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

ORDERS RESERVED ON: 15.12.2015

ORDERS DELIVERED ON: 04.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Cr1.R.C. (MD) .No.424 of 2015

S.Indra : Petitioner/Complainant

Vs.

The State
Rep by the Inspector of Police,
Devakottai Taluk Police Station,
Devakottai. : Respondent/Respondent

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order dated 30.04.2013 in Crime No.355 of 2011 on the file of the Judicial Magistrate, Devakottai and set aside the same.

For Petitioner : Mr.S.Ravi
For Respondent : Mr.P.Kannithevan
Government Advocate(crl.side)

ORDER

The petitioner/complainant has preferred the instant Criminal Revision Petition before this Court as against the order dated 30.04.2013 in Crime No.355 of 2011 passed by the LearnedMagistrate, Devakottai.

2.The Learned Magistrate, Devakottai, while passing the impugned order dated 30.04.2013 in Crime No.355 of 2011 had among other things, at paragraph No.7, *inter alia* observed that "... in the present case, no direct evidence were produced as regards the fact that suspected accused Gowry had stolen the gold jewels of the complainant and it comes to be known that the present case was filed against the accused based on suspicion and under the said circumstance, if an offence of theft was levelled against a person based on suspicion, for taking the



case on file, prima facie, this Court had to look into as to whether necessary documents were submitted and while doing, this Court opined that sufficient evidence/materials were not produced to inspire the confidence of the Court and came to be consequent conclusion that no prima facie documents were produced before the Court for taking the private complaint on file to try the offences under Sections 454 and 380 of IPC and resultantly dismissed the private complaint in terms of Section 203 of Cr.P.C."

3.Challenging the propriety, validity and legality of the order of the dismissal, dated 30.04.2013 in Crime No.355 of 2011 passed by the trial Court in dismissing the private complaint filed by the Revision Petitioner under Section 203 of Cr.P.C., the Learnedcounsel for the Revision Petitioner/complainant has filed the present Criminal Revision Petition contending that the impugned order is manifestly illegal, arbitrary and clearly unsustainable in the eye of Law.

4.The Learned counsel for the Revision Petitioner/complainant urges before this Court that the trial Court had failed to take into account the prima facie fact that the Revision Petitioner/complainant in her complaint had specifically named the accused and as such, the Respondent/police should have investigated the same in the manner known to law and failure to do so has resulted in serious miscarriage of justice.

5.Advancing his arguments, the Learned counsel for the Revision Petitioner/complainant proceeds to take a plea that when the Revision Petitioner/complainant pinpointed the accused, it is the duty of the Respondent/police to investigate and recover the stolen jewels and these vital aspects were not taken into account by the trial Court at the time of passing the impugned order in Crime No.355 of 2011 on 30.04.2013.

6.The Learned counsel for the Revision Petitioner/complainant takes a plea that the trial Court should have provided an opportunity to the petitioner/complainant to substantiate their claim and in fact, the trial Court on total misconception of facts and contrary to the well settled principles of Law had dismissed the private complaint. Expatiating his contention, Learned counsel for the Revision Petitioner/complainant projects an argument that when the case itself was in initiation stage, the trial Court came to the wrong conclusion that no other witness was examined and in fact, the trial Court should have provided opportunity to the Revision Petitioner/complainant to substantiate her case.

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7.Lastly, it is the submission of the Learned counsel for the Revision Petitioner/complainant that the trial Court should



not have gone into the merits and demerits of the case at the stage of issuance of summons. To lend support to the contention that the object of an inquiry under Section 202 of Cr.P.C. is to find out whether there is prima facie case against the accused and at that stage, the Learned Magistrate is called upon to examine as to whether there are sufficient ground for proceeding further in the subject matter in issue, the Learned counsel for the Revision Petitioner relies on the decision of the Hon'ble Supreme Court in **S.K.SINHA, CHIEF ENFORCEMENT OFFICER v. VIDEOCON INTERNATIONAL LTD AND OTHERS** reported in **(2008) 2 SCC 492**.

8.The Learned counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in **NUPUR TALWAR v. CBI** reported in **(2012) 2 SCC 188**, at page 189, whereby and where under, it is observed and held as follows:-

"The Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may prima facie find out whether an offence has been made out or not. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record."

9.Also, in the aforesaid decision, it is held as follows:-

"The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance will come to the conclusion that there has been due application of mind by the Magistrate and it is a well-reasoned order. The order of the High Court passed on a criminal revision under Sections 397 and 401 Cr.P.C. (not under Section 482) at the instance of the appellant would also show that there has been a proper application of mind and a detailed speaking order has been passed. At this stage, the Court should exercise utmost restrain and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The superior courts should maintain this restrain



to uphold the rule of law and sustain the faith of the common man in the administration of justice. The Court should not interfere with the concurrent order of the Magistrate which is affirmed by the High Court."

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10. Per contra, it is the submission of the Learned Government Advocate that the Revision Petitioner filed a complaint before the Respondent on 31.07.2011 alleging that jewels of 23 ½ sovereign was stolen on 13.3.2011 by one Gowry, W/o. Mathialagan (Neighbour) and that the value of stolen jewel was Rs.2,30,000/-. As such, the Respondent had registered a case in Crime No.355 of 2011 under Sections 454 and 380 of IPC in and by which the said Gowry was arrayed as a suspected accused. Thereafter, the Respondent/police had conducted the investigation and obtained statements under Section 161(3) of Cr.P.C. during investigation of the aforesaid crime.

11. The Learned Government Advocate (crl. side) for the first Respondent contends that as per the statement of witnesses, viz., (1) Kuppachi ammal, W/o. Late Karuppaiah (2) Valliappan, S/o. Karuppaiah and (3) Kamatchi, S/o. Karuppaiah (relatives of the petitioner), they had all suspected the involvement of the said Gowry in the crime for the reason that she frequently visited the petitioner's house. In this regard, the stand of the Respondent is that there were no incriminating materials/evidence found at the place of occurrence to implicate the said Gowry. Also, the ingredients of said Gowry and the Revision Petitioner had not said anything fishy against the said Gowry should be investigated. Moreover, the Revision Petitioner gave contradictory replies during the inquiry as regards the vanishing of the gold jewels and that she had not co-operated with the investigation by giving necessary inputs.

12. It is represented on behalf of the Respondent/police that the Respondent filed a final report before the Learned Magistrate, Devakottai on 18.07.2012 in Crime No.355 of 2011 thereby closing the said case as 'undeducted'. Added further, on 'Referred Charge Sheet Notice' was also served on the Petitioner regarding the closing of the said case and that the Revision Petitioner filed a protest petition before the trial Court challenging the closure order in Crime No.355 of 2011. That apart, before the trial Court, the Revision Petitioner had deposed that 25 sovereigns of gold jewels were stolen, but in the First Information Report she had stated only 23 ½ sovereigns of gold jewels were stolen. Besides that, she had not adduced any evidence in order to corroborate the fact that the said jewels were actually owned by her.

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13. The Learned Government Advocate (crl. side) for the Respondent contends that in her evidence, the Petitioner had



admitted that her gold jewels were stolen on 12.03.2011, but she gave a complaint only on 31.07.2011 and for the delay of four months, she had not averred any satisfactory explanation. In short, no concrete evidence was produced on the side of the Revision Petitioner to substantiate her claim that the said Gowry was involved in the crime.

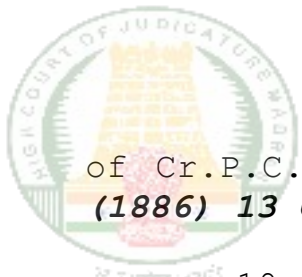
14.The Learned Government Advocate (crl. side) for the Respondent while winding up, submits that the impugned order in Crime No.355 of 2011 was passed by the trial Court on 30.04.2013 and that the Revision Petitioner had not averred any reason for approaching this Court with an inordinate delay of two years and that the impugned order passed by the trial Court on 30.04.2013 in Crime No.355 of 2011 is a legal one in the eye of Law.

15.This Court has heard the Learned counsel for the Revision Petitioner/complainant and the Learned Government Advocate (crl. side) for the Respondent.

16.It is to be noted that when a complainant is examined, then it adds to the credibility of the complaint at the threshold. After all, the complaint is the basis of whole proceedings. Therefore, it should pass the test of credibility by examining the complainant on oath as regards the facts of the complaint. Further more, the inquiry prescribed under Sections 200 to 201 of Cr.P.C. is made for finding out the truth or falsity of the complainant, i.e. for finding out whether there is evidence to support the complaint with a view to justify the issue of process, and not where there is sufficient material/ground for conviction.

17.It is to be borne in mind that once the Learned Magistrate proceeds on the basis of the original complaint, then he is to examine on oath the complainant and his witnesses under Section 200 of Cr.P.C. and thereafter, must hold an inquiry himself or direct the inquiry to be held by a police officer, as per Section 202 of Cr.P.C. It is to be remembered that the examination of the complainant on solemn affirmation of any other witnesses produced by the complainant cannot be said to be a condition precedent for taking cognizance, in the considered opinion of this Court.

18.The purpose of examination of the complainant is to ascertain whether the complaint is frivolous or vexatious or a justifiable one in the eye of Law. The Learned Magistrate is duty bound to receive the complaint and after examining the complainant, is to proceed further in the manner known to Law and in accordance with Law. Further more, the Learned Judicial Magistrate is bound to examine the complainant and then he can either issue summons to the accused or order an inquiry under Section 202 of Cr.P.C. or dismiss the complaint under Section 203

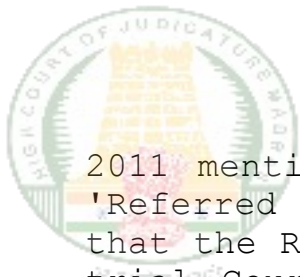


of Cr.P.C. as per decision in **UMER ALI v. SAFER ALI** reported in **(1886) 13 Cal 334**.

19. It is to be pertinently pointed out that the legal position is that the Learned Judicial Magistrate in Law should not act as mere spectator, but when he is not satisfied that cognizance cannot be taken by mere examination of the complainant/his witnesses in terms of the ingredients of Section 200 Cr.P.C. then he is obliged to proceed further and conduct an investigation or inquiry under Section 202 of Cr.P.C. It is not obligatory on the part of the Learned Magistrate to examine each and every witnesses mentioned by the complainant in the 'List of Witnesses'. The examination of the witnesses is one of the power judicial discretions of the Learned Magistrate and it is not compulsory with a view to determine whether process is to be issued under Section 204 of Cr.P.C. or not. Even if the police had submitted a final report, the Learned Judicial Magistrate is not precluded from taking cognizance, if material on record makes out a case for that purpose, as per decision in **JAGADISH RAM v. STATE OF RAJASTHAN** reported in **AIR 2004 SC 1734**.

20. It cannot be brushed aside that a Judicial Magistrate in Law is free to reject the police report submitted under Section 169 of Cr.P.C. and act on the protest petition. However, this can be done by him only if the protest petition satisfies all the ingredients of a complaint, which is defined under Section 2(d) of Cr.P.C. In such a situation, the procedure to be followed is that a complaint case and statement under Section 200 of Cr.P.C. will have to be taken and then it is for the Learned Magistrate to decide how to proceed thereafter. In this connection, it is not out of place for this Court to make the relevant mention that a 'Protest Petition' ought to be dealt with in accordance with the provisions of Chapter XV of Cr.P.C. The Learned Judicial Magistrate is duty bound to follow the procedure prescribed under Section 202 of Cr.P.C. Once he treated the protest petition to be a complaint and started proceeding with a case as a complaint case, the non-compliance of Section 202 Cr.P.C. by the Learned Judicial Magistrate will vitiate his order of summoning the accused illegal and unsustainable in the eye of Law. Under Section 200 of Cr.P.C. no notice is envisaged to the accused and the protest petition till the Court take cognizance of the offences mentioned in the petition. When the matter has been referred to for investigation and report, in Law, the Magistrate is not justified in concluding that no case was made out on receipt of the report without providing an opportunity to the complainant.

21. In the instant case on hand, the Respondent/police after investigation had filed the final report before the Learned Judicial Magistrate, Devakkottai on 18.07.2012 in Crime No.355 of



2011 mentioning that the case was 'undeductable'. Also, that the 'Referred Charge Sheet Notice' was served on the Petitioner and that the Revision Petitioner filed the protest petition before the trial Court challenging the final report and an opportunity was provided to the Revision Petitioner/complainant to substantiate her case. Even after an opportunity being provided to her, the Revision Petitioner was not able to substantiate her claim made in the complaint.

22. In fact, the trial Court in the impugned order dated 30.04.2013 in Crime No.355 of 2011 had categorically averred that although the case occurrence took place on 12.03.2011 and the same being mentioned in the complaint yet the missing of the jewels was found out on the next day viz., on 13.03.2011 when she opened the Bureau and about this in the complaint although it was made mentioned of in her sworn statement, she had stated that the jewels were missing on 16.03.2011 and further, though the occurrence took place on 12.03.2011, the complaint was lodged before the police on 31.07.2011 nearly after a lapse of four months. For the delay in lodging the complaint before the police, although a reason was assigned that the said delay was due to the conduct of panchayat with the help of elders. For the said conduct of Panchayat, no witnesses were examined on behalf of the complainant in this regard and as such, the trial Court had not accepted the reason for the delay in filing of complaint.

23. Apart from the above, the trial Court had opined that only on suspicion but the the complaint was lodged against the accused (Gowry), for which, no prima facie materials were available so as to inspire its confidence.

24. In the light of forgoing elaborate quantitative and qualitative discussions and also this Court taking note of the entire gamut of the attendant facts and circumstances of the present case in an encircling manner, unhesitatingly holds that the view taken by the Learned Judicial Magistrate, Devakottai on 30.04.2013 in Crime No.355 of 2011 in dismissing the private complaint filed by the Revision Petitioner/complainant does not require any interference in the hands of this Court sitting in revision. Consequently, the Criminal Revision Petition fails.

25. In the result, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar

/True Copy/



To

1.The Judicial Magistrate, Devakottai.

2.The Inspector of Police,
Devakottai Taluk Police Station,
Devakottai.

+1cc to Mr.J.Anandkumar,Advocate Sr.No.224

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AA/SKS-RR/28.01.2016/8p-4c

Pre-Delivery Order made in
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