

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl. Revision Case No.402 of 2018

Bhaskar Lakshmikanthan ... Petitioner/Complainant
vs

N.Balasubramanian ... Respondent/Accused

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to aside the order dated 14.12.2017 made in if any, he should examine the witnesses if any produced by the passed in CMP.No.4628 A/17 complainant and any enquiry or investigation under Section 202 of Cr.P.C. on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : M/s.R.Nagasundaram

ORDER

This revision has been filed to set aside the order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai made in C.M.P.No.4628/A/17 dated 14.12.2017.

2. According to the petitioner, respondent is the tenant and he paid monthly rent of Rs.11,500/- under lease deed dated 22.10.2005. By the said deed, he had agreed to vacate and deliver the vacant possession as and when required by the petitioner herein. The respondent had defaulted in payment of rent and also damaged the premises. The petitioner requested the respondent to vacate and deliver the possession and the respondent did not consider his request. Thereafter, the respondent had moved the petition in RCOP.No.1041 of 2010 on the file of the XIII Small Causes Court, Chennai. The order of eviction was granted on 24.01.2011. In spite of the said order, the respondent did not come forward to deliver the vacant possession. Thereafter, he filed an execution petition in E.P.No.251 of 2011 seeking delivery of possession and notice was ordered to the respondent. The respondent had chosen to file an affidavit of undertaking to vacate the premises and delivered keys of the premises through his counsel before the execution Court on 10.10.2011. However, the respondent had not chosen

to discharge the rental dues for a sum of Rs.2,94,500/- towards the rental arrears and other charges. Therefore, the petitioner had lodged a complaint before the XVIII Metropolitan Magistrate, Saidapet, Chennai and the same was dismissed as no prima facie made out under Section 203 Cr.P.C. Hence, the petitioner has filed the present criminal revision before this Court.

3. It is seen from the records that the learned XVIII Metropolitan Magistrate, Saidapet, Chennai has passed the orders by dismissing the complaint as not prima facie made out under Section 203 of Cr.P.C. Section 203 of Criminal Procedure Code provided 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."

As per the procedure of Section 203 of Cr.P.C., the learned Magistrate should act that after taking the complaint on file, he should record the statement on oath of the complainant, if any, he should examine the witnesses if any produced by the complainant and any enquiry or investigation under Section 202 of Cr.P.C., thereafter, the learned Magistrate is having power or opinion to proceed the complaint filed by the complainant.

4. The learned counsel for the petitioner has relied upon the judgment in the case of D.N.Bhattacharjee and others v. State of West Bengal and Another reported in (1972) 3 SCC 414, it is stated in para 7 is as follows:

"It has to be remembered that an order of dismissal of a complaint under Section 203, Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether

the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code."

5. In view of the above, it is made clear that when the order has been passed under Section 203 of Cr.P.C., the learned Magistrate should have followed the procedure under Section 203 of Cr.P.C. and thereafter should pass appropriate orders. Admittedly, in the case on hand, the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., but simply dismissed the same even after recording of sworn statement or the examination on oath of the petitioner, if any, he should examine the witnesses if any produced by the complainant and any enquiry or investigation under Section 202 of Cr.P.C.

6. It is my absolute view that the learned Magistrate has not followed the procedure as per Section 203 of Cr.P.C., since the complainant had cited his witness as well as documentary evidence relied upon and enclosed with the complaint laid in writing, which had been ignored by the Court below before passing orders under Section 203 of Cr.P.C. and the same is illegal and liable to be set aside. Therefore, this Court is inclined to interfere in the order passed by the learned XVIII Metropolitan Magistrate for the purpose of examination of the witnesses, if any, produced by the complainant and conduct enquiry or investigation under Section 202 of Cr.P.C. dated 14.12.2017.

7. Considering the facts and circumstances of this case, this Court is inclined to pass the following orders:

i) The impugned order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai made in C.M.P.No.4628/A/17 dated 14.12.2017, is hereby set aside.

ii) In view of the above, the matter is remanded to the XVIII Metropolitan Magistrate, Saidapet, Chennai. The said Magistrate is directed to take up the matter for fresh

consideration on giving notice to all the parties concerned.

The learned Magistrate is directed to pass appropriate orders after following the procedure under Section 203 of Cr.P.C. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

8. This criminal appeal is allowed with the above direction.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2. The Chief Metropolitan Magistrate,
Egmore, Chennai.8

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PVS (CO)
EU(18/04/2018)

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