

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 02.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE **S.VIMALA****Criminal Revision Case (MD)No.352 of 2015**

K.Rengammal

.. Petitioner/Petitioner

Vs.

1.State rep. by
The Inspector of Police,
Naraikinar Police Station,
Thoothukudi.

2.Ayyalusamy

3.Murugan

4.Madathi

5.Ananda Sudharsan

.. Respondents/Respondents

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records relating to the order dated 29.06.2015 made in Cr.M.P.No.6975 of 2014 on the file of the Judicial Magistrate Court No.II, Kovilpatti in Crime no.29 of 2011 on the file of the first respondent police and set aside the same and consequently direct the first respondent to reinvestigate the matter in Crime No.29 of 2011 and file a final report.

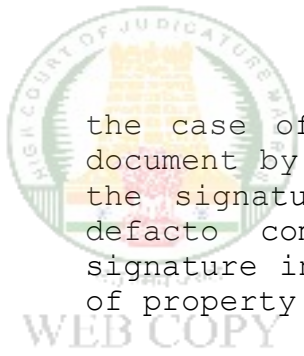
For Petitioner : Mr.T.Antony Arul Raj
For R1 : Mr.P.Kandasamy
Government Advocate (crl. side)

ORDER

This revision petition has been filed as against the order, dated 29.06.2015 made in Cr.M.P.No.6975 of 2014 by the Judicial Magistrate Court No.II, Kovilpatti.

2.The first respondent herein has registered a case against the accused under Sections 465, 468, 471 and 420 IPC.

3.The revision petitioner herein is the defacto complainant. It is



the case of the defacto complainant that the accused created a forged document by impersonating the defacto complainant and her sister and that the signature in the affidavit, dated 02.04.2008 is not that of the defacto complainant. It is further alleged that using the forged signature in the affidavit, dated 02.04.2008, there has been a conveyance of property on 29.04.2009.

4. When such a serious allegation is made against the accused person, the first respondent has chosen to close the investigation simply on the ground that a civil suit is pending.

5. No doubt, a civil suit is pending in O.S.No.176 of 2011 on the file of the District Munsif, Kovilpatti. But the prayer in the suit is for the relief of injunction. In a suit filed for injunction, the issue with regard to possession alone is relevant and in order to decide the legality of the possession, the issue regarding title would be an incidental one.

6. Even assuming that the suit is one for declaration of title, even then, the ultimate remedy would be civil in nature. The scope and objective of civil remedy is different from the scope of criminal remedy. Therefore, just because of the civil suit is pending, it is not a ground to refuse investigation, so far as the present case is concerned. However, when the closure report was filed by the concerned Court, the protest petition has been filed as per the direction issued by this Court in Crl.O.P. (MD)no.2685 of 2014.

7. The defacto complainant has once before moved this Court seeking direction to the first respondent herein to order further investigation and while considering such application, this Court has directed the defacto complainant to file a protest petition before the concerned Magistrate, if she is an aggrieved person. Accordingly, the defacto complainant has filed the protest petition.

8. It is the settled law that once a protest petition is filed, the same shall be treated as a private complaint. Instead of treating the protest petition as private complaint, the learned Magistrate has chosen to direct the defacto complainant to file a separate private complaint, which is incorrect and unwarranted. Pendency of the civil suit cannot curtail the power of the learned Magistrate under the Criminal Procedure Code.

9. Therefore, the order of the learned Judicial Magistrate, dated 29.06.2015 asking the defacto complainant to file a fresh private complaint is set aside. The Criminal Revision Petition is allowed. The learned Judicial Magistrate is directed to treat the protest petition as private complaint and to proceed further in accordance with law.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



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To

1.The Inspector of Police,
Naraikinar Police Station,
Thoothukudi.

2.The Judicial Magistrate Court No.II, Kovilpatti.

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

+1CC to Mr.T.Antony Arulraj Advocate Sr.No.51548

GJM/NGM/SS/11.9.15-2P-5C

Cr1.R.C. (MD) No.352 of 2015
02.09.2015