IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.935 of 2010

Pushpalatha … Petitioner

Vs.

1. State rep. by
   The Inspector of Police,
   Central Crime Branch,
   Egmore, Chennai- 8.

2. Ashok … Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order of dismissal of the protest petition filed by the petitioner in the trial Court in M.P.No.116 of 2010 in X.Cr.No.154 of 2010 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.C.Arun kumar

For respondents : Mrs.M.F.Shobana,
Gov. Adv. (Crl.S.) for R1

: Mr.G.Mohanakrishna, for R2

O R D E R

The Criminal revision has been filed challenging the order passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai, dismissing the protest petition filed by the petitioner in Crl.M.P.No.116 of 2010 dated 07.07.2010.

2. The petitioner is the complainant in Crime No.154 of 2009 on the file of Central Crime Branch, Egmore. The above complaint has been given by the petitioner on the ground that a house in Door No.7, Raja Pather Street, Pandi Bazar, Chennai – 17, is a joint family property belonging to the petitioner and her two sisters and one brother. The said property has been sold to the accused through a broker, after they entered into a sale agreement for a total sale consideration of Rs.75 lakhs and each of their share comes to Rs.18 lakhs. According to the

complainant, the accused has given Rs.18,00,000/- to her brother and one sister, but, only Rs.3,00,000/- has been given to the petitioner/complainant and her another sister, by name, Rajalakshmi. Subsequently, when they demanded money, the accused refused to pay the balance of sale consideration. Thereafter, the petitioner came to know that the property has been sold and the accused had forged signature of the petitioner in a bearer cheques and withdrawn a sum of Rs.18,00,000/- from the Punjab National bank. Hence, she has given a complaint. Based on the said complaint, a case has also been registered in Crime No.154 of 2009 by the first respondent, Central Crime Branch, Chennai. After investigation, the said complaint was closed by the first respondent as 'Mistake of Fact' and filed a final report before the XI Metropolitan Magistrate Court. On receipt of the final report, notice was sent to the complainant and after receipt of notice, the complainant filed a protest petition and sought for further investigation.

3. The learned XI Metropolitan Magistrate dismissed the petition holding that during investigation, the first respondent police, after obtaining the specimen signatures of the complainant had sent the same to the Handwriting Expert Opinion for comparing the signature found in the cheques as well as with that of the account opening form submitted by the complainant in the Indian Overseas Bank, T.Nagar Branch, which shows that the specimen signature of the complainant tallys with the signature found in the cheques and also tallys with the signature found in the account opening form submitted by the complainant to the Indian Overseas Bank. In the above circumstances, it has been held that after receipt of the entire cheque amount, the complainant demanded more amount in view of the sudden increase in price of the property and when the purchaser refused to give the amount, the complaint has been filed. The learned Metropolitan Magistrate after being satisfied with the investigation, accepted the final report and dismissed the protest petition filed by the petitioner. Challenging the same, the present revision has been filed by the petitioner.

4. The learned counsel for the petitioner would submit that the first respondent did not conduct the investigation properly, and without sending the sale deeds along with the disputed cheques for comparison, the first respondent has obtained the account opening form submitted by the petitioner from the Indian Overseas Bank, T.Nagar, Chennai and also the withdrawal slip of the petitioner. Apart from that, the learned Metropolitan Magistrate, while considering the petitioner's application, failed to consider the scope of Section 311(a) Cr.P.C and without obtaining any specimen signature from the complainant, has mechanically accepted the final report

submitted by the first respondent and dismissed the petition. The learned counsel also relied upon the judgment of this Court in Crl.O.P.Nos.12751, 12754 to 12760 of 2014 dated 06.08.2014.

5. Per contra, learned counsel appearing for the first respondent submitted that during investigation, the first respondent examined many witnesses and all the witnesses have categorically stated that the amount has been paid to the complainant. Even the brother and sisters of the petitioner have categorically stated that all the amount has been paid to the complainant and other co-sharers. Apart from that, while sending the document for comparison, the first respondent requested the complainant to provide documents containing the signature of the petitioner during the relevant period, but the complainant avoided to produce those documents. In the above circumstances, the first respondent has approached the Indian Overseas Bank, T.Nagar Branch, where the petitioner had an account and obtained the account opening form signed by the complainant and also a withdrawal slip signed by her and sent it for comparing the signature found in the cheque. A report has also been received from the Forensic Department stating that the signature found in the cheques and other documents are similar in nature. Based on the statement obtained from the other co-owners and also based on the opinion of the handwriting expert, the first respondent came to the conclusion that there was no forgery as alleged by the complainant. Hence, closed the complaint and filed a negative final report.

6. Learned counsel for the second respondent submitted that the complainant received the entire sale consideration. Even the serial numbers of cheques received by the complainant itself has been mentioned in the sale deed and the petitioner has also specifically admitted that they have received the cheques. Subsequently, when there was a increase in price of the property, the petitioner and her husband, who is also an ex-police officer demanded more money from the purchaser. When the purchaser refused to pay the amount, with a malafide intention, the present complaint has been filed. Now the other co-owners, namely, brother and sisters of the petitioner admitted the payment of entire sale consideration. In the above circumstances, they have not committed any crime.

7. I have considered the above submissions and perused the records carefully.

8. On a perusal of the sale deed executed by the complainant/petitioner and other co-owners, it has been specifically mentioned that the petitioner has received three cheques and the cheque numbers and the date of the cheques were also mentioned in the sale deed and the petitioner also admitted

the cheques. Subsequently, after filing the complaint, the first respondent has obtained statement from the other co-owners, namely, brother and sisters of the petitioner, wherein they have also admitted the receipt of the entire sale consideration. Since the signature found in the cheques was disputed by the complainant, the first respondent decided to send the disputed cheques for comparison to the handwriting expert along with the admitted signature. For that purpose, when they asked the petitioner/complainant to give documents containing the signature of the complainant during the relevant period, they refused to do so. Hence, they approached the Indian Overseas Bank, T.Nagar Branch, where the petitioner has account and they obtained application form filed by the petitioner for opening the account in the bank and also the withdrawal slips submitted by the petitioner/complainant for withdrawal of money from that bank. The signature found in the above form and the withdrawal slips were not disputed by the petitioner/complainant. The above admitted and disputed signatures were sent to the handwriting expert and the Handwriting Expert has given a opinion that the admitted and the disputed signatures are same and based on that and the statements of other witnesses, the first respondent filed the final report. Hence, I find no infirmity in the investigation conducted by the first respondent.

9. So far as the contention of the learned counsel for the petitioner that the Magistrate has not followed the procedure contemplated under Section 311(a) of Cr.P.C. is concerned, the said procedure is not required in the present case. The petitioner has not disputed the signature found in the application form submitted by the petitioner while opening the account in the Indian Overseas Bank and also the signature found in the withdrawal slip, which was sent for comparison along with the disputed signature, in the absence of any dispute regarding the admitted signature found in the form, sent for comparison, there is no necessity for following the procedure under Section 311(a) of Cr.P.C. Hence, the judgment relied upon by the petitioner is not applicable to the facts of the present case on hand. Hence, I find no illegality or irregularity in the order of the learned XI Metropolitan Magistrate, Saidapet. Hence, this criminal revision case deserves to be dismissed.

10. Accordingly the Criminal Revision Case is dismissed.

sd/
Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

mrp

To

1. XI Metropolitan Magistrate Court,
   Saidapet, Chennai.

2. The Inspector of Police Central Crimp Branch,
   Egmore Chennai.

3. The Chief Metropolitan Magistrate Egmore,
   Chennai.

4. The Public Prosecutor,
   High Court, Madras.

+1cc to M/s.J.Franklin,Advocate SR.No.73760.

Crl.R.C.No.935 of 2010

RP(CO)
GN(08/02/2017)