

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.Nos.102 & 103 of 2016
and
Crl.M.P.Nos.733 & 734 of 2016

Chrome Leather Company Limited,
represented by its Manager Selvakumar,
No.7, C.L.C. Works Road,
Chrompet, Chennai - 600 044. ... Petitioner in both revisions

vs

1. Inspector of Police,
Metro Wing,
Crime Branch CID,
Chennai - 600 032.
2. Inspector of Police,
Central Crime Branch,
Team XXII, Egmore,
Chennai.
3. Quentin Dawson,
Power of Attorney Holder of George,
Joseph Chambers (Late),
No.4/350, Kennedy Valley,
Moovarasampet,
Chennai.
4. David Chambers,
S/o.George Joseph Chambers (Late),
Door No.5, 6th Street, Chamber Colony,
Chrompet, Chennai - 600 044. ... Respondents in both revisions

Criminal Revisions filed under section 397 r/w 401 of the Code of Criminal Procedure, against orders of learned Principal District Judge, Chengalpet, passed in Crl.M.P.No.3405 of 2015 in Crl.R.P.No.4 of 2014 and Crl.M.P.No.3028 of 2015 in Crl.R.P.No.5 of 2014 on 11.01.2016.

For Petitioner : Mr.N.R.Elango, senior counsel for
Mr.S.Ashok Kumar

For Respondents: Mr.C.Iyyapparaj,
Govt Advocate [Crl.side] [R1 & R2]

C O M M O N O R D E R

These revisions arise against orders of learned Principal District Judge, Chengalpet, passed in Crl.M.P.No.3405 of 2015 in C.R.P.No.4 of 2014 and Crl.M.P.No.3028 of 2015 in C.R.P.No.5 of 2014 on 11.01.2016.

2. Heard learned senior counsel for petitioner and learned Government Advocate [Crl.side] for respondents 1 and 2.

3. On complaints of the 3rd respondent, case in Crime No.304 of 2007 was registered for offences under Sections 420, 465, 466, 467, 468 r/w 471 and 120(B) IPC. and case in Crime No.305 of 2007 was registered for offences under Section 420, 465, 467, 468, 471 r/w 120(B) IPC. by the Central Crime Branch, Chennai on 20.06.2007. In a line, the complaints informed of wrong doings relating to the affairs of the petitioner company and its properties. On completion of investigation final reports were filed informing both the complaints to be "mistake of fact". Third respondent/defacto complainant initially moved protest petitions. The final reports came to be accepted under orders dated 23.12.2009. The investigation agency has moved petitions under Section 173(8) Cr.P.C. in the year 2013 and on 26.07.2013. The same were considered in Crl.M.P.Nos.3405 and 3028 of 2015 and under orders thereunder, learned Judicial Magistrate No.1, Chengalpattu was pleased to dismiss such petitions. There against, the investigating agency moved Crl.R.C.Nos.4 and 5 of 2014 before Principal District Judge, Chengalpattu. The petitioner sought to implead itself in such revisions. Under orders in Crl.M.P.Nos.3045 and 3028 of 2015 dated 11.01.2016, such petitions were dismissed. Aggrieved, petitioner has moved the present revisions.

4. In dismissing Crl.M.P.Nos.4 and 5 of 2014, learned Principal Sessions Judge, Chengalpet has expressed the view that it was uncertain, who would be arrayed as accused in the case upon further investigation, that there was no direct link between the company and the offences and the prosecution case was that property of the company and temple lands have been misappropriated. There had been no averments of the company being an offender and therefore, provision of Section 401(2) Cr.P.C., which stipulated that no order under the said Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence, did not apply. The petitioner company had been represented by its Managing Director and the Court below also informed that no authorisation to present the petition on behalf of the company had been produced before it.

5. Learned senior counsel for petitioner referred to the decision of this Court in Crl.O.P.No.19104 of 2014 dated 23.07.2014 wherein while dismissing the petition moved by de facto complainant seeking a direction to register a case on the basis of his complaint dated 27.03.2014, this Court has taken note of the submission made on behalf of the State that (i) the petitioner (complainant) has no locus standi to maintain any complaint; (ii) He has filed successive petitions raising similar allegations before different forums and suffered adverse orders; and (iii) the petition came to be filed by suppressing the fate of the earlier proceedings. This Court held, "having regard to the facts as stated above, this Court is of the considered view that the present petition filed by the petitioner is without any right to do so and is not at all maintainable and is hence liable to be dismissed." Learned senior counsel submitted that having filed final reports in both cases informing the cases to be 'mistake of fact' which were accepted by the Magistrate on 23.12.2009, State, after seven long years moved petitions u/s.173(8) Cr.P.C. towards further investigation.

6. Learned senior counsel also referred to the decision of this court in K.Gokul Murugesan and another v. State of Tamil Nadu and others [2008 (4) MLJ 513] to submit that therein the wrong doings of the complaint party towards grabbing temple lands had been recorded. This Court, under orders in Crl.O.P.No.8632 of 2011 dated 26.04.2011 wherein the de facto complainant had sought a direction for registration of case, has observed as follows:

"3. Though it is in a rare case that we would hear a party against whom accusation is made in the complaint, we find useful information furnished by such party that on the very same allegation as now made by the petitioner, a complaint was preferred on 18.01.2007 and the same has resulted in registration of Crime No.305 of 2007 by the Chennai City Central Crime Branch for offences under Sections 420, 465, 467, 468, 471 IPC r/w. 120(B) IPC. On completion of investigation, the case in such crime number was referred as a mistake of fact. Against such filing of the Investigating Agency, the petitioner has moved a protest petition in Crl.M.P.No.4148 of 2007 before the Judicial Magistrate No.I, Poonamallee, but has not pursued the same. It is informed that such petition was dismissed on 23.12.2009.

4. This Court finds that the present complaint of the petitioner is substantially the same as that informed in the case which was investigated in Crime No.305 of 2007. Hence, this petition would stand

dismissed on the sold ground that the petitioner has not informed of the earlier proceedings of similar nature and the outcome thereof. Consequently, the connected miscellaneous petition is closed."

7.The Hon'ble Supreme Court in Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel ((2012) 10 SCC 517) held

"Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of proceedings until issuance of process under Section 204, yet in 401(2) Cr.P.C. provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence."

8.The Expressions "prejudice", "other person" and "in his own defence" has also been explained as follows:

"47.1 Black's Law Dictionary (8th Edn.) explains "prejudice" to mean damage or detriment to one's legal rights or claims. Concise Oxford English Dictionary (10th Edn., Revised) defines "prejudice" as under:

"Prejudice. - n (1) preconceived opinion that it is not based on reason or actual experience. >> unjust behaviour formed on such a basis. (2) chiefly Law harm or injury that results or may result from some action or judgment >> v. (1) give rise to prejudice in (someone); make biased. (2) cause harm to (a state of affairs)."

47.2 Webster Comprehensive Dictionary (International Edn.) explains "prejudice" to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination ... detriment arising from a hasty and unfair judgment; injury; harm.

47.3 P.Ramanatha Aiyar; the Law Lexicon (The Encyclopaedic Law Dictionary) explains "prejudice" to mean injurious effect, injury to or impairment of a right, claim statement, etc.

47.4. "Prejudice" is generally defined as meaning "to the harm, to the injury, to the disadvantage of someone". It also means injury or loss.

47.5. The expression "other person" in the context of Section 401(2) means a person other than the accused. It includes suspects or the persons alleged in the

complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

47.6. The expression "in his own defence" comprehends, inter alia, for the purposes of Section 401 (2), in defence of the order which is under challenge in revision before the Sessions Judge or the High Court."

9. In a revision filed before the Court below to re-open cases in Crime No.304 of 2007 and 305 of 2007 towards further investigation and at the instance of a party (respondent State) which had earlier informed and reiterated that there were no merits in the de facto complainant's case, all that the petitioner/company seeks to do is to place materials available at its hands towards proper consideration of the petitions seeking further investigation. As stated supra, both complaints related to the affairs and property of the company. Further investigation could well visit the petitioner company with consequences, desirable or otherwise. The purpose behind seeking to implead itself is to sustain the finding of the Judicial Magistrate disallowing further investigation. Application of the decision of the Supreme Court in Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel ((2012) 10 SCC 517) would lead to the conclusion that the petitioner company answers the description of 'other person' in Section 401(2) Cr.P.C. which 'in its own defence' seeks to defend the order of the Judicial Magistrate disallowing further investigation. In the aforesaid circumstances, permitting it to participate in the revision proceedings before Court below would be in keeping with the spirit underlying Section 401(2) Cr.P.C.

10. These Criminal Revisions shall stand allowed. The orders of learned Principal District Judge, Chengalpet, passed in CrI.M.P.No.3405 of 2015 in C.R.P.No.4 of 2014 and CrI.M.P.No.3028 of 2015 in C.R.P.No.5 of 2014 on 11.01.2016, shall stand set aside. Such petitions shall stand allowed. Consequently, connected miscellaneous petitions are closed.

gm

s/d-

Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge,
Chengalpet.

2. The Inspector of Police,
Metro Wing,
Crime Branch CID,
Chennai - 600 032.

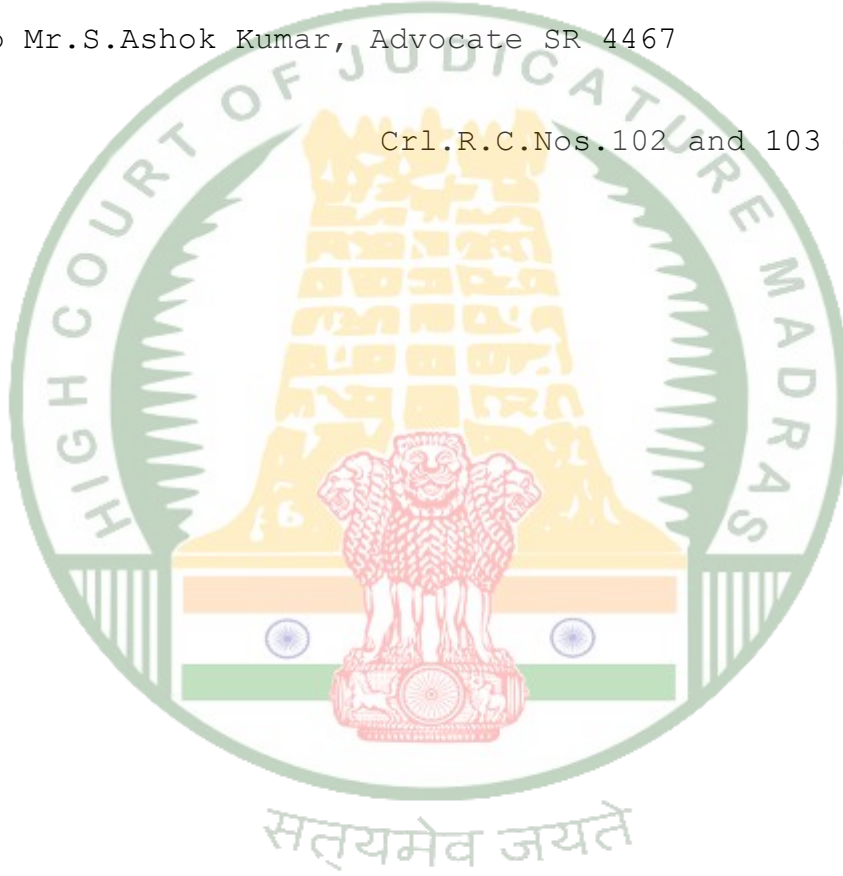
3. The Inspector of Police,
Central Crime Branch,
Team XXII, Egmore,
Chennai.

4. The Public Prosecutor,
High Court, Madras.

+ 2 ccs to Mr.S.Ashok Kumar, Advocate SR 4467

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Crl.R.C.Nos.102 and 103 of 2016



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