

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.8.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision No.840 of 2015

and

M.P. No. 1 of 2015

G.Subramani

.. Petitioner

Versus

State rep. by
Inspector of Police
District Anti Land grabbing Cell
Krishnagiri District

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the order dated 03.6.2015 made in Crl.M.P. No. 2665 of 2015 on the file of learned Judicial Magistrate No.II, Hosur.

For Petitioner : Mr. B.Manoharan

For Respondent : Mr. V.Arul
Government Advocate (Crl.side)

ORDER

The petitioner, who is the accused in Crime No. 383 of 2007, has come forward with this Criminal Revision Case questioning the correctness of the order dated 03.6.2015 passed by the Court below in Crl.M.P. No.2665 of 2015, by which the Petition filed by the respondent under Section 173 (8) of Cr.P.C. seeking permission for reinvestigation was allowed.

2. According to the revision petitioner, the defacto complainant, namely, Dinesh with the malafide intention suppressed several facts and gave a third complaint in Cr.No.11 of 2012 before the respondent, who, in turn, without any enquiry registered the case against the petitioner and arrested him and now he is enlarged on bail. According to him, for the very same allegation, the said Dinesh made a complaint before the Inspector of Police, Hudco Police and the same was taken on file vide Crime No.383 of 2007. After investigation, the same was closed as civil in nature by filing final report in No.23 of 2007 before the learned Judicial Magistrate No.II, Hosur. Thereafter, again in the year 2011, the petitioner was called for enquiry by the respondent. After investigation, the petitioner was orally informed that the complaint was closed as civil in nature. Suppressing all these facts, the said Dinesh filed third complaint against the petitioner. Therefore, the petitioner filed Crl.OP.No.27547 of 2012 to quash the complaint in Cr.11 of 2012 on the file of the respondent and the same was allowed. Pursuant to the

said order, the respondent filed petition under Section 173 (8) of Cr.PC. in which, the Court below ordered for reinvestigation. Aggrieved over the said order, the petitioner has filed this revision.

3. The learned counsel for the petitioner submitted that the Magistrate has no power to order for reinvestigation. According to the learned counsel, as per Section 173 (8), the Magistrate can only order for further investigation and reinvestigation is different from further investigation. The learned counsel further submitted that the petitioner was not heard before passing such an order. It is the submission of the learned counsel that the matter is purely civil in nature and the petitioner is the bonafide purchaser of the property and as per the ex parte decree in the Suit for Specific Performance in O.S.No.57 of 2007, he deposited the sale consideration in Court, viz., the Principal District Court, Krishnagiri. Above all these things, as earlier complaint has been closed as civil in nature, the present petition seeking for reinvestigation is not maintainable. Therefore, the order of the Court below in allowing the petition for reinvestigation is not correct.

4. The learned Government Advocate (Criminal side) brought to the notice of this Court that petition has been filed under Section 173 (8) for further investigation only and instead of "further investigation", the word, "reinvestigation", has been wrongly mentioned in the order of the Court below. The learned Government Advocate submitted that the accused was not present at the time of ordering further investigation. It is submitted that this Court, by order dated 07.01.2015 in CrI.OP.No.27547 of 2012, has given liberty to the prosecution to file application for further investigation. Pursuant to the order of this Court, the petition has been filed and while ordering further investigation, the word "reinvestigation" has been wrongly used in the order. Therefore, he would request the Court to modify the word as "further investigation" instead of "reinvestigation".

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) and perused the materials available on record.

6. By consent of both sides, the main revision itself is taken up for final disposal.

7. It is seen that earlier the petitioner has filed CrI.OP.No.27547 of 2012 seeking to quash the complaint in Cr.No.11 of 2012. It is useful to extract the operative portion of the order dated 07.01.2015, which read thus:-

"Therefore, the registration of Crime No.11 of 2012 on the file of the first respondent is set aside and liberty is given to the first respondent to approach the learned Magistrate No.II, Hosur to seek leave for further investigation in respect of Crime No.23 of 2007 which was originally registered by the HIDCO police station by furnishing the further

materials and after the leave is granted, the first respondent can proceed with the case. This Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed. "

8. In view of the above order, the contention of the petitioner that the he was not given an opportunity to putforth his case before passing such an order, does not arise at this stage. In fact, the petitioner was heard before passing such an order.

9. It is also the contention of the petitioner that the learned Magistrate has no jurisdiction to order for reinvestigation.

10. It appears that the prosecution has filed petition under Section 173 (8) seeking for further investigation only, that too, pursuant to the direction of this Court in the Crl.OP.No.27547 of 2012. It is needless to state that Section 173 (8) contemplates only for further investigation. As rightly pointed out by the learned Government Advocate, the Court below has wrongly used the word reinvestigation instead of further investigation. Though the Court below mentioned that the petition has been filed under Section 173 (8) Cr.PC., in the operative portion, it has wrongly used the word "Reinvestigate " instead of the word "further investigate". Therefore, the word "reinvestigate" is should read as further investigate". Accordingly, the respondent is permitted to further investigate the case in Cr.No.383 of 2007 in accordance with law. It is made clear that the petitioner shall be given an opportunity to put forth his case as he claims to be the bonafide purchaser by depositing the sale consideration into Court in O.S.No.57 of 2007, pursuant to the ex parte decree.

With the above observation, the Criminal revision is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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TO

1. The Inspector of Police District Land Grabbing Cell Krishnagiri District.
2. The Public Prosecutor, High Court, Chennai 600 104.

+ 1 cc to Mr.B. Manoharan, Advocate Sr.43096

Crl RC No.840 of 2015

CTK(CO)

Eu 27.08.15