



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2015

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

Cr1.R.C. (MD) No.121 of 2015

R.Rajagopal

..Petitioner/Defacto complainant

Vs.

1.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar,
Virudhunagar District.

.. 1st petitioner/Complainant

2.R.Manjula

3.R.Kandakumar

..2nd & 3rd Respondents/Accused 1 and 2

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 06.02.2015 made in Cr.M.P.No.9406 of 2014 on the file of the learned Judicial Magistrate No.2, Virudhunagar and to set aside the same and allow this revision petition and consequently, restore the case to file, proceed in accordance with law.

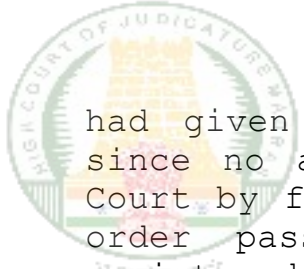
For Petitioner : Mr.P.Mahendran

For R-1 : Mr.C.Ramesh,

Additional Public Prosecutor

ORDER

It is the case of the petitioner that the second respondent, who is also related to him had borrowed a sum of Rs.2,50,000/- and executed a promissory note on 29.07.2011. The petitioner was repeatedly demanding the second respondent to pay back the amount with interest and it was evaded by her and some times through her son, the second respondent used to threatened him and at one point of time, she told that unless he executed a gift deed in respect of the property at Gopalapuram, she won't pay back the amount. It is the further case of the petitioner that on 23.07.2013 when the petitioner was standing in front of his house, the second respondent came and abused him by using filthy words and also told him that she will not pay back the amount borrowed under promissory note and she can do whatever she likes and if she does not pay back the amount, she will kill him. The third respondent, who is the son of the second respondent also used to threatened him over phone. The petitioner in this regard



had given a complaint to Virudhunagar East Police Station and since no action was taken, he was constrained to approach this Court by filing Crl.O.P(MD)No.1440 of 2014 and in pursuant to the order passed by this court on 18.02.2014, the said police registered a case in Crime No.495 of 2013 for the commission of offences under Sections 420, 294(b) and 506(i) of I.P.C on 24.10.2013. The first respondent police after investigation, has filed a final report on 29.03.2014 closing the case as 'mistake of fact'.

2. The petitioner filed a protest petition on the file of the Court of the learned Judicial Magistrate No.II, Virudhunagar, who vide order dated 04.12.2014, has treated the said protest petition as private complaint and thereafter conducted enquiry. The petitioner examined himself as P.W.1 and also examined one Rajesh and Alagar as P.Ws.2 & 3 to substantiate his case. The Court of learned Judicial Magistrate No.II, Virudhunagar after taken into consideration, the sworn statements of P.Ws.1 and 2, has found that the matter is purely of civil in nature and also placed reliance on the judgment of the Honourable Apex Court reported in (2012) 1 MLJ (Crl.) 393 (SC) (*Thermax Ltd. & Others v. Johny & others*) and found that the witnesses examined have not cogently spoken about the same and having found that there is no prima facie case made out for taking cognizance of the private complaint, has dismissed the petition vide impugned order, dated 06.02.2015 and aggrieved by the same, the present revision is filed.

3. The learned counsel for the petitioner would vehemently contend that the second respondent though his relative has evaded the payment due and payable under the promissory note executed by her and though the petitioner has made repeated efforts to get back the amount, the second respondent adopted dilatory tactics and at one point of time she told that he should execute a deed of gift settlement in respect of the property at Gopalapuram and also through her son, she made number of threatening telephone calls. Sworn statements recorded in support of the complaint would prima facie disclose the commission of offence and hence the impugned order passed by the lower Court declining to take cognizance of the private complaint is not sustainable in law and prays for interference.

4. In support of his submission, he has also placed reliance upon the judgment rendered by the Patna High Court in Criminal Miscellaneous No.1231 of 2011 dated 17.05.2013, wherein it has been held as follows:

"Para-21, Thus it is undoubtedly true that even after the police report indicates that no case is made out against the accused, the Magistrate can ignore the same and can take cognizance on applying his mind independently to the case. But in that situation, he has



two options: (i) he may not agree with the police report and direct an enquiry under Section 202 and after such enquiry take action under Section 203; (ii) he is also entitled to take cognizance under Section 190 Cr.P.C at once if he disagrees with the adverse police report but even in this circumstances, he cannot straightaway direct submission of the charge-sheet by the police."

5. It is the well settled position of Law that at the stage of taking cognizance of offence, the jurisdictional Court has only to see whether prima facie case and ingredients of the offence have been made out.

6. A perusal of the protest petition, which was treated as private complaint coupled with the sworn statements of the witnesses would disclose the fact that the matter is purely of civil in nature and the petitioner made attempts to give a colour of criminality to the same by using the process through police to recover the amount. It is also the case of the petitioner that right from 2012, the second respondent has evaded the payment due and payable and used his son/third respondent to make telephone calls and threatened him and only in the year 2013, he thought it fit to lodge the complaint. The trial Court has placed reliance upon the judgment rendered by the Honourable Apex Court in (2012) 1 MLJ (Crl.) 393 (SC) (cited supra) and rightly came to the conclusion that the matter in issue is purely of civil in nature and the ingredients of the offence have not been made out.

7. This Court on a perusal and scrutiny and appreciation of material placed before it, is of the view that there is no apparent error or infirmity in the reasoning assigned by the trial Court and finds no merits in this revision and therefore, the same is dismissed.

Sd/-

Assistant Registrar (Per. Admn)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.2, Virudhunagar.

2. Do through the Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur

3. The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar, Virudhunagar District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr. P. Mahendran, Advocate, SR.No.13131

pm

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