

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

CORAM

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1331 of 2008

Agathiyadasan

... Petitioner

Versus

Dinesh Butt

... Respondent

Criminal Revision case filed under Sections 397 and 401 of Cr.P.C. against the Judgment dated 15.07.2008 passed by the learned XIII Metropolitan Magistrate, Egmore, Chennai 600 008 passed in Cr.M.P.No.1898 of 2008 in CrI.M.P.No.1101 of 2006 in C.C.No.9076 of 2008.

For Petitioner : Agathiyadasan
Party in person - No appearance

For Respondent : No appearance

ORDER

This Criminal Revision Case is filed against the order dated 15.07.2008 passed by the learned XIII Metropolitan Magistrate, Egmore, Chennai 600 008 passed in Cr.M.P.No.1898 of 2008 in CrI.M.P.No.1101 of 2006 in C.C.No.9076 of 2008 in dismissing the petition filed under Section 216 of the Criminal Procedure Code.

2. The case of the petitioner in brief is as follows:

The petitioner is a subscriber of a Mobile phone connection with the BSNL. According to the petitioner, whenever he makes a call, such call is being intercepted or the line got connected to some other caller to whom the call is not intended to. According to the petitioner, his phone calls are wilfully intercepted or disrupted at the instance of the employees of BSNL besides that his balance amount also got reduced improperly. The petitioner also recorded the conversation and or ghost voice received in his mobile phone. Therefore the petitioner has filed a Petition under Section 200 of Cr.P.C. before the trial Court praying to issue direction to the jurisdictional police to register a case for commission of offence under Section 506(i), (ii), 507, 418, 419 and 166 IPC. The learned Judicial Magistrate has taken the complaint on

file only in respect of the alleged offence under Section 290 of IPC. Pending the Complaint, the petitioner has filed a petition under Section 216 of the Criminal Procedure Code to include certain other charges under the Indian Penal Code, however, the same was dismissed by the Court below. Hence, the present revision.

3. The respondent, before the Court below, by way of filing counter, stated that the statements made by the petitioner are vague and the same are not relevant to the case. Further, the petitioner has got no locus standi to file a petition under Section 216 of the Criminal Procedure Code to alter the charge.

4. The only ground raised by the petitioner is that the Court below dismissed the petition filed by the petitioner on the ground that the accused is not a public servant. According to him, for determining whether a particular person is a public servant or not is, it has to be seen whether he is in the service or pay of the Government or whether he is entrusted with the performance of any public duty. As far as this case is concerned, the accused/unknown person of BSNL Limited Customers Service has spoken to him in a ghost voice and has committed the offence. Hence, he is a public servant. However, the Court below, without considering the evidences adduced by the petitioner, viz., audio cassettes evidencing the conversation made between the petitioner and the BSNL Customer service person disbelieved the same and dismissed the petition filed by the petitioner. Accordingly, he prayed for setting aside the same.

5. When the matter is taken up today, neither the petitioner/party-in-person nor the respondent or his counsel is present before this Court. On an earlier occasion, this Court also ordered fresh notice to the petitioner/party-in-person stating that the matter is to be listed for hearing on 06.08.2014. However, even after one year, when the matter was listed during the past two hearings, there was no representation for the petitioner. Hence, the matter was listed today under the caption "'for dismissal'". Even today, there is no representation for the petitioner. Hence, as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], if the petitioner do not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner. The Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this matter is taken up for disposal on merits as the same is pending before this Court from the year 2008 onwards.

6. Perused the records. On a careful perusal of the order passed by the Court below, it is seen that the learned Judge has clearly pointed out that though the Court is empowered to alter or add any charge at any time before judgment is pronounced, considering the nature of evidence produced by the petitioner, which was in the

cell phone, held that the evidence required to prove the offence is not available with the petitioner and accordingly, dismissed the petition filed under Section 216 of Cr.P.C. Further the Court below has held that the petitioner has contended that the person has committed the offence punishable under Section 506(i) (ii) of IPC, however, to convict the accused under the said Section, it has to be prima facie established by the petitioner that the said person threatened or caused injury to him. When there is no such evidence was adduced, by the petitioner, the accused cannot be tried for the offence under Section 506 (i) of IPC. The petitioner has only alleged in the complaint that somebody in the ghost voice has threatened him, which does not cause any injury to his person or reputation or property for altering the offence. The Court below has also further held that based on the investigation report received as against the accused person and on confirming that the accused has done the act of using some unnatural sound, which caused annoyance to the petitioner, has taken the case on file under Section 290 IPC and stating so, dismissed the petition filed by the petitioner under Section 216 Cr.P.C.

7. It is well settled that under Section 216 of Cr.P.C. it is only for the Court to either alter or amend the existing charge or include an additional charge on the basis of the material evidence available. The petitioner/defacto complainant has no right to file such an application to include certain charges. In this context, useful reference can be made to the decision of this Court in the case of [H.A. Hurul Firdhouse, represented by her power agent H.A. Abdul Jabbar vs. State, represented by Inspector of Police, W-22, All Women Police Station, Mylapore, Chennai - 2 and others] reported in 2010 (3) Madras Weekly Notes (CrI.) 368 wherein it was held that neither the prosecution nor the petitioner/accused has any right to seek for inclusion or deletion of a charge and it is for the trial Court, in its discretion, consider such inclusion of a charge. It was also held in the above said decision that as against an order passed by the trial Court, dismissing an application under Section 216 of Cr.P.C. a Criminal Revision Case is not maintainable.

8. In view of the fact that the Court below has considered all the materials available before it and has passed a detailed order, I do not find any reason to interfere with the same. Accordingly, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

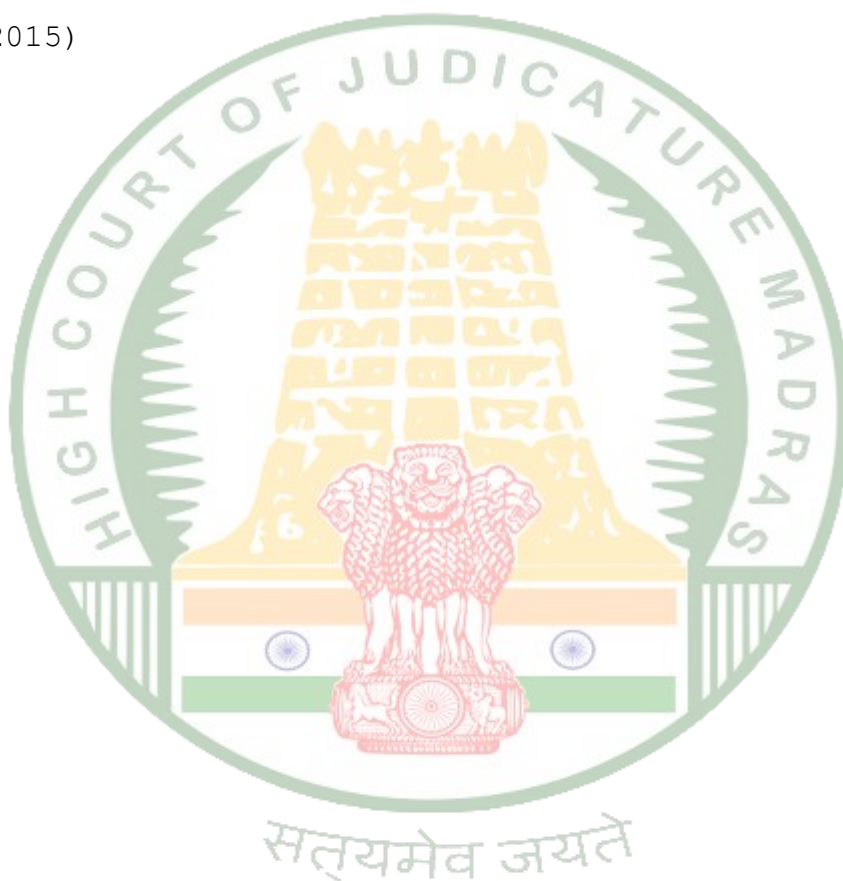
vj2/rsh

To

The XIII Metropolitan Magistrate,
Egmore,
Chennai 600 008.

Cr1 RC No.1331 of 2008

ALA (CO)
CA (25/09/2015)



WEB COPY