

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

(Orders Reserved on : 09.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1370 of 2011

and

M.P.No.1 of 2011

1. R.Krishnamurthy
2. Y.Navshath
3. Nazeer
4. G.Gunasekar Petitioners/Accused

Vs.

1. State Rep. by
Inspector of Police,
D.C.B. Vellore. Respondent/Complainant
2. K.Raju @ RajiProposed 2nd Respondent

(R-2 impleaded as per order of this
Court dated 01.06.2016
in Crl.M.P.No.4299 of 2016
in Crl.R.C.No.1370 of 2011)

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, praying to call for the records in C.C.No.108 of 2011 on the file of the learned Judicial Magistrate No.II, Vellore, and set aside the order of the learned Judicial Magistrate No.II, Vellore, made in Crl.M.P.No.1797 of 2011 in C.C.No.108 of 2011, dated 12.07.2011 and allow the above criminal revision case.

For Petitioners: Mr.P.Chandrasekar
for Mr.G.Jeremiah
For R-1 : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)
For R-2 : Mr.M.Satish Kumar
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ORDER

This Criminal Revision Case is directed against the order dated 12.07.2011 passed by the learned Judicial Magistrate No.II, Vellore, in Crl.M.P.No.1797 of 2011 in C.C.No.108 of 2011, dismissing the discharge petition filed by the petitioners/Accused 1 to 4.

2. The learned counsel appearing for the petitioners would mainly contend that the second respondent/de facto complainant has given a complaint against the petitioners/accused 1 to 4 and they were charged with Sections 120(B), 467, 468, 471 and 420 IPC. The petitioners have filed a petition for discharge in C.M.P.No.1797 of 2011 before the learned Judicial Magistrate No.II, Vellore. The learned Magistrate had dismissed the said petition. As against the said dismissal order, the present criminal revision case is preferred by the petitioners before this Court.

3. On a reading of the grounds itself, it is admitted that the fourth petitioner had already been convicted for an offence under Section 138 of the Negotiable Instruments Act in C.C.No.165 of 2008 by a judgment dated 20.06.2011 in respect of the very same set of facts. In this case, only against the same accused, the case was filed by the prosecution. In the above circumstances, for the same set of offence, the present case was filed. Hence, the order of the trial Court has to be set aside and the criminal revision case has to be allowed.

4. The learned Government Advocate (Crl.Side) appearing for the first respondent would contend that in the present case, the petitioners were not charged for the offence under Section 138 of the Negotiable Instruments Act. Hence, the question of double jeopardy will not arise. There is no infirmity or illegality in the order passed by the learned Magistrate and hence, the learned Government Advocate appearing for the first respondent prayed that the Criminal Revision Case may be dismissed.

5. The learned counsel appearing for the second respondent would contend that the petitioners have created false documents and the first respondent police investigated the matter and clearly found that offences under Sections 120(B), 467, 468, 471 and 420 IPC are made out and therefore, it is not at all in any way connected with Section 138 of the Negotiable Instruments Act. Hence, there is no infirmity or illegality in the order passed by the learned Magistrate and hence, the Criminal Revision Case may be dismissed.

6. In this case, on a reading of the affidavit filed by the fourth petitioner, it is seen that all the petitioners colluded to cheat the second respondent/de facto complainant and the de facto complainant was made to believe on the basis of a forged receipt that the fourth petitioner entered into an agreement to purchase an extent of 4.52 acres from one A.K.Jenthunbi, W/o. M.N.Mohamed Ismail. On the said representation, the de facto complainant had entered into an agreement of sale dated 06.06.2007 for the purchase of the said land for a sale consideration of Rs.1,47,00,000/- and paid an advance of Rs.25,00,000/-. Subsequently, when it came to light that the fourth petitioner did not have an agreement of sale from the owner of the land, a police complaint had been lodged before the Arcot Police station and the fourth petitioner had issued five cheques towards return of the advance sum of Rs.25,00,000/-. Since the cheques were dishonoured, the de facto complainant filed cases in C.C.No.165 of 2008, C.C.No.166 of 2008, C.C.No.167 of 2008 and C.C.No.168 of 2008 against the fourth petitioner for an offence under Section 138 of the Negotiable Instruments Act. Hence, it is a separate case.

7. Hence, the arguments of the learned counsel for the petitioners that in respect of the very same set of facts, the present case was filed by the prosecution and the petitioners are protected under Article 20(2) of the Constitution of India are not at all acceptable. The question of double jeopardy does not arise in this case. Therefore, there is no infirmity or illegality in the order passed by the learned Judicial Magistrate No.II, Vellore, in CrI.M.P.No.1797 of 2011 in C.C.No.108 of 2011. This Court finds no reason to interfere with the order of the learned Magistrate which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

8. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II,
Vellore.

2. The Inspector of Police,
D.C.B. Vellore.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.M.Sathish kumar Advocate sr 47969

+1 cc to M/s.G.Jermiah, P.Chandraseksar Advocate sr48143

dt 15/09/2016

Crl.R.C.No.1370 of 2011

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