IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2016

PRONOUNCED ON : 11.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.360 of 2011

S.Prakashchand … Petitioner

Vs.

1. M/s.Vertex Commex & Finpro Pvt. Ltd.,
   (Commodities Trading firm of
   M/s. Vertex Securities Limited,)
   No.31, North Usman Road,
   T.Nagar, Chennai - 600 017.
   represented by its Branch Manager,
   Mr.Jahangir

2. Vertex Commex & Finpro Private Limited,
   registered office at Kochi,
   Thotathil Towers,
   Second floor, Market Road,
   Ernakulam,
   Kochi - 682 094,
   Kerala State.

3. M/s. Aniram Stocks,
   No.15, II Trunt Link Road,
   Chennai - 600 028.
   represented by its Manager
   Mr. Ramesh Bhat … Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code against the order passed by the XI Metropolitan Magistrate, Saidapet, Chennai in M.P.No.4057 of 2010 in C.C.No.2894 of 2008, dated 12.01.2011.

For Petitioner : Mr.Joseph,
for M/s. Chennal Law Associates,
For respondent : Mr. S.Ashok Kumar,
Legal Aid counsel,
for R2 & R3

O R D E R

Challenging the order allowing an application filed by the respondents herein under Section 245 Cr.P.C, to discharge from the charges levelled against them under Section 406 r/w. 120(b) IPC, the present revision has been filed.

2. The petitioner herein is the complainant in a private complaint in C.C.No.2894 of 2008 on the file of XI Metropolitan Magistrate, Saidapet, Chennai. The above complaint has been given for an offence under Section 406 r/w. 120(b) IPC stating that, the second respondent company engaged in on line commodity business, and the respondents 1 and 3 are branch office and sub-agent of the second respondent and the second respondent is acting as a intermediary between the clients and the Multi Commodity Exchange of India Limited. The clients of the second respondent, who wish to trade in commodities, has to open a running current and mutual account with the second respondent company and thereafter only, they will be permitted to trade on-line in commodities future and the accounts are operated on day to day basis. The complainant became a client with the second respondent for the said online commodity business. As per the rules and bye-laws of the company, the complainant also entered into a Member-Client agreement with the second respondent company under Rule 27, the complainant has also entered into a risk disclosure agreement and the risk involved in the trading are governed under the clause. The complainant traded with the commodities through the second respondent company during the period 01.04.2006 to 19.04.2006. According to the respondents/accused, since the complainant account showed a hefty debit balance, the respondents/accused requested the complainant to pay the margin amount to avoid closer of the contracts with the respondents/accused. The complainant has also issued a cheque for a sum of Rs.49,000/-. But the cheque was dishonoured and due to that, the respondent/accused closed the accounts of the complainant. It is also stated that since the debit balance of the complainant's account shown as Rs.5,40,511.67, the respondents/accused filed a civil suit in O.S.No.500 of 2006 for recovery of the balance on the file of the Sub-Court, Ernakulam and an exparte decree was also passed in favour of the respondents/accused. Subsequently, the present complainant has been filed by the complainant for an offence under Section 406 r/w. 120(B) IPC and the Court below has also taken cognizance of the offence and issue summons.

3. It is also seen that the respondents/accused have already filed a petition to quash the criminal complaint before this court in Crl.O.P.No.22604 of 2008 and this Court by an order dated 19.08.2009 dismissed the quash petition on the ground that since all the facts are disputed, the same may be agitated only before the trial court on production of valid materials. Subsequently, after evidence of prosecution has been over under Section 244 Cr.P.C., the respondents/accused have filed petition under Section 245 Cr.P.C ., to discharge them. The Courts-below allowed the application and thereby, discharged the accused. Challenging the same, the present revision has been filed.

4. Heard Mr.Joseph, learned counsel for the petitioner and Mr.S.Ashok Kumar, learned counsel for the respondents 2 & 3.

5. From the perusal of the records, it could be seen that already in respect of the very same transaction, a civil suit has been filed by the respondents/ accused against the complainant and the same has also been decreed exparte in their favour. Now, further proceedings is pending between the parties in the civil Court. Apart from that as held by the court below, there is no evidence to show that the complainant has paid a sum of Rs.10,95,000/- to the respondents/accused's company. Except the oral statement, there is no material available to primafacie prove the entrustment. From the material available on record, no primafacie case is made out as against the respondents herein and this Court find no ground to proceed against the petitioner. Considering all the above materials, the court below discharged the respondents/accused.

6. In the above circumstances, I find no infirmity or irregularity in the order passed by the court below. There is no merit in the revision. Hence, the revision is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed.

7. While parting with the case, I appreciate the services rendered by Mr.S.Ashok Kumar, learned counsel, who appeared on behalf of the respondents 2 and 3/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The XI Metropolitan Magistrate,
   Saidapet, Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.S. Ashok Kumar, Advocate, S.R.No.2878

rk(CO)
md(01/02/2017)

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