



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2016

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

C.R.L.RC(MD) No.43 of 2013

WEB COPY

Sathavu Pandian

... Petitioner

-vs-

1.Kalyani

2.Karuppaiyee

... Respondents

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the order passed by the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, in Cr.M.P.No.8606 of 2012, dated 06.10.2012, and set aside the same.

For Petitioner : Mr.G.Karuppasamy Pandian

For Respondents : Mr.T.Antony Arul Raj

for Mr.G.R.Swaminathan for R1

No appearance for R2

ORDER

The complainant in a private complaint case aggrieved by the dismissal of his private complaint in CrI.M.P.No.8606 of 2012 has directed this revision.

2. The revision petitioner is the husband of the 1st respondent and son-in-law of the 2nd respondent herein. It is alleged that certain unidentified persons have slapped him at the place of occurrence. When questioned, they have stated to have told him that they were sent by the first respondent as mercenaries.

3. The learned Magistrate, considering the allegations in the complainant's sworn statement, having found absence of a *prima facie* case, dismissed the complaint.

4. The learned counsel for the petitioner contended that the approach of the Magistrate is not in accordance with law. He has not viewed the matter in proper perspective. At the stage of enquiry, under Section 202 Cr.P.C., the learned Magistrate could find that there is any ground to proceed further. He cannot shift the evidence. He cannot consider the probative value of the evidence. Thus, the learned Magistrate has fell into error. In support of his contentions, he has cited **P.Manj v. Ganeshkumar [(2016) 2 MLJ (CrI) 471]**. He stressed emphasis on Para No.12 in the said Judgment.

5. On the other hand, the learned counsel for the first respondent would support the impugned order. He would submit that the impugned order is not flawed. The learned Magistrate has considered the entire materials in totality and found that there is no basis to proceed further. And the decision cited is not applicable to the facts of this case.

<https://hcservices.ecourts.gov.in/hcservices/>

6. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.



7. A written complaint, constituting allegations containing commission of offence, has to be filed under Section 200 Cr.P.C. Under Section 202 Cr.P.C., the learned Magistrate shall record the sworn statement of the complainant. Further, if any witnesses are produced by the complainant, they have to be examined. Upon consideration of the sworn statement and the documents produced, the learned Magistrate, if finds *prima facie* case or there is ground to proceed further, will summons to the accused under Section 204 Cr.P.C. Otherwise, he will dismiss the complaint under Section 203 Cr.P.C.

8. Issuing of summons to a person, under Section 204 Cr.P.C., is a serious matter, because it results in a person becoming an accused. No one is like to be an accused. There is no pride in being an accused. The Court must be very careful in making a person an accused. Ofcourse, at the stage of enquiry under Section 202 Cr.P.C., the probative value of the materials produced shall be considered nor shifting of evidence shall be done. But, there must be some base with concrete materials to proceed against a person an accused.

9. Now, in this case, the husband suspects his wife and her mother as root cause for an alleged occurrence. There must be some materials, ofcourse, taking it as a face value, it must present *prima facie* case. Merely based upon oral complaint, the Court must be very slow in making a person an accused. In certain circumstances, mere allegations in the sworn statement may not be sufficient to disclose a *prima facie* case.

10. Here is the case, where the revision petitioner suspects his wife and his mother-in-law for an alleged occurrence. Except this, there is no material. Except his this *ipse dixit*, there is nothing. It would be too dangerous to act upon such mere *ipse dixit* and make the revision petitioner's wife and his mother-in-law as accused persons. The Magistrate cannot mechanically, blindfoldly and simply act upon the mere sworn statement of the complainant and issue summons to the persons under Section 204 Cr.P.C., and make them accused.

11. So, viewing the matter from this perspective, we have to support the order of the learned Magistrate in dismissing the complaint of the revision petitioner.

12. In this view of the matter, this criminal revision fails and it is dismissed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To:

The District Munsif-cum-Judicial Magistrate No.I, Usilampatti.
+1cc to M/S.T.Antony Arulraj, Advocate in SR.No.29158

C.R.L.RC(MD) No.43 of 2013
08.06.2016