



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2015

CORAM:

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

CrI.R.C. (MD) NO.504 of 2014

M.Chandrasekar

.. Revision Petitioner

Vs.

M.Muthukumar

.. Revision Respondent

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records from the learned Judicial Magistrate Court, Sankarankovil in Cr.M.P.No.9349 of 2013 dated 27.03.2014 and set aside the same and order to take appropriate action under Section 190(i) (c), 156(3) Cr.P.C.

For Petitioner :: Mr.M.Sheik Abdullah

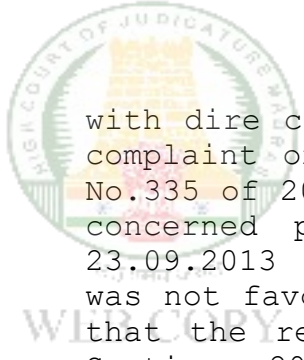
For Respondent :: Mr.G.Thalaimutharasu

ORDER

The petitioner is the private complainant and he is carrying on business under the name and style of "Murugan Javuli Store" at **(*)Sankarankovil** Main Road and he is having a close acquaintance with the respondent. According to the petitioner/private complainant, on 28.11.2011 on account of the said acquaintance/ relationship, the respondent requested him a hand loan of Rs.One Lakh to meet out his urgent business expenses and received the sum on that date and also made a promise that he will return the amount within two months. The private complainant would further state that since it was a hand loan, he did not insist for payment of interest and at the time of borrowal, the respondent herein has executed a receipt/slip acknowledging the receipt of a sum of Rs.One Lakh.

2. It is the case of the petitioner/private complainant that in spite of promise on the part of the respondent to pay back the sum of Rs.One Lakh within two months from the date of receipt, he did not pay the same and he also came to know that the respondent with an intention took a conscious decision not to pay back the amount and, therefore, the said act would amount to cheating and allied offences. In this regard, the petitioner/private complainant has sent a legal notice on 17.06.2013 and though it was acknowledged on 20.06.2013, the respondent did not give any reply.

3. On 02.07.2013, the petitioner/private complainant along with one Ponnusamy went to **(*)Tenkasi** and met the respondent in his Office at about 10.00a.m. and at that time, the respondent abused the petitioner/private complainant with abusive words and also threatened him



with dire consequences and in this regard, the petitioner led to lodge a complaint on the file of the Sankarankovil police, for which, a receipt No.335 of 2013 was given on 06.08.2013. Since no action was taken by the concerned police, the petitioner herein sent a representation dated 23.09.2013 to the jurisdictional Superintendent of Police and since he was not favoured with any response, he filed a private complaint alleging that the respondent herein has committed the offences punishable under Sections 294(b), 406, 420 and 506(i) I.P.C. The petitioner has also given a sworn statement on 02.01.2014 in consonance with his private complaint and also examined one Ponnusamy as P.W.2 to substantiate the allegation with regard to criminal intimidation.

4. The learned Magistrate, on a consideration of the contention of the private complaint and the sworn statement of the petitioner/private complainant/P.W.1 and P.W.2, held that a perusal of the receipt dated 28.11.2011 said to have been executed by the respondent in favour of the petitioner herein would go to show that it is not written on the letter pad of the petitioner/private complainant and on the one side of the receipt, the name with "Srivari Tex" has been printed and on the backside only, an endorsement with regard to the receipt of a sum of Rs.One Lakh has been made and, therefore, it cannot be construed as a receipt for the sum of Rs.One Lakh. The lower Court was also recorded the finding that in respect of money transaction, the Court lacks jurisdiction. Insofar as the criminal intimidation is concerned, the lower Court found that the said offence had been committed within the jurisdiction of the Court of Judicial Magistrate, at Tenkasi and, therefore, it cannot take cognizance and stating other reasons, dismissed the complaint under Section 203 Cr.P.C. and aggrieved by the same, the petitioner/private complainant has filed the present Criminal Revision Case.

5. The learned Counsel for the petitioner would submit that before filing of a private complaint, the petitioner herein has lodged a complaint on the file of the jurisdictional police and though the receipt for the acknowledgment of the complaint was given, no action was taken and, therefore, he approached the jurisdictional Superintendent of Police for remedial measure and though the representation, in this regard, would submit to the said Official, nothing fruitful has happened and, therefore, he would constrain to file a private complaint and the jurisdictional lower Court, while dismissing the private complaint, has recorded the finding that the receipt dated 28.11.2011 cannot be construed as a receipt for receiving the money on the part of the respondent and, thereby, foreclosed the option on the part of the petitioner to approach the civil Court by available common law remedy. It is further submitted by the learned Counsel appearing for the petitioner that the criminal intimidation on the part of the respondent is a continuous act and, therefore, the lower Court has committed a grave error in directing the petitioner herein to approach the jurisdictional Magistrate Court at Tenkasi and prays for interference.

6. Per contra, Mr.G.Thalaimutharasu learned Counsel appearing for the respondent would vehemently contend that even for invoking Section 156(3)Cr.P.C., obligation is cast upon the jurisdictional Magistrate to apply his mind to find out whether it can direct the jurisdictional police to inquire into the complaint in terms of Section 156(3)Cr.P.C. and the learned Judge, on due application of mind to the contention of



the private complaint and the sworn statement given the petitioner/private complainant, recorded that it is fairly civil in nature and insofar as the alleged commission of offence of criminal intimidation is concerned, it took place at **(*)Tenkasi** and it lacks jurisdiction to investigate the complaint.

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7. The learned Counsel for the respondent, in support of his contentions, placed reliance on record the following judgments:

(i) In **Y.Abraham Ajith and Others V. Inspector of Police, Chennai and another** reported in **AIR 2004 Supreme Court 4286**; and

(ii) In **M/s Pasumai Irrigation Limited, Egmore Chennai Vs. M/s Mansi Finance (Chennai) Limited, Sowcarpet, Chennai** reported in **2003(2) CTC 270**

8. This Court has carefully considered the submissions made by the learned Counsel appearing for the petitioner/private complainant and the learned Counsel appearing for the respondent and also perused the materials available on record in the form of typed set of papers.

9. The alleged given receipt dated 28.11.2011 is a valid receipt for acknowledging the receipt of the sum on that date or not, cannot be gone in extenso by the lower Court, while considering the private complaint filed under Section 200 Cr.P.C. In fact, the lower Court, in paragraph No.7, has given a categorical finding that it cannot be construed as a receipt for the hand loan of Rs.One Lakh received by the respondent from the petitioner/private complainant. In the considered opinion of the Court, the said finding has also foreclosed the option on the part of the petitioner herein to approach a civil Court for recovery of the said sum.

10. The petitioner also alleges the criminal intimidation on the part of the respondent and in this regard, he has examined P.W.2 one Ponnusamy. The lower Court has recorded the finding that the said act of criminal intimidation had been committed at Tenkasi and, therefore, he cannot lodge a complaint with regard to the commission of the said offence on the file of the Jurisdictional Magistrate Court at Sankarankoil.

11. Chapter XIII of the Code of Criminal Procedure 1973 speaks about the Jurisdiction of the Criminal Courts in inquiries and trials and it is relevant to extract Section 178 Cr.P.C.

"178.Place of inquiry or trial - (a) when it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

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12. According to the private complainant, the act of criminal intimidation is a continuous act on account of the alleged non-payment of



money on the part of the respondent, which, according to him, amounts to cheating and allied offence and, therefore, this Court is of the view that with regard to the alleged commission of the said offence, the Court at Sankarankoil is also having jurisdiction to entertain the said complaint.

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13. Therefore, this Court is of the view that the reasons assigned by the Court of Judicial Magistrate at Sankarankoil, in the light of the reasons assigned above, are unsustainable and, therefore, the impugned order dismissing the private complaint under Section 203 Cr.P.C. is liable to be set aside and the matter is remanded once again for fresh consideration.

14. In the result, the Criminal Revision Petition is allowed and the impugned order dated 27.03.2014 passed by the Judicial Magistrate, Sankarankovil in Cr.M.P.No.9349 of 2013 is set aside and the matter is once again remanded to the Court of Judicial Magistrate, Sankarankoil for fresh consideration. There is no dispute in the principles laid down in the above cited decisions. But, on the face of it, the decisions cited above have no application, for the reason that the cognizance of the offences alleged by the petitioner herein has not been taken at all. It is made clear that the observations made herein are only for the purpose of disposal of the Criminal Revision Case and the lower Court need not be influenced by these observations and it has to consider the private complaint in accordance with law.

Sd/-

Assistant Registrar (CO)

**(*) PARAGRAPH NO.1,3 & 6
AMENDED AS PER ORDER OF
THIS COURT DATED 18.03.2015
MADE IN MP.NO.1/2015**

/True copy/

Sub Assistant Registrar

To

TO BE SUBSTITUTED TO THE ORDER ALREADY DESPATCHED ON 03.02.2015

THE JUDICIAL MAGISTRATE, SANKARANKOVIL.

+1cc to MR.M.SHEIK ABDULLAH, ADVOCATE IN SR : 12912/15.

Ssl

SR : 30.01.2015 : 4p/4c

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msm 25.03.2015 p4/3c