

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2017

(Orders reserved on 14.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1028 of 2011 &
MP.NO.1/11

Krishnamurthy ... Petitioner/Accused

.. Vs ..

1.State:Rep by
The Inspector of Police,
Central Crime Branch,
Team No.III
Egmore,Chennai-8.

2.Sadak Ahamed Shah ...Respondents/Complainant

(R2-impleaded amended as per
order in Crl.M.P.13532 of 2016 in
Crl.RC.1028 of 2011, dated 19/12/16)

PRAYER: Criminal Revision Case filed under Section 397 r/w.
401 of Cr.P.C., to set aside the order dated 24.06.2011 in
Crl.M.P.No.4947 of 2009 in C.C.No.151 of 2009 on the file of
Judicial Magistrate No.I, Poonamallee and discharge the
accused from the said case.

For Petitioner : Mr.K.Chandrasekaran

For R1 : Mr.B.Ramesh Babu,
Govt.Advocate (crl.side)

For R2 : Mr.V.Elangovan
for Mr.Doraisamy

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ORDER

The accused has preferred this Criminal Revision Case
under Sections 397 r/w. 401 of Cr.P.C., seeking to set aside
the order dated 24.06.2011 in Crl.M.P.No.4947 of 2009 in
C.C.No.151 of 2009 on the file of Judicial Magistrate No.I,
Poonamallee and discharge the accused from the said case.

2. The sole accused in C.C.No.151 of 2009 as the petitioner herein. This Criminal Revision Petition is filed against the order of dismissal made in CrI.M.P.No.4947 of 2009 filed under Section 239 of Cr.P.C., for discharge for the accused from C.C.No.151 of 2009. As the discharge petition filed by the accused is dismissed and hence, the revision.

3.The brief facts leading to the filing of the above Criminal Revision Petition, necessary for determination are as under:-

On 7.6.2004 the defacto complainant Mr.Sadak Ahamed Shah entered into a Memorandum of Understanding with one Mr.Nazim N.Sahib and Mr.Sabestin Joseph on their false representation that they would arrange to provide construction contract work for construction of 500 houses to the charitable institution and the defacto complainant paid Rs.45.25 lakhs towards commission/service charges to the said three persons and hence, the FIR was lodged. After investigation, the final report under Section 173(2)Cr.P.C was filed on 2.1.2007 against the said three accused. According to the petitioner, the charge sheet is bristles with infirmity and discloses no offence against the petitioner. In the FIR as well as in the charge sheet that a sum of Rs.45.25 lakhs was parted away by the defacto complainant on a false representation made by the three persons who are named in the FIR itself. The petitioner is not one such person who received the sum on false representation. The Director of Paramount Builder who is the defacto complainant that he has paid the sum of Rs.45.25 lakhs directly to the said three persons and not to the petitioner/accused. The name of the accused does not find a place in the FIR and admittedly the transaction has disclosed in the FIR is between defacto complainant and the three persons and hence, prayed for discharge from criminal proceedings.

4. Heard both sides and perused on records.

5. It is seen that based upon the investigation, the respondent Central Crime Branch 3, have filed the charge sheet alleging that the petitioner herein has falsely represented to Arunagiri (land broker) that he has influence in the kanchi mutt and with exercise of such influence he will get the contract for the construction of 500 houses in the mutt and the Arunagiri (land broker) inturn represented to the defacto complainant paramount builders through the Nazir, Sahib and such false representation made them to believe and have received 45.25 lakhs, out of 3525 has been returned by the three persons who are named in the F.I.R and while 10 lakhs that was given to Arunagiri, (land broker) and the person Krishnamoorthy was not returned and hence, the final report.

6.The learned counsel for the petitioner have submitted that the petitioner name was not mentioned in the F.I.R and there is no transaction between the defacto-complainant and the petitioner herein and hence, seeks to discharge from the criminal proceedings.

7.The learned Public Prosecutor made submission on the line of charge sheet.

8.Heard both sides and perused records.

9.It is seen from records that F.I.R filed against three named accused alleging the payment of Rs.45.25 lakhs by the paramount builders and the said transaction has been carried on at the instance of the land broker, Arunagiri who had made arrangement between the three person named as accused in the F.I.R with the petitioner Krishnamoorthy who had claimed that he had influence in the kanchi mutt and on such false promise, an amount Rs.45.25 lakhs was paid by the paramount builder to the three persons named in the F.I.R had received Rs.35.25 lakhs and through Arunagiri 10 lakhs was paid to the Krishnamoorthy, the petitioner herein.

10. Further, as per the further statement of the defacto-complainant and statement of other persons examined during the investigation levelled that the petitioner have misrepresentation, as if, he has got more influence in the mutt and made to believe Arunagiri and other three persons who have in turn have made representation to the Director of the paramount builders and which has resulted in the agreement for cash transaction and after the F.I.R came to be existence person named in the F.I.R as accused have returned Rs.35.25 lakhs except the 10 lakhs that was alleged to have been given to the petitioner herein was not received and hence, the Final Report to that effect is appears to have been filed before the trial Court.

11.It is to be stated that F.I.R is not encyclopedia and here the petitioner was arrayed as an accused in the final report based upon the material collected in investigation it came to light about the specific overtact, in all people and based upon the further statement of the defacto-complainant and other witnesses the investigation authority, the law enforcing authority, have come to the conclusion that the petitioner accused Krishnamoorthy has falsely represented that he has influence in mutt and he will get an contract work for construction of the 500 houses in the charitable institution and based upon his false representation through Arunagiri, the defacto - complainant as parted away with Rs.42.50 lakhs, and out of which the other 3 persons who have returned the amount to the complainant and hence, the trial Court after taking into consideration of the statement and records further

statement of the defacto-complainant and statement of other witnesses have rightly come to the conclusion that there are sufficient materials available on record to presume that the petitioner/accused has alleged to have committed under Section 420 of the I.P.C and accordingly, rejected the plea for discharge of petitioner is well found and well merited does not suffer from any illegality or irregularity and hence, does not warrant interference by this Court and in this view of the matter, this petition is devoid of merits.

12. Accordingly, this Criminal Revision Petition is dismissed. The learned Judicial trial Magistrate is hereby directed to complete the trial within a period of eight weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate I,
Poonamallee.
- 2.-do-Thro The Chief Judicial Magistrate,
Tiruvallur.
- 3.The Inspector of Police,
Central Crime Branch,
Team No.III, Egmore, Chennai-8.
- 4.The Public Prosecutor, High Court, Madras
- 5.The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Mr.K.Chandrasekaran, Advocate sr.75069

+1cc to M/s.S.Duraisamy, Advocate sr.74475

Order in
Cr1.R.C.No.1028 of 2011

skv(co)
ss(30/10/2017)