

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 02.08.2017**

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN**Cr1.R.C(MD) .No.574 of 2015**

B.Selvam

... Revision Petitioner/Petitioner

-Vs-

1. Murugeswari
The District Manager,
TASMAC (South),
Kappalur,
Madurai - 625 008.
2. D.Saravanan,
The Assistant,
District Manager Office,
TASMAC (South), Kappalur,
Madurai - 625 008.

... Respondents

Prayer : Criminal Revision Case filed under Section 397 r/w 401 and 482 of the Code of Criminal Procedure, praying this Court to call for the records from the lower court and set aside the order made in Cr.M.P.No.1740 of 2015, dated 13.5.2015 passed by the learned Judicial Magistrate, Thirumangalam by allowing this revision.

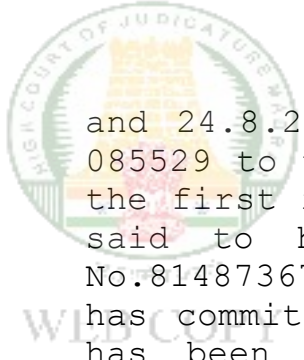
For Petitioner : M/s.N.Sathish Babu

For Respondents : Mr.M.Gururaj
(No appearance)**O R D E R**

This revision has been filed challenging the order passed under Section 200 of Cr.P.C., dismissing the Petitioner's private complaint.

2.The Petitioner was working as Supervisor in TASMAC Shop in Thirumangalam in Shop No.5278 and as per the Regulations of TASMAC, the Petitioner has to send daily sales particulars through SMS to the District Manager of TASMAC, the first respondent herein.

3.According to the Petitioner, every day, he used to send SMS regarding daily transaction. On two days i.e., on 23.8.2014



and 24.8.2014, he sent SMS from his Mobile phone bearing No.9487 085529 to the first respondent/The District Manager of TASMAL. But the first respondent has erased the above SMS, and based on a SMS said to have been sent by some other Mobile Phone bearing No.8148736766, he has come to a conclusion that the petitioner has committed some irregularities. Hence departmental proceedings has been initiated against him and he was also removed from service. According to the Petitioner, both the first respondent and second respondent, who is working as Assistant, colluded together and committed forgery. Hence, the Petitioner has filed a criminal case against them and the Police has closed the said case as 'mistake of fact', thereafter, he filed a private complaint. He has also filed a sworn statement and also examined three witnesses including the petitioner and also marked so many documents including the statement of BSNL obtained under Right to Information Act, showing that on the disputed date i.e., on 23.8.2014 and 24.8.2014, the Petitioner has sent message through his phone to the first respondent/The District Manager, but, the Court below dismissing the private complaint stating that the witnesses examined by the Petitioner have not whispered anything about the alleged occurrence in the sworn statement. Now challenging the same, the present revision is filed.

4.I have heard the submissions of Mr.N.Sathish Babu, learned counsel for the Petitioner. When the matter was called on 31.7.2017, there was no representation for the respondents. Hence the matter was directed to be listed today under the caption for orders. Today also, there is no representation on behalf of the respondents.

5.A perusal of the records would show that, in the complaint as well as in the sworn statement and evidence produced by the Petitioner, there are allegations made against the respondents. As there are statement available on record, the learned Magistrate is expected to consider the complaint and sworn statement and the evidence produced by the Petitioner to find out that whether any prima facie case is made out to proceed with the complaint. But the learned Magistrate dismissed the complaint stating that a perusal of the sworn statement, there is no whisper about the alleged offence and come to the conclusion that there is no prima facie case made out by the Petitioner.

6. On a perusal of the order passed by the Court below, the learned Judicial Magistrate has failed to consider the complaint and sworn statement in a proper perspective and without applying his mind mechanically come to a conclusion that there is no prima facie material made out by the Petitioner. In the above circumstances, the Criminal Revision Case is allowed and the <https://hccrvtscourts.in/services> is sent back to the trial Court and the learned Judicial Magistrate shall consider all the materials available on record and applying his mind, pass orders afresh in accordance



with Section 200 Cr.P.C. The above said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-II)

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/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate,
Thirumangalam.

+1 cc to Mr.M.Gururaj , Advocate in SR.No. 70097

+1 cc to Mr.N.Sathish Babu , Advocate in SR.No. 69456

vsn

AE/SKN RSK/SAR3/17.08.2017/3P/4C

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