

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.279 of 2010

S.Jayapal

.. Petitioner

Vs.

1. P.Mani
2. R.Varadharaj
3. V.Jayamani
4. R.Arukkutti
5. A.Saraswathi

.. Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the learned Judicial Magistrate No.II, Coimbatore, in C.M.P.No.1795 of 2009 in C.C.No.322 of 2010, dated 26.02.2010.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.N.Ishtiaq Ahamed

O R D E R

Private complaint has been made on 09.02.2010. The learned Judicial Magistrate No.II, Coimbatore, has recorded the sworn statement. After considering the averments made in the complaint and the sworn statement, he has passed the following orders,

"Records perused. On the basis of the averments made in the complaint and in the sworn statement of the complainant, sufficient grounds for proceedings made out only against A1 and A2. With regard to A3 to A7, there is no sufficient ground for proceedings. Therefore, the complaint is dismissed, with regard to A3 to A7 and with regard to A1 and A2, the case is ordered to be taken on file for the offences, under Sections 120(b), 109, 420, 423, 424 and 506 (ii) IPC. Summons to A1 and A2."

Being aggrieved by the dismissal of the complaint, as against A3 to A7/respondents, the petitioner has filed the revision petition.

2. Mr.C.Prakasam, learned counsel for the petitioner submitted that the Court below ought not to have dismissed the complaint, insofar as it relates to A3 to A7/respondents, is concerned, as

sufficient materials were produced, while taking the case on record. He further submitted that the Courts below ought to have referred the matter, for further investigation under Section 156(3) of the Code of Criminal Procedure.

Heard the learned counsel for the parties and perused the materials available on record.

3. As per Section 200 of the Code of Criminal Procedure, a Magistrate, while taking cognizance of an offence on complaint, shall examine, upon oath, the complainant and the witnesses present, if any, and the substance of such examination, shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Proviso to the said Section states that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Further proviso to the said Section reads that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

4. In the case on hand, the learned Judicial Magistrate No.II, Coimbatore, after considering the averments made in the complaint and the sworn statement, has found that the petitioner has made out a case, insofar as A1 and A2 alone. With regard to A3 to A7/respondents, the Court below has found that there was no prima facie material, nor sufficient grounds for proceeding further. In the abovesaid circumstances, the Court below has ordered to take the complaint on file, as against A1 and A2 only.

5. Perusal of the complaint in entirety, does not disclose any prima facie material against A3 to A7/respondents. Even the ingredients for the offences, under Section 120(b), 109, 420, 423, 424 and 506(ii) IPC., have not been specifically averred in the complaint, as against A3 to A7/respondents. In the abovesaid circumstances, there is no material irregularity in the impugned order.

6. The contention that the Court below ought to have ordered investigation, under Section 156(3) Cr.P.C., against A3 to A7/respondents, cannot be countenanced. Under Section 190 of the Code of Criminal Procedure, the Court below is empowered to take cognizance of an offence and it is also empowered to order for an investigation, to be done, under Section 156(3) of the Code, if required.

7. In view of the above, the contention that the Court below ought to have directed investigation under Section 156(3) Cr.P.C., alone, cannot be countenanced. There is no merit in the Criminal Revision Case and hence, the same is dismissed. No costs.

Sd/-
Assistant Registrar
Dated:23.2.15

True Copy

Sub Assistant Registrar

To

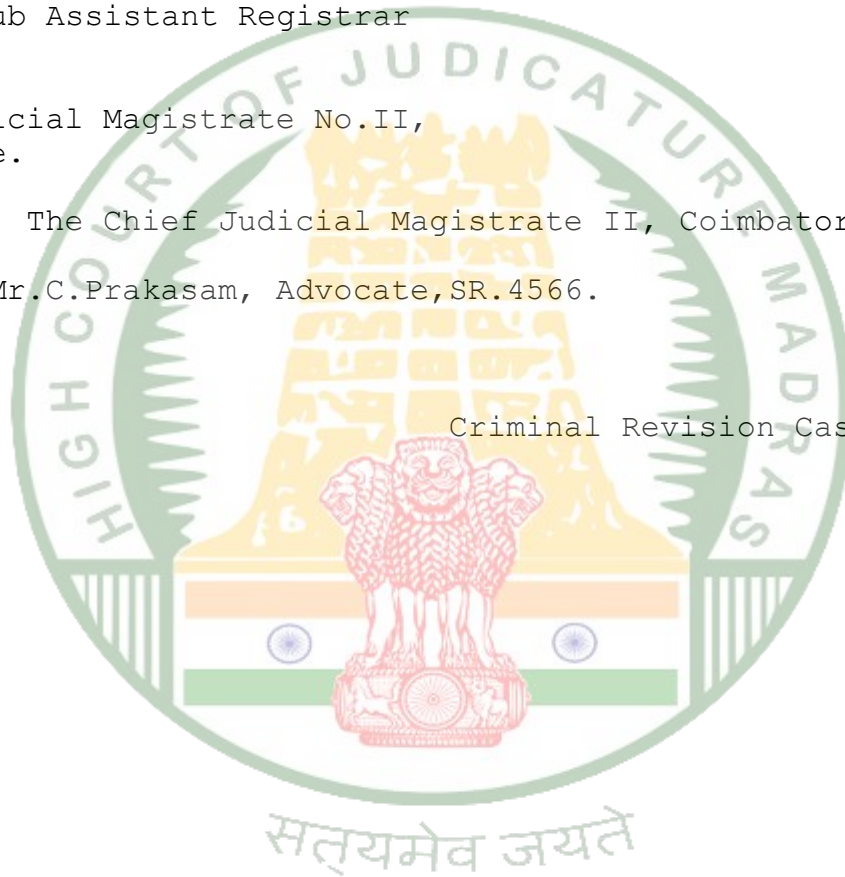
1.The Judicial Magistrate No.II,
Coimbatore.

2.do thro' The Chief Judicial Magistrate II, Coimbatore.

+1 cc to Mr.C.Prakasam, Advocate,SR.4566.

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krd 25/2

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