

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2016

(Orders Reserved on : 24.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.381 of 2016

H.Nemichand

... Petitioner/Defacto
complainant

Vs.

The Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 8.

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 26.08.2014 passed by the III Metropolitan Magistrate, George Town, Chennai, in Crl.M.P.No.1047 of 2014 in Crl.Cr.No.510 of 2010 on the file of the respondent police.

For Petitioner : Mr.S.Arivazhagan
For Respondent : Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is directed against the order dated 26.08.2014 passed by the learned III Metropolitan Magistrate, George Town, Chennai, in Crl.M.P.No.1047 of 2014 in Crl.Cr.No.510 of 2010 on the file of the respondent police.

2. The learned counsel appearing for the petitioner would mainly contend that the present petitioner, who is the de facto complainant, was cheated by one Anil Kumar Agarmal and Sunil Kumar Agarwal to the tune of Rs.3 Crores by committing theft of property. Hence, the petitioner/de facto complainant has filed a protest petition before the learned III Metropolitan Magistrate, George Town, Chennai, praying to direct the Inspector of Police, Central Crime Branch, Egmore, Chennai, to file charge sheet against the said Anil Kumar Agarmal and Sunil

Kumar Agarwal. But, the Investigating Authority, without proper investigation, filed the closure report. The learned III Metropolitan Magistrate, George Town, Chennai, without considering the protest petition filed by the petitioner, erroneously recorded the closure report filed by the Investigating Authority, and erroneously dismissed the said petition. Hence, the learned counsel for the petitioner prayed that the order passed by the learned Magistrate may be set aside and the matter may be referred to the Investigating Authority for conducting further investigation.

3. The learned Government Advocate (Crl.Side) would contend that in this case, the Investigating Authority, after conducting thorough investigation, filed the final report and the learned Magistrate also, after considering the materials and after hearing the petitioner, passed the order. Hence, there is no infirmity or illegality in the order passed by the learned Magistrate and therefore, the learned Government Advocate prayed that the Criminal Revision Case may be dismissed.

4. In this case, the present petitioner has filed a complaint before the respondent police alleging that the accused viz., Anil Kumar Agarmal and Sunil Kumar Agarwal have cheated him to the tune of Rs.3 Crores and the respondent police registered a case in Crime No.510 of 2010 for the offences under Sections 379, 406 and 420 r/w.34 IPC. After registering the case, the respondent police has not taken any steps to investigate the case and submitted the final report. Therefore, the petitioner has filed a petition in Crl.O.P.No.18757 of 2012 before this Court seeking for a direction to the respondent police to investigate the case and file final report based on Crime No:X Crime No.510 of 2010. When the said petition came up before this Court, the learned Government Advocate (Crl.Side), submitted that the investigation in the above said crime number is over and charge sheet will be filed within a period of six weeks and therefore the said Crl.O.P.No.18757 of 2012 was disposed of by this Court, recording the submission made by the learned Government Advocate. The petitioner submits that after the said order was passed, more than 1 year and 7 months elapsed. But, till date, no charge sheet was filed.

5. The operative portion of the order passed by the learned III Metropolitan Magistrate, George Town, Chennai, reads as follows:-

"Then, from this Court, intimation notice was sent to this petitioner on 25.03.2014 and directed him to appear before this Court on 4.4.2014 at 10.30 a.m. But the petitioner failed to appear before this Court on 4.4.2010 and hence FIR closed as per the report of concerned police as action dropped. After

that this petitioner filed this Protest petition on 23.5.2014 and direct the respondent to file charge sheet. On verifying the case records it is found that already the FIR was closed by the respondent police as action dropped.

The petitioner has not filed the original document even along with this Protest Petition. The complaint was given in respect of the business transaction between the petitioner and respondent 2 and 3. As per the 161 statement of Nemichand it is stated that the R2 and R3 given cheque in respect of the property on 8.3.2008 to 6.11.2008, but the cheques were returned as dishonored. If the cheques were dishonored, it is left to the petitioner to file case u/s 138 N.I. Act. In spite of the dishonor of the cheques as stated above the petitioner gave the property to the respondent 2 and 3 which were kept in godown and it was also not stated in the complaint also in the 161 statement of petitioner that in which date the properties were returned. But the petitioner states that on 12.8.2012 only he came to know that the properties were given back to respondent 2 and 3. For these transactions also the petitioner did not produce any document along with this Protest petition. In this Protest petition the petitioner has not sought any direction for further investigation but the Petitioner sought for direction to file Charge Sheet. But the FIR was closed as action dropped on 28.9.2012 itself. Hence in the interest of justice, this Petition is dismissed accordingly. Result : Petition dismissed."

6. On a perusal of the order, it is clear that the petitioner has not filed any original documents along with the protest petition and also, the cheques issued to the petitioner were dishonored and the petitioner has right to file a case under Section 138 of the Negotiable Instruments Act for the dishonor of the cheques. Now, the petitioner is ready to furnish documents to the Investigating Authority. The trial Court mainly relied upon the dishonor of cheques. Even though the petitioner is entitled to file a case under Section 138 of the Negotiable Instruments Act for dishonor of cheques, it will not be a bar for the petitioner to proceed with the IPC offences. Hence, the order of the learned III Metropolitan Magistrate, George Town, Chennai, rejecting the protest petition, is erroneous and the same is liable to be set aside. Further, since the petitioner is willing to produce original documents before the Investigating Authority, this Court is inclined to set aside the said order of the learned Magistrate.

7. In the result, this Criminal Revision Case is allowed and the order passed by the learned III Metropolitan Magistrate, George Town, Chennai, in CrI.M.P.No.1047 of 2014 in CrI.Cr.No.510 of 2010, on 26.08.2014 is set aside. The Investigating Authority is directed to proceed with the further investigation and file a final report, according to law, within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to produce the relevant original documents and co-operate for enquiry.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The III Metropolitan Magistrate,
George Town, Chennai.
2. The Chief Metropolitan Magistrate Egmore
Chennai
3. The Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 8.
4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.Arivazhagan Advocate sr 48582

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