



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C (MD) .No.478 of 2016

and

Cr1.M.P (MD) .No.5546 of 2016

WEB COPY

Murugan ... Petitioner/sole accused
-Vs-
Annathai ... Respondent/ Complainant

Prayer : Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records relating to the order passed by the learned Judicial Magistrate I, Nagercoil in Cr1.M.P.No.1641 of 2016 in C.C.No.130 of 2008 dated 20.04.2016 and set aside the same.

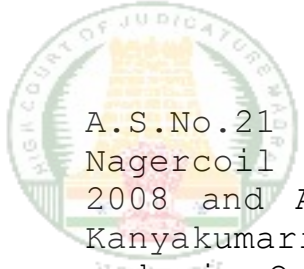
For Petitioner : Mr.K.P.Narayanakumar
For Respondent : Mr.Pinaygash

O R D E R

Against the order dismissing the petitioner's application filed under Section 245 of Cr.P.C, the present revision has been filed.

The case of the petitioner in brief is as follows:

2.The petitioner is sole accused in C.C.No.130/2008, pending on the file of the learned Judicial Magistrate, No.I, Nagercoil. Earlier, the respondent herein had given a complaint against the petitioner for an offence under Section 420 of I.P.C. on the ground that she is a widow, and the petitioner has developed a good relationship with her, but, later, cheated her by executing two sale deeds in his favour, without paying any sale consideration. Based on that complaint, a crime has been registered in Crime No.341 of 2007 and after investigation, a negative final report has been filed closing the complaint as 'mistake of fact'. Thereafter, the respondent herein filed a protest petition and the protest petition was accepted by the Judicial Magistrate, No.I, Nagercoil. The learned Judicial Magistrate, No.I, Nagercoil found that a prima facie case has been made out against the petitioner and taken the complaint on file and issued summons to the petitioner. It is further stated that on the very same allegation, the petitioner has already filed two civil suits in O.S.Nos.296 of 2008 and 64 of 2008 on the file of the learned I Additional District Munsif Court, Nagercoil and the Principal Sub Court, Nagercoil respectively. Both the suits were dismissed. Thereafter, the respondent has filed two appeals in



A.S.No.21 of 2011, on the file of the II Additional Sub Court, Nagercoil against the judgement and decree made in O.S.No.296 of 2008 and A.S.No.87 of 2014, on the file of the District Court, Kanyakumari District at Nagercoil against the judgement and decree made in O.S.No.64 of 2008. The learned II Additional Subordinate Judge, Nagercoil has dismissed A.S.No.21 of 2011, by a judgment, dated 17.12.2012. Now, against the judgment and decree made in A.S.No.21 of 2011, a second appeal is pending before this Court in S.A.(MD).No.729 of 2011. It is only a civil dispute between the parties, by giving a criminal colour, the respondent has filed the present complaint. Thereafter, the petitioner has filed a petition under Section 245 Cr.P.C to discharge him from the offence. The learned Judicial Magistrate, No.I, Nagercoil, without considering the materials available on record, has dismissed that petition. Now, challenging the same, the present Criminal Revision Case has been filed.

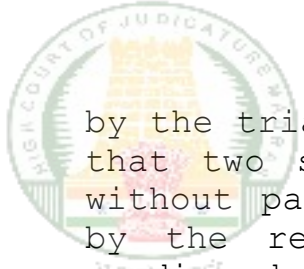
3.I have Heard Mr.K.P.Narayanakumar, the learned Counsel appearing for the petitioner and Mr.Pinaygash, learned counsel appearing for the respondent and perused the records carefully.

4.The learned counsel appearing for the petitioner submitted that on the very same allegation, the respondent filed two civil suits and the same have been dismissed, against which, first appeals have been preferred. In the first appeal preferred against the judgment and decree made in O.S.No.296 of 2008, the first appellate court has held that there is no evidence to show that the petitioner has cheated the respondent and also executed two sale deeds in his favour without any sale consideration. In the above circumstances, the complaint against the petitioner is not maintainable. There is no prima facie case made out against the petitioner.

5.Per contra, the learned counsel appearing for the respondent submitted that against the judgment of the trial court, an appeal is pending before the appellate court. In such circumstances, till the appeals are disposed of by the appellate court, the judgment of the trial Court cannot be considered as final, and it is a clear case of cheating and the court below, also considered the same. Since prima facie case is made out, the learned Judicial Magistrate, No.I, Nagercoil dismissed the petition and there is no illegality or irregularity in the order.

6.I have considered the rival submissions.

7.The specific case of the respondent is that she is a widow and she is living alone; Taking advantage of the fact, the petitioner developed a close relationship with her and without consideration, he has executed two sale deeds in his favour. Raising the very same plea, the respondent has filed two suits before the civil Court and both the suits were dismissed



by the trial Court on the ground that there is no evidence to show that two sale deeds were executed in favour of the petitioner, without paying sale consideration. In one suit, an appeal filed by the respondent was also dismissed and a second appeal is pending before this Court and in another suit, an appeal is pending before the first appellate Court. Considering the fact that the civil Court has already held that there is no evidence to hold that two sale deeds were executed without paying sale consideration and it is also binding on the Criminal Court to some extent.

8. From a perusal of the materials available on record, I am of the view that it is only a civil dispute between the parties. In the above circumstances, I am of the considered view that no prima facie case is made out against the petitioner for an offence punishable under Section 420 I.P.C. Hence, the criminal case against the petitioner cannot be proceeded with.

9. In view of the above, the order passed by the Court below is set aside and this Criminal Revision Case is allowed. The petitioner is discharged from the criminal charges punishable under Section 420 I.P.C. Since the appeals are pending, if the appellate courts give a finding that the petitioner has committed any cheating or forgery, it is always open to the petitioner to proceed against respondent. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, No.I, Nagercoil.

2. -Do- Thro The Chief Judicial Magistrate,
Kanyakumari at Ngergoil.

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.67042

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.66802

VS/LS

VB/MR/KKR/SAR1/03/08/2017/3P/5C

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