

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2015

DELIVERED ON : 14.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.No.833 of 2015

P.M.Najeeb Rawther

... Petitioner /Complainant

Vs

Sree Gokulam Chit and
Finance Company Pvt. Ltd
Regd.Office : 49, Arcot Road
Kodambakkam
Chennai 600 024
Rep by its Managing Director
and Directors.

... Respondent/Accused

Prayer:- Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to call for the records pertaining to Crl.M.P.No.356 of 2015 on the file of the XVII Metropolitan Magistrate Court at Saidapet, Chennai and to pass orders in the interest of justice allowing the above complaint as prayed for by setting aside the order dated 14.05.2015 passed by the XVII Metropolitan Magistrate Court at Saidapet, Chennai in Crl.M.P.No.356 of 2015.

For Petitioner Mr.S.Diwakar

O R D E R

This petition has been filed to call for the records pertaining to Crl.M.P.No.356 of 2015 on the file of the XVII Metropolitan Magistrate Court at Saidapet, Chennai and to pass orders in the interest of justice allowing the above complaint as prayed for by setting aside the order dated 14.05.2015 passed by the XVII Metropolitan Magistrate Court at Saidapet, Chennai in Crl.M.P.No.356 of 2015.

2. It is the case of the petitioner that he is one of the subscribers in a Chit Group No.J2G 942 along with 20 others in a registered Chit transaction with the respondent and that in the bid, he was allotted prize money of Rs.2,25,000/- in the said chit transaction. Dispute arose between the petitioner and the respondent with regard to repayment of the availed amount, on account of which, arbitration proceedings in ARC No.229 of 2011 was initiated by the respondent against the petitioner before the Registrar of Chits. While so, it is alleged by the petitioner that the respondent had issued a legal notice dated 08.12.2014 calling

upon the petitioner to make payment towards the chit amount, lest face further legal action, which according to the petitioner had caused fear of injury to his mind, reputation and property. Therefore, the petitioner filed a private complaint against the respondent before the XVII Metropolitan Magistrate, Saidapet, Chennai for offences under Sections 384 and 385 IPC. The learned Magistrate recorded the sworn statement of the petitioner on 07.04.2015 and dismissed the complaint on 14.05.2015, aggrieved by which the petitioner is before this Court in this revision case.

3. The learned counsel for the petitioner relied upon the following judgments and submitted that the trial Court ought not to have dismissed his private complaint, but should have proceeded further by issuing process to the respondent.

S. No.	Cause title	Citation
1	Kitti alias Kittarain and another v. Thammiah Shetty and another	1967(XI) MLJ (Cr1) 773
2	Dr.S.S.Khanna v. Chief Secretary, Patna and another	AIR 1983 SC 595
3	Mohinder Singh v. Mohinder Pal and others	AIR 1992 SC 1894
4	Gurudas Balkrishna v. Chief Judicial Magistrate	1993(1) Crimes 554

4. The learned counsel submitted that, when once a Court has recorded the sworn statement, it has taken cognizance of the offence and therefore, it has to necessarily issue process to the accused.

5. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner. The short question that requires answer is, whether the Magistrate has the power to dismiss a complaint after taking the sworn statement of the complainant. The answer to this question requires no great legal research, for, it is found in Section 203 Cr.P.C. itself, which reads as follows:

"203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

6. On a bare reading of Section 203 Cr.P.C. it is evident that, after recording the sworn statement of the complainant and of the witnesses, if the Magistrate is of the opinion that there are no sufficient grounds for proceeding, he shall dismiss the complaint. In this case, it has to be seen whether there are sufficient grounds for proceeding with the complaint. On a reading of the complaint, the petitioner has not even stated as to when the arbitration proceedings in ARC No.229 of 2011 was initiated and

what is the outcome of the proceedings. For attracting the provisions of Sections 384 and 385 IPC, there should first be 'Extortion'. It may be necessary to extract Section 383 IPC:

"383. Extortion.-- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

7. On the facts and circumstances of the case, as admitted by the petitioner himself, the ingredients of Section 383 IPC does not stand attracted. The respondent initiated lawful proceedings against the petitioner under Chit Funds Act in ARC No.229 of 2011. Thereafter, the respondent has issued a legal notice calling upon the petitioner to repay the amount, lest face legal action. Handing out a threat of legal action can never amount to extortion, because extortion envisages illegal action. Just because the petitioner fears legal action, the respondent cannot be charged for extortion. On the contrary, the private complaint itself is an attempt by the petitioner to browbeat the respondent so as to put him under the fear of false prosecution, if he proceeds in accordance with law to realise his claim. Therefore, the Magistrate was perfectly justified in not entertaining the private complaint and dismissing the same at the threshold under Section 203 Cr.P.C.

In the result, this petition is devoid of the merits and the same is dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

gms

To

1.XVII Metropolitan Magistrate Court at Saidapet,
Chennai.

2. -do-thro' The Chief Metropolitan, Magistrate,
Egmore, Chennai - 8.

Cr1.R.C.No.833 of 2015

su(co)
kra(31/08)