after considering the material and statements of 11 witnesses examined, the Police has closed the case as mistake of fact.

12. Though Mr.A.Sirajudeen, learned counsel for the petitioner reiterated the very same grounds, urged before the Court below, going through the materials on record and in particular, the impugned order, this Court is of the view that the defacto complainant has not made out a case for interference. The learned Magistrate has properly considered the evidence on record and found that the petitioner has not substantiated the accusations made. Though the petitioner has contended that the Engineer and others, ought to have been examined and records should have been seized, etc., first of all, he must substantiate the averments made in the complaint. Making bald allegations, without any basis, cannot be approved. In any event, the Police has examined eleven witnesses and found that there was no truth in the complaint of the petitioner and thus, closed the case as mistake of fact. Allegation made against the former Director General of Police that he was instrumental, in closing the final report as mistake of fact, is not substantiated. Absolutely, there are no materials to substantiate the allegation.

13. In the result, the Criminal Revision Case is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Metropolitan Magistrate No.3,
George Town, Chennai.

2. Inspector of Police,
Central Crime Branch,
Team 9A, Vepery,
Chennai-7.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.A.Sirajudeen, Advocate,SR.27166.

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