

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 1974 of 2016

ORDER:

Assailing the order dated 22.07.2016 passed in CrI.M.P. No.707 of 2016 on the file of the Additional Judicial Magistrate of First Class, Armoor, wherein and whereunder the complaint filed under Section 200 Cr.P.C., for the offences punishable under Section 120(B), 423, 424 IPC was dismissed on the ground that the matter is civil in nature, the present Revision is filed under Sections 397 and 401 of the Code of Criminal Procedure. In the said complaint, the informant sought for referring his case under Section 156(3) Cr.P.C., to the police. At that stage, the trial court passed the following order :-

"Perused the record. On perusal of the averments of the petition it appears that the matter is in civil nature. No document is filed to show the ownership of the complainant. Hence, returned."

2. Learned counsel for the petitioner mainly submits that the order passed by the learned Magistrate in returning the complaint is bereft of any reason and infact the documents filed along with the complaint show that the sale deed dated 09.03.2016 filed was not taken into consideration. The same is opposed by the learned Additional Public Prosecutor contending that the order under challenge warrants no interference.

3. An objection was raised by the learned Additional Public Prosecutor with regard to the disposal of the Revision at the stage of

admission without issuing a notice to the accused. He placed reliance on the judgment of the Apex Court in *Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others*¹. The said case may not apply to the case on hand as in the said case the complaint was dismissed at the stage of Section 203 Cr.P.C.

4. It would be appropriate here to extract the relevant paragraph of the order, which is as under :-

"53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan*¹, *Raghu Raj Singh Rousha*² and *A. N. Santhanam*³. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

5. In the instant case, the complaint was sought to be referred to police under Section 156(3) Cr.P.C., but the same was returned on the ground that no documents were filed to show the ownership of the complainant. A perusal of the averments in the complaint filed by the petitioner would show that A-1's father purchased land from Deshpande

¹ (2012)10 Supreme Court Cases 517

Dattarao and made non lay-out plots in the said land. A-1's father offered to sell plot No.3 in Sy.No.380 and 381 in the said non-lay out plots, as such the informant approached the father of the accused with L.W.1 and showed his intention to purchase the said plot. Accordingly, the said plot was sold to the informant and he paid a sum of Rs.3,300/- to the father of A-1, who also issued a receipt accepting the total sale consideration. L.W.1 is said to be the witness to the said transaction and L.W.2 is the scribe of the receipt. Thereafter the informant took possession of the said plot. The averments in the complaint also show that subsequently the father of A-1 executed a simple sale deed (Bainama) in favour of the informant before the witnesses. After the death of the father of A-1 in the year 2000, A-2 conspired with others and was trying to dispose of the informant's plot in favour of A-2 in a clandestine manner. The averments in the report also show that the accused persons having knowledge that the informant is the owner of the said plot, sold the plot to A-2 vide Doc.No.831/16. On coming to know about the same, the informant questioned A-1 but he is alleged to have stated that he is going to cancel the document No.831/16 and requested not to initiate any action. Hence, no report was given initially and subsequently when the attitude of the accused changed, the informant lodged a report before the police. As the police failed to take any action against the accused, the informant filed the present complaint before the trial court with a request to refer the same to police under Section 156(3) Cr.P.C.

6. Learned counsel for the petitioner placed on record the documents in support of his case more particularly the sale deed executed by Gyama Sailu, receipt dated 30.06.1987 and also the Bainama dated 12.12.1997. In view of the above, it cannot be said that no *prima-facie* case is made out against the accused.

7. Accordingly, the Criminal Revision Case is allowed and the order under challenge is set-aside and the learned Magistrate is directed to proceed further in accordance with law. Consequently, Miscellaneous Petitions pending if any in this Revision shall stand closed.

Dt: 08.09.2016
GM



JUSTICE C.PRAVEEN KUMAR