



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.07.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C(MD) .No.376 of 2016

Suresh

... Petitioner
-Vs-

1.Bhasker
2.Madasamy
3.Maheswari
4.Thankadurai
5.Thangamariappan
6.Srinivasan
7.Sureshkumar
8.Gopal

... Respondents 4 TO 8/ Proposed
Accused 1 to 8

Prayer : Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order dated 21.07.2015 in C.C.No.83 of 2015 passed by the learned Judicial Magistrate, Sivagiri.

For Petitioner : Mr.C.Kishore

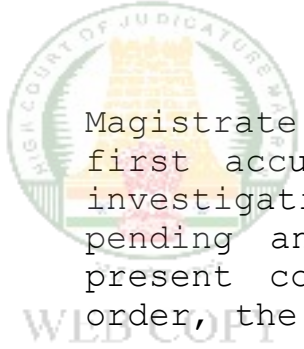
For Respondent : Mr.V.Kathirvelu, Sr. Counsel
for Mr.K.Prabhu

ORDER

Challenging the dismissal of a private complaint filed by the petitioner, the present criminal revision case has been filed.

2.The learned counsel for the petitioner submitted that based on the complaint given by the petitioner, a crime was registered under Sections 147, 294(b), 323, 506(i) and 379 I.P.C in Cr.No.426 of 2013 on the file of the Puliyangudi Police Station. After investigation, a negative final report was filed. Thereafter, the petitioner filed the present private complaint.

3. The learned Judicial Magistrate dismissed the complaint stating that once a negative final report is filed by the police, the petitioner, without raising any objection, cannot maintain a private complaint, that too after 10 months. The learned Judicial



Magistrate further observed that based on a complaint given by the first accused herein, a crime was already registered and after investigation, a charge-sheet was also filed and the case is pending and in order to escape from the above complaint, the present complaint has been filed. Challenging the above said order, the present revision has been filed.

4.I have heard Mr.C.Kishore, the learned counsel appearing for the petitioner and Mr.V.Kathirvelu, the learned Senior Counsel appearing for the respondents and perused the records carefully.

5.The learned counsel for the petitioner submitted that the learned Judicial Magistrate dismissed the complaint, without considering whether any prima facie case is made out to proceed with the complaint. The learned Magistrate mechanically dismissed the same stating that after filing of negative final report, the petitioner cannot maintain a private complaint, which is not permissible under law.

6.Per contra, the learned Senior Counsel appearing for the respondents would submit that based on a complaint given by the petitioner, a crime has been registered and after investigation, a negative final report has been filed against the petitioner. Even though the petitioner filed a protest petition, he did not pursue the same. The negative final report was also accepted by the court below. Thereafter, after 10 months, the petitioner filed the present private complaint in order to escape from the counter complaint filed by the respondent. Since no prima facie case is made out in the complaint, the learned Judge dismissed the same. There is no illegality or irregularity in the order.

7.I have considered the rival submissions.

8.The petitioner filed a private complaint under Section 200 Cr.P.C. Section 200 Cr.P.C contemplates that while a Magistrate taking cognizance of the offence, he has to consider the complaint and examine the complaint upon oath and any other witnesses present. On such examination, if the Magistrate comes to a conclusion that no sufficient ground is made out for proceeding with the complaint, he can dismiss the complaint under Section 203 Cr.P.C or the Magistrate satisfies that based on the materials, there is prima facie case to proceed with the complaint, he can proceed with the complaint by issuing process under Section 204 Cr.P.C. But, in the case on hand, the learned Judicial Magistrate, without considering the materials available before him and to satisfy himself whether any prima facie case is made out to proceed with the complaint, dismissed the complaint on the ground that the complaint has been filed with a delay of 10 months. In order to escape from the counter complaint, the present complaint was filed by the respondent, which is not permissible under law.



9. In view of the above irregularities, the order passed by the court below is set aside and the matter is remanded to the learned Judicial Magistrate, Sivagiri. The learned Magistrate is directed to consider the complaint and the witness if any and pass suitable orders on merits and in accordance with law. The learned Magistrate is directed to complete the above process within a period of two months from the date of receipt of a copy of this order.

10. With the above observation, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

The Judicial Magistrate, Sivagiri.

Copy to:

The Record Clerk,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.C.Kishore, Advocate in SR.No. 63577

+1 cc to Mr.K.Prabhu , Advocate in SR.No. 63645

vs

AE/MR KKR/SAR1/19.07.2017/3P/5C

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