

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.295 of 2018

V.R.M.Gokulakrishnan .. Petitioner/Complainant

Vs.

1.Arumugam
2.Annamalai
3.S.Parthasarathy
4.S.Lakshmi Narasimhan
5.S.Janaki
6.S.Rama
7.S.Jayanthi
8.S.Vijayalakshmi .. Respondents/Respondent

Prayer: Criminal Original Petition filed under Section 397 read with 401 of Cr.P.C., against the order passed by the Learned Judicial Magistrate No.I, Kancheepuram in C.M.P.No.472 of 2014 dated 03.03.2014.

For Petitioner : Mr.B.Singaravelu

O R D E R

The instant criminal revision is filed as against the dismissal of the petitioner's private complaint filed under Section 200 of Cr.P.C.

2.It is the case of the petitioner that he lodged a complaint before the Inspector of Police, District Crime Branch at Kancheepuram against the father of the respondents herein for the offence under Sections 420, 467, 468 and 471 r/w 120 (b) of IPC. It is alleged in the complaint that Arumugam Muthaliyar, Annamalai Muthaliyar and Deceased Munsamy Muthaliyar & Selvaraj Muthaliyar had created a forged document and sold the property comprised in S.No.1175/4 in which they have no right at all to one Srinivasavarathan by virtue of a registered sale deed dated 21.12.1972. The above said persons well aware that they have no right over the said property and manipulated the above said forged sale deed. The purchaser Srinivasavarathan died and his legal heirs claiming right and title to the above said property

under the said forged sale deed.

3.Originally the petitioner herein purchased the above said property from one Ambulu ammal. She filed a suit against the deceased Srinivasavarathan in O.S.No.366 of 1966 and the same was decreed in favour of Ambulu ammal. Against which an appeal was filed in A.S.No.502 of 1971 before this Court and the same was also came to be dismissed in favour of Ambuluammal on 08.12.1972. After the above said Judgment, the father of the respondents herein knowing full well that they have no semblance of right over the property in S.No.1175/4 created the above said forged sale deed. The respondents 3 to 8 herein were kept silent till the death of their father Srinivasavarathan and after his demise they claim right over the said property.

4.On coming to know about the fraud committed by the father of the respondents herein, the petitioner lodged a complaint before the Inspector of Police, District Crime Branch, Kancheepuram against Annamalai Muthaliyar, K.Srinivasavarathan, Lakshminarashimman & Parathasarathi on 10.01.2007. The Inspector of Police has registered the case in Cr.No.12 of 2007 on 09.05.2007 against the above said persons for the offence under Sections 467, 468 and 471 of IPC only after the direction obtained from this Hon'ble Court in Crl.O.P.No.8718 of 2007. The said complaint was investigated and closed as mistake of fact after filing referred charge sheet. The final report filed by the Inspector of Police, DCB was accepted by the Learned Judicial Magistrate No.I, Kancheepuram against which the petitioner has filed the protest petition and the same was enquired into and ultimately dismissed by order dated 08.04.2010 by the Learned Judicial Magistrate No.I, Kancheepuram. Aggrieved over the said order, the petitioner herein filed Crl.O.P.No.1244 of 2010 before this Hon'ble Court and this Hon'ble Court by order dated 09.12.2013 disposed the same with an observation that the petitioner is at liberty to approach the appropriate court to file a private complaint under section 200 of Cr.P.C. Thereafter the petitioner herein filed the present private complaint under Section 200 of CrPC in Crl.O.P.No.472 of 2014 before the Learned Judicial Magistrate No.I, Kancheepuram. The Learned Magistrate upon perusing the complaint was pleased to dismiss the same by holding that the complaint is civil in nature and therefore the petitioner should be rededicated the issue only before the Civil Court by order dated 03.03.2014. Being aggrieved over the same the present civil revision is filed.

5.I heard Mr.B.Singaravelu, learned counsel for the petitioner and perused the entire records.

6.On perusal of the impugned order, it is seen that Learned Magistrate from the beginning proceeded on a footing that the

case on hand is of civil in nature and it is liable to be tried by the Civil Court.

7. In my considered opinion, the Learned Judge ought to have seen firstly as to whether there are allegations of Criminal deeds. If the complaint does not disclose any allegations as to Criminal acts, then an order is liable to be passed under Section 203 of Cr.P.C, however in complaints where there is express allegations of Criminal acts, then the same could be found true or otherwise only after holding an Inquiry and examination of oral and document any evidence.

8. It is needless to say for this Court that from a bare reading of complaint and a mere reference to the nomenclature of documents available before it, a Court cannot come to a conclusion that the complaint is liable to be dismissed in limine. In fact only an oral or documentary evidence adduced by either side will enable a Court to come into an appropriate conclusion.

9. It is further seen that by citing a civil proceeding, the Learned Magistrate vide Para 7 of the impugned order has held that the issue raised in the complaint will also be raised in the civil case by the parties.

10. In my considered opinion, such approach is pedantic and based on presumption and assumption. When the relevant papers pertaining to the civil case is unavailable before the Learned Judge, it is surprising for this Court to find that the Learned Judge has held that very same issue will be raised before civil Court, such finding is erroneous.

11. Further the Learned Judge also erred in yet another angle that to sort out the issue through a binding decision, the subject issue has to be dealt by a civil Court. The said finding do not withstand the scrutiny of this Court for the reason that the scope of a private complaint under Section 200 CrPC is to see whether there are ingredients of any Criminal deed put forth and the same is prima facie established. In other words, a Civil suit will not preclude the petitioner to avail his remedy under Cr.P.C, provided that there is a Criminal act done by the respondent. Mere pendency of a civil suit will not disentitle a person to seek out his remedy under section 200 of Cr.P.C. Thus the finding of the Learned Magistrate that only Civil Court is competent to deal the issue is also erroneous.

12. Apart from this, the order of the learned Magistrate in C.M.P.No.472 of 2014, dated 03.03.2014 has passed under Section 203 of Cr.P.C. and dismissed the same.

13. Whether the learned Magistrate has followed the provisions under Section 203 of Cr.P.C. in this case in proper manner?

14. Section 203 of Cr.P.C. says as follows:-

"203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

15. As per the provision under Section 203 of Cr.P.C. which says the dismissal of the complaint and in the provision under Section 203 of Cr.P.C., it made clear that after considering the statements of oath of the complainant and of the witnesses and thereafter, the matter should be heard on inquiry or investigation, if any, under Section 202 of Cr.P.C., the Magistrate can pass order by dismissing the complaint under Section 203 of Cr.P.C.

16. I already held in a case of S. Mukanchand Bothra v. Shivaji Rao Gaikwad @ Rajinikanth reported in 2018-1-L.W. (Cri.) 295 that the learned Magistrate while entertaining the complaint under Section 200 of Cr.P.C. and the learned Magistrate if come to a conclusion for dismissing the complaint under Section 203 of Cr.P.C., the Court must follow the procedure laid under Section 203 of Cr.P.C.

17. Admittedly, in this case, the learned Judge in the order itself stated the sworn statement of the complaint recorded, the copies of the documents filed are perused, but no witnesses were produced.

18. On perusal of the order in C.M.P.No.472 of 2014, I have not found anywhere that the learned Magistrate directed the complainant to produce any other witnesses and even after his direction, if the complainant has not produced any witnesses, then the learned Magistrate can pass any orders on this. But in this case, there is no whisper about directing the complainant to produce any witnesses and not discuss about the sworn statement, discussion of the document filed by the complainant and passed the order under Section 203 of Cr.P.C.

19. Time and again, this Court and the Hon'ble Apex Court issuing direction to the learned Magistrate to follow Section 203 of Cr.P.C. in an appropriate manner and to pass appropriate orders. In this case, the learned Magistrate has not properly

followed the procedure.

20.Once the learned Magistrate has recorded the sworn statement, it is the bounden duty of the learned Magistrate to take further course of action by directing the complainant to produce the witnesses, oral enquiry or enquiry, thereafter to pass appropriate orders about the complaint either to take cognizance or rejection of the complaint. But, in this case, it is totally lack on the part of the learned Magistrate, therefore, this Court warranting interference in the order passed by the learned Magistrate in C.M.P.No.472 of 2014, dated 03.03.2014 and the same is liable to be set aside.

21.In the result:

(a) this Criminal Revision Case is allowed by setting aside the order passed in C.M.P.No.472 of 2014 dated 03.03.2014, on the file of the learned Judicial Magistrate No.I, Kancheepuram;

(b) the learned Judicial Magistrate No.I, Kancheepuram, is directed to follow the procedure under Section 203 of Cr.P.C. and thereafter to pass an appropriate orders in C.M.P.No.472 of 2014;

(c) the said exercise shall be done within a period of two months from the date of receipt of a copy of this order;

(d) the complainant is directed to give his fullest co-operation for passing orders by the learned Magistrate within the stipulated period fixed by this Court. No costs.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs
To

The Judicial Magistrate No.I,
Kancheepuram.

+1 CC to Mr.B.Singaravelu, advocate sr 17039.

CRL.R.C.No.295 of 2018

AD(CO)
SP(26/04/2018)