



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.DHANDAPANICr1.O.P(MD).No.3119 of 2011

P.S.Perumal

...Petitioner

Vs

1.Subaiah
2.Sivaraj Pillai
3.Jeya
4.V.Kesavan

...Respondents

PRAYER: Criminal Revision case filed under Section 482 of the Code of Criminal Procedure, praying this Court to admit the petition on file, to call for the records from the lower Courts and to set aside the Judgment passed by the learned Additional Sessions Judge, Fast Tract Court No.I, Tirunelveli, Tirunelveli District in his Cr1.R.C.No.74 of 2010, dated 18.01.2011 in Cr1.M.P.No.1798 of 2010 dated 16.09.2010 on the file of the Chief Judicial Magistrate, Tirunelveli, Tirunelveli District.

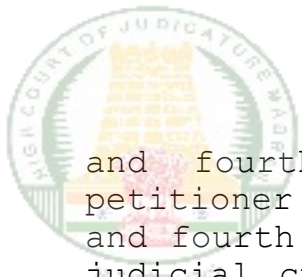
For Petitioner	: Mr.V.Kathirvelu Senior Counsel
For R1,R2 and R4	: No appearance
For R3	: Mr.J.Ashok

ORDER

This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to set aside the Judgments passed by the learned Additional District Judge, Fast Tract Court No.I, Tirunelveli, Tirunelveli District, in Cr1.R.C.No.74 of 2010, dated 18.01.2011, and the order passed by the learned Chief Judicial Magistrate, Tirunelveli, in Cr1.M.P.No.1798 of 2010, dated 16.09.2010, on the file of the learned Chief Judicial Magistrate, Tirunelveli, Tirunelveli District.

2.The brief facts of the case as follows:

(i) The petitioner filed a private complaint under Section 191 Cr.P.C., for the alleged offences under Sections 342, 347, 352, 384, 448, 451, 506(i) and 109 I.P.C. before the Chief Judicial Magistrate Court, Tirunelveli, and the same has been numbered as Cr1.M.P.No.1798 of 2010.



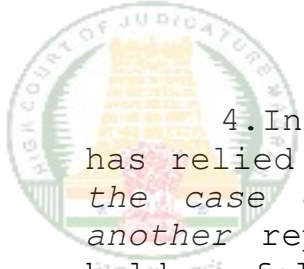
(ii) The nutshell of the complaint is that the third and fourth respondents have lodged a complaint against the petitioner on 27.02.2010. Based on the complaint given by the third and fourth respondents, the petitioner was arrested and remanded to judicial custody on 28.02.2010. The allegation of the petitioner is that, on 26.02.2010, at 12.00 p.m., the first respondent along with police party came to the house of the petitioner without following the procedure established under law and they have taken the petitioner to the illegal custody. After that, the illegal custody was informed by the petitioner's son, namely, Subash to the Tamil Nadu Chief Minister Cell, the Deputy Superintendent of Police, Tirunelveli and the District Collector, Tirunelveli on 27.02.2010. However, they remanded the petitioner only on 28.02.2010. The first and second respondents without following due process of law, illegally detained the petitioner for 3 days and after making complaint to the higher officials, they remanded the petitioner to the judicial custody.

(iii) Due to the illegal act of the respondents, the petitioner filed a private complaint under Section 190(1) of Criminal Procedure Code before the Chief Judicial Magistrate Court, Tirunelveli, in CrI.M.P.No.1798 of 2010. Initially, the said complaint was taken on file and thereafter, the learned Chief Judicial Magistrate, Tirunelveli, dismissed the complaint, as if the petitioner did not show any evidence to implicate the respondents for the offence alleged in the complaint.

(iv) Aggrieved over the same, the petitioner filed a revision under Section 397(1) Cr.P.C., before the Additional District Judge, Fast Tract Court No.I, Tirunelveli, Tirunelveli District, in CrI.R.C.No.74 of 2010. The Revisional Court also dismissed the revision filed by the petitioner.

(v) As against the dismissal order passed in the revision, the petitioner has come out with the present Criminal Original Petition invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C.

3.The learned Senior Counsel appearing for the petitioner submitted that the exercise undertaken by the learned Chief Judicial Magistrate, Tirunelveli, is illegal and it is not procedural as established by law. He further submitted that at the initial stage, the learned Chief Judicial Magistrate, Tirunelveli, has to consider whether there is a *prima facie* case made out or not. The learned Senior Counsel further submitted that the learned Magistrate is not entitled to discuss the pros and cons of the case while taking a complaint on file whether *prima facie* case is made out by the petitioner against the accused persons or not. He further submitted that the learned Chief Judicial Magistrate, Tirunelveli has elaborately considered the matter and dismissed the complaint is unsustainable in law. The revisional Court also committed various errors while considering this case. Hence, he approached this Court under Section 482 Cr.P.C., since both the courts below have committed serious errors in law.

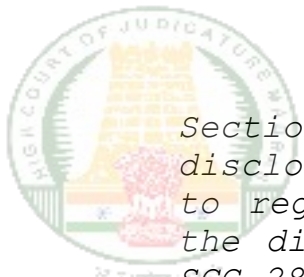


4. In support of his contentions, the learned Senior Counsel has relied on the decision of the Hon'ble Supreme Court of India in the case of *S.W.Palanitkar and others -vs- State of Bihar and another* reported in 2002 Supreme Court Cases (Crl) 129 ; it had held as follows:

"In case of a complaint under Section 200 Cr.P.C. or IPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words "sufficient ground" used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction". (emphasis supplied)

Another decision of this Court in the case of *K.Mohanraj and another vs. J.Jayapaul Mohan and others* reported in 2016-2-L.W(Crl).461 has held in paragraph-23 as follows:

"23. In view of the aforesaid discussion, I am of the considered view that the order passed by the learned Chief Judicial Magistrate, dated 18.04.2015 cannot be sustained and it is liable to be quashed for more than one reason, viz., firstly, though any detailed enquiry is not necessary under Section 156(3) of Cr.P.C., I find that the learned Magistrate has passed the order in exercise of power under Section 156(3) Cr.P.C in a mechanical manner without applying the mind and without even looking prima facie to find out the genuineness in the complaint as to whether the information provided by the petitioner is credible and whether it would prima facie disclose any cognizable offence to proceed against the respondents 1 and 2. Secondly, the petitioner has made the complaint under Section 156(3) Cr.P.C. Before the learned Magistrate, by suppressing the official designation of the respondents 1 and 2 to wriggle out of the compliance of the condition precedent under Section 197 Cr.P.C., i.e sanction from the competent authority for ordering investigation against the public servants . Thirdly, the allegations made by the petitioner against the respondents 1 and 2 are vague and of no credibility since the second respondent retrieved the documents in his official capacity as Inspector of Police, Vigilance and Anti-corruption during the course of investigation. Fourthly, the complaint made by the petitioner before the learned Magistrate is bereft of the ingredients of

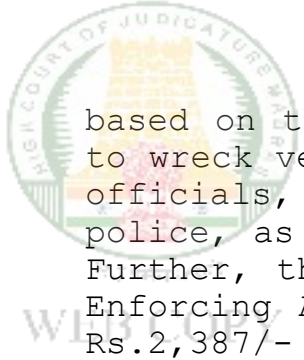


Section 448 or 379 IPC and as such, the same would not disclose any commission of offence, warranting direction to register the case for investigation. Fifthly, as per the dictum laid down in the Judgment reported in 2015(6) SCC 287 referred above, no supporting affidavit was filed by the petitioner to enable the Magistrate to verify the truth and veracity of the allegations made in the complaint. In such view of the matter, the reliance placed upon by the learned counsel for the petitioner cited supra, in my opinion, will not be helpful to the case of the petitioner. Since the order dated 18.04.2015 passed by the learned Chief Metropolitan Magistrate itself is not in accordance with the cardinal principle of law, the question of considering the objection raised by the petitioner that the first respondent has not locus standi to raise his objection as against the order passed by the learned Chief Metropolitan Magistrate before registering the FIR against him, does not merit any consideration" (emphasis supplied)

5. Per contra, the learned counsel appearing for the third respondent submitted that the respondents 3 and 4 filed a complaint against the petitioner under Sections 342, 347, 352, 384, 448, 451, 506(i) and 109 I.P.C., before the Tirunelveli Town Police Station. The petitioner and the other accused prepared forged documents and taking advantage of the similarity by impersonation and thereby, the respondent police registered a complaint on 27.02.2010 and after investigation, the petitioner was arrested on 28.02.2010. In order to defeat the rights of the third respondent, the petitioner filed a private complaint against the respondents 3 and 4 as well as the law enforcing agency. After examining the complaint under Section 191 Cr.P.C., the learned Magistrate passed a detailed order. Since the petitioner did not establish the case for implicating the respondents including the third respondent as well as the law enforcing agency in the aforesaid offences, the private complaint was dismissed and the same was confirmed by the learned Additional District Judge, Fast Tract Court No.I, Tirunelveli, Tirunelveli District and the second revision is not maintainable in view of bar under Section 397(3) Cr.P.C.

6. The issues involved in this case are whether the petition under Section 482 Cr.P.C., is maintainable in view of bar under Section 397(3) Cr.P.C. and whether the lower Court can dismiss the complaint at the initial stage after conducting a detailed enquiry. Admittedly, there was a complaint against the petitioner by the respondents 3 and 4 on 22.06.2010. On the basis of the complaint, a search was conducted for the purpose of investigation and therefore, the petitioner was taken to their custody and thereafter, remanded to the judicial custody.

7. The case of the petitioner is that he was illegally detained by the first respondent police, but, he was arrested only



based on the complaint given by the respondents 3 and 4. In order to wreck vengeance against the respondents 3 and 4 and other police officials, the petitioner filed a complaint before the respondent police, as if the respondent police committed serious error in law. Further, there was an allegation by the petitioner against the Law Enforcing Agency is that the police officials recovered a sum of Rs.2,387/- (Rupees Two Thousand Three Hundred and Eighty Seven only), which was not returned to him. However, the petitioner has not produced any document before the Courts below in order to substantiate the high-handedness of the police officials. After considering the matter elaborately, in order to prevent the abuse of process of law, the said complaint was dismissed by the learned Chief Judicial Magistrate, Tirunelveli. Thereafter, the petitioner filed a revision before the Revisional Court. After considering the matter elaborately, the Revisional Court, confirmed the order passed by the learned Chief Judicial Magistrate, Tirunelveli.

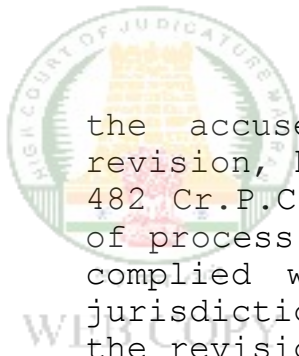
8.As per Section 397(3) Cr.P.C., if an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. In this context, it is relevant to extract below Section 397 (1) and (3) Cr.P.C.

''397.Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.''

9.In view of bar under Section 397(3) Cr.P.C., further revision is not permissible and the same cannot be entertained by any forum. The said position was also discussed by the Hon'ble Apex Court in the case of Krishnan Vs. Krishnaveni reported in 1997 (4) SCC 241, wherein the Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or



the accused cannot be allowed to take recourse to a second revision, but the High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional Court.

10. However, in the present case on hand, on perusal of the Judgements and records, both the Courts below, after elaborately enquired into the matter and rendered the clear-cut findings.

11. The another issue raised in the case is whether the learned Magistrate can dismiss the complaint at the initial stage or the learned Magistrate can discuss the pros and cons of the entire case without considering the *prima facie* case. It is useful to refer the judgment of the Hon'ble Apex Court while dealing with the power of the learned Magistrate under Section 190 Cr.P.C., in the case of *Mehmood UL Rehman v. Khazir Mohammed Tunda & others* reported in AIR 2015 Supreme Court 2195, it has been held as follows:

" 23. The steps taken by the Magistrate under Section 190 (1) (a) of Cr.P.C. Followed by Section 204 of Cr.P.C. Should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the fact alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the Court. No doubt, no formal order or a speaking order is required to be passed at that stage. The code of Criminal Procedure requires speaking order to be passed under Section 203 of Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of Cr.P.C., if any, the accused is answerable before the Criminal Court, there is ground for proceeding against the accused under Section 204 of Cr.P.C., by issuing process for appearance by disclosure of facts and circumstances giving rise to the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections



190/204 of Cr.P.C., the High under Section 482 of Cr.P.C, is bound to invoke its inherent power in order to prevent abuse of the power of the Criminal Court. To be called to appear before Criminal Court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of Criminal Court shall not be made a weapon of harassment". (emphasis supplied)

12. On perusal of the decision relied upon by the learned counsel appearing for the petitioner, it is clear that the learned Magistrate can take cognizance of offence made out and he has to examine the complainant and the witness, if any, to ascertain whether a *prima facie* case is made out against the accused. Then, the learned Magistrate can issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass.

13. In another judgment of this Court in the case of *K.Mohanraj and another vs. J.Jayapaul Mohan and others* reported in 2016-2-L.W(Cr1).461, it is stated that the learned Magistrate cannot pass the order in a mechanical manner while dealing with the complaint against the petitioner and it is the duty of the Magistrate to find out the genuineness in the complaint as to whether the information provided by the petitioner is credible and whether it would *prima facie* disclose any cognizable offence. The decisions cited by the learned counsel for the petitioner are not applicable to the facts of the present case on hand.

14. On perusal of the abovesaid Judgments of the Hon'ble Apex Court as well as this Court, the learned Magistrate should not act mechanically and applying his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court and the satisfaction of the Court is necessary. In the present case, the learned Chief Judicial Magistrate, Tirunelveli, after perusing the entire records, dismissed the complaint filed by the petitioner in order to prevent the abuse the process of law. Hence, I do not find any error in the order passed by the learned Chief Judicial Magistrate, Tirunelveli, as well as in the order passed by the learned Additional District Judge, Fast Tract Court No.I, Tirunelveli, Tirunelveli District.

15. In view of the above, I am not inclined to interfere with the order passed by the Courts below. Accordingly, this Criminal Original petition is dismissed.

Sd/-

Assistant Registrar(CSIII)



To

1.The Additional Sessions Judge,
Fast Tract Court No.I,
Tirunelveli, Tirunelveli District.

2.The Chief Judicial Magistrate,
Tirunelveli

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.S.Raventhre, Advocate, SR.No.87254

+One cc to Mr.J.Ashok, Advocate, SR.No.87121

mrn/msa

RL/6C/8P/JC/SAR1/20/12/2017

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