

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Crl.R.C.No.638 of 2015

and

M.P.No.1 of 2015

1.N.Vijayaragavan
2.N.Maheswaran
3.N.Santhanakrishnan

... Petitioners

Vs.

1. State Rep. By its
Assistant Commissioner of Police,
Royapuram Range,
Chennai 600 013.

2. Alagarsamy

3. Susheela

... Respondents

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order dated 04.05.2015 made in Crl.M.P.No.921 of 2015 in C.C.No.2810 of 2014 by the learned XVI Metropolitan Magistrate, George Town, Chennai.

For Petitioners : Mr.V.Raja Saravanan

For Respondents : Mr.V.Arul,
Government Advocate(Criminal Side)

O R D E R

Being aggrieved by the order dated 04.05.2015 passed in Crl.M.P.No.921 of 2015 in C.C.No.2810 of 2014 by the learned XVI Metropolitan Magistrate, George Town, Chennai, dismissing the protest petition, this revision case is filed by the de facto complainant along with two others who are his brothers. The 1st petitioner is the de facto complainant and the other petitioners are his brothers. The 1st respondent is the complainant and the respondents 2 and 3 are the accused in the said case.

2. The case of the petitioners in brief is that one of the 1st petitioner is a tenant under the 2nd respondent in respect of the shop in question and he is running his business in the name and style of "Vijayalakshmi Tex Trading". While so, the 2nd respondent/land lord threatened the 1st petitioner demanding more money as advance. In those circumstances, the 1st petitioner filed a civil suit and obtained an order of injunction in his favour. While so, on 22.11.2013, the 2nd respondents with a view to usurp the property, leashed out his barbarous activities, even though there has been an order of injunction granted in favour of the petitioners in the civil suit filed by them. When the 1st petitioner made a complaint in this regard to the police, instead of examining the adjacent shop owners, the police had chosen to procure the witnesses' testimony from the very far off place and those witnesses did not know anything with regard to the alleged occurrence. The investigating officer, who investigated the matter and filed charge sheet, has not at all conducted the investigation fairly and properly.

3. Heard both sides.

4. The learned counsel for the petitioners would contend that the very investigation was not fair and proper. Furthermore, according to the learned counsel, a copy of the police report, which has been filed into the court, has not been given to the petitioners / de facto complainants. Had a notice been given at appropriate time, they would have immediately made a protest petition, but, instead the 1st petitioner was served with only a witness summon to appear in the court as a witness for giving evidence on 30.10.2014. Even the said summons was served on him only on 28.04.2014. Therefore, he did not have sufficient time to see the police report and to file a protest petition as he did not know about the investigation at that time. In the mean while, according to the learned counsel, the trial has been commenced and thereafter, only he filed the protest petition after getting a certified copy of the police report and came to know that the very investigation was not fair and proper.

5. The learned counsel for the petitioner would further contend that the protest petition filed by the petitioners came to be dismissed by the learned Magistrate on the erroneous conclusion that already the trial has commenced and five witnesses have already been examined on the side of the prosecution. It is mandatory on the part of the investigating officer to give notice of the police report to the de facto complainant. In support of his above submission, the learned counsel for the petitioner would rely upon a judgement in Gangadhar Janardan Mhatre v. State of Maharashtra and others, (2004) 7 SCC 768.

6. The learned Government Advocate (Criminal Side) would per contra contend that the revision pension itself is not maintainable. According to him, when the trial has already been commenced, no protest petition could be entertained and in the instant case, so far five witnesses have been examined on the side of the prosecution. According to him, the petitioners should have filed the protest petition immediately after filing of the police report.

7. The learned Government Advocate (Criminal Side) would further submit that in this case subsequent to the filing of the final report, the petitioner himself filed a petition in CrI.O.P.No.31896 of 2014 before this court under Section 482 of Cr.P.C. seeking to Assistant Commissioner of Police, Royapuram Range, to conduct further investigation and to file a proper charge sheet against the accused under appropriate penal provisions. That application was dismissed by this court on 05.12.2014. According to the learned Government Advocate (criminal side), in fact, the petitioners did not at all get any liberty to file protest petition. Even otherwise, the protest petition after examination of more than five witnesses on the side of the prosecution, is not at all maintainable. He would further add that if at all the petitioners are aggrieved, they can very well file a private complaint under Section 200 of Cr.P.C. Thus, he prayed for dismissal of the criminal revision petition.

8. No doubt, it is mandatory on the part of the learned Magistrate to issue a notice of filing of police report to the de facto complainant. In the instant case, the petitioners were not satisfied over the way in which the investigation had been done in this case. According to the petitioners, the witnesses who have been cited to speak about the occurrence were not the residents near the locality where the occurrence had taken place and therefore, they might not have been in a position to speak anything about the occurrence. No doubt, the occurrence took place in a day light, that is., at about 9.30 a.m. on 22.11.2013. If that be so, the petitioners would have very well known at the earliest point of time that the investigation was not fair and proper. Admittedly, earlier when the petitioners approached this court seeking to direct the Assistant Commissioner of Police, Royapuram Range to conduct further investigation and file appropriate final report, this court refused to give such a direction and dismissed the original petition. But, instead of filing the protest petition, the petitioners have chosen to approach this court under Section 482 of Cr.P.C. for further investigation that too after examination of three witnesses on the side of the prosecution. Now, admittedly, in all five witnesses have been examined. In fact, while dismissing the petition filed by the petitioners, this court pointed out that the de facto complainant should have approached the court below by way of protest petition at

the earliest point of time. Unfortunately, the petitioners did not obtain either liberty or leave of this court to do so at the time of dismissal of that petition. Even thereafter, the petitioners slept over the matter for more than five months and file the protest petition only in the month of May, 2015. Under these circumstances, I am of the considered view that the learned Metropolitan Magistrate was right in dismissing the protest petition and as such, the criminal revision petition is liable to be dismissed. However, it is open for the petitioners to file appropriate private complaint, if so advised, under Section 200 of Cr.P.C.

9. In the result, this Criminal Revision Petition is dismissed, however, with the above observation.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The XVI Metropolitan Magistrate,
George Town, Chennai.
- 2.The Assistant Commissioner of Police,
Royapuram Range,
Chennai 600 013.

+3cc's to Mr.V,Raja Saravanan, Advocate, S.R.No.38448

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Cr1.R.C.No.638 of 2015

NM(CO)

CA(13/08/2015)

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