

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 334 of 2010

Suresh @ Krishnan

.. Petitioner

Versus

1.The State
rep. by Inspector of Police
Kottur Police Station
Thiruvarur District
(Cr.No.205/2005).

2.Sri Jeyandra Saraswathi Swamigal
Sri Kanchi Kamakodi Feedam
Kancheepuram.

3.S.Ramachandran

4.Sethuraman

5.V.Chandrasekaran

6.J.Lickmichand

7.V.R.Balasubramania Iyyer

8.S.Venkatarajalu

9.V.Somasundara Sivachariar

10.Muthukurukkal
(Presently performing
Pooja in Temple)
Vadivaiyikkal
Malavarayanallur
Mannargudi Taluk
Thiruvarur District.

.. Respondents

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 15.09.2009 passed in unnumbered Crl.M.P. No. of 2009 in Crime No.205 of 2005 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam, and direct the first respondent police to conduct further investigation and to file a final report.

For Respondents

: Mr.V.Arul
Government Advocate (Crl.Side)
for R.1

Mr.K.S.Vaidyanathan
for Mr.S.Karthikeyan
for R.2 to R.4

Service Awaited for R.5 & R.7

Mr.A.Mohamed Ismail for R.6

No Appearance
for R.8 to R.10

ORDER

This Criminal Revision Case is filed by the petitioner/defacto complainant against the order dated 15.09.2009 passed in unnumbered protest petition on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam, seeking further investigation in the case in Crime No.205 of 2005.

2. According to the petitioner/defacto complainant, on 12.11.2005, the second respondent came to Periyagudi Village and asked to remove the valuable stones from the idols for the purpose of "Asthabanthama Mrunthu" and the same were not fixed. The petitioner was informed the valuable stones were kept for "Pariharam". The grievance of the petitioner is that in the name of "Pariharam", the valuable stones and Sivalingam were stolen. In this regard, the petitioner has lodged a complaint. The first respondent police without investigating the matter, closed the complaint as "mistake of fact". Hence, the petitioner has filed the protest petition seeking further investigation of the case in Cr.No.205 of 2005. The petitioner was issued with a notice dated 04.08.2009 to make his objection, if any, within 15 days from the date of receipt of the notice. The petitioner after receipt of the notice has made his objection on 14.08.2009. Without considering the objection, the learned Additional Chief Judicial Magistrate, Kumbakonam, passed the order dated 15.09.2009, accepting the final report of the prosecution closing the complaint as "mistake of fact". Aggrieved against the same, this Criminal Revision Case is filed.

3. Mr.S.Kingston Jerold, learned counsel appearing for the petitioner would submit that the petitioner was issued with a notice dated 04.08.2009 to make his objection, if any, within 15 days from the date of receipt of the notice. The petitioner, immediately, after receipt of the notice has made his objection on 14.08.2009. Without considering the objection and without giving an opportunity to the petitioner, the Lower Court, by order dated 15.09.2009, accepted the final report of the prosecution closing the complaint as "mistake of fact", which is not correct and hence, the revision.

4. Mr.V.Arul, learned Government Advocate appearing for the first respondent would contend that the Lower Court, in its order, has specifically stated that no materials were produced by the petitioner

to substantiate his case inspite of time granted. He would further add that the final report has been filed after thorough investigation, wherein also, it was specifically stated that no prima facie case has been made out against the accused and hence, the complaint was rightly closed as "mistake of fact" and only thereafter, the petitioner has filed the protest petition and before the Lower Court also, the petitioner has not chosen to appear and produce any materials to substantiate his case, but, he is only going on making vague allegations and therefore, the Lower Court has rightly dismissed the protest petition and hence, he prayed for the dismissal of the revision.

5. Mr.K.S.Vaidyanathan, learned counsel appearing for respondents 2 to 4 would submit that only vague and frivolous allegations were levelled against the accused by the petitioner and that inspite of time granted, after filing his objection, the petitioner has not chosen to appear before the Lower Court and produce any materials to substantiate his case.

6. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

7. On a careful perusal of the entire materials available on record as well as the orders passed by the Lower Court, it is clear that after the final report was filed by the police closing the complaint as "mistake of fact", the petitioner has filed a protest petition before the Lower Court and on notice, the petitioner has filed his objection on 14.08.2009 and thereafter, though, the petitioner was granted one month time and ultimately, the case was posted on 15.09.2009 and even on that day, the petitioner/defacto complainant has neither chosen to appear nor produced any oral or documentary evidence to substantiate his case. Though, the petitioner/defacto complainant now says that he was present in Lower Court on that day, he has not chosen to file any application in that regard. There is absolutely no oral or documentary evidence available to substantiate the case of the petitioner, especially when the final report says that there is no prima facie case made out to proceed against the accused and hence, this Court finds that there is no other option except to confirm the order passed by the Lower Court, accepting the final report submitted by the prosecution closing the complaint as "mistake of fact". The order passed by the Lower Court, dated 15.09.2009, stands confirmed. This Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

paa

To

1.The Inspector of Police
Kottur Police Station
Thiruvarur District.

2.The Additional Chief Judicial Magistrate
Kumbakonam.

1 cc to Public Prosecutor, High Court, Madras.

1 cc to Mr. S.Kingston Jerold , Advocate Sr.No.43789

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lrs(co)
pmk.7.9.2015



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