

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CrI.RC.No.448 of 2011

L.Swaminathan

.. Petitioner/Petitioner
Vs.

1. P.Angamuthu
2. R.Kuppusamy
3. N.Mani @ Manivannan

.. Respondents/Accused 1 to 3

Prayer: Criminal Revision has been filed under Section 397 & 401 of the Code of Criminal Procedure to set aside the order dated 20.08.2010 in C.C.No.122/2010 passed by the Judicial Magistrate, No.3, Salem.

For Petitioner : Mr.Manikandan
for Mr.S.P.Tamilavel

For Respondents: Mr.V.Balu

O R D E R

This Revision petition has been filed to set aside the order dated 20.08.2010 in C.C.No.122/2010 passed by the Judicial Magistrate, No.3, Salem.

2.The facts of case is as follows:

The revision petitioner appears to be the friend of the first respondent who is working as a Sub Inspector of Police, who had also indulged in the Real Estate business. The first respondent approached the revision petitioner for financial help and also induced the revision petitioner to invest in Real Estate business. Based on such inducement, the revision petitioner mortgaged his property and obtained loan for a sum of Rs.12,00,000/-. Further, he also borrowed a loan of Rs.2,00,000/- from one Vadivelu Finance and another Rs.2,00,000/- from Murugappa Finance and totally advanced to the first respondent Rs.18,00,000/-. The revision petitioner has not obtained any documents or receipts for the said advance as the second and third respondents were acting as agents of the first respondent.

3. With the above money, the first respondent has purchased the property in R.S.No.103/2, converted the same into several plots and sold the plots and invested the remaining amount to other business. When the revision petitioner was demanding his money advanced and also his properties, the same was not heeded by the first respondent. On such situations, the revision petitioner has put to great difficulty.

4. The bankers also brought his property for auction against the revision petitioner, when the matter stood thus, the revision petitioner informed the same to his brother in law, one Arunachalam. The said Arunachalam contacted the first respondent through cell phone and recorded a telephonic conversation, wherein the first respondent accepted that Rs.18,00,000/- has been borrowed from the revision petitioner.

5. Hence, a private complaint was lodged against the first respondent under section 200 of Cr.P.C. to take cognizance of offence under Section 168, 169 and 429 of I.P.C. before the Judicial Magistrate. The defacto complainant has given a statement and his brother in law Arunachalam has also been examined. Based on the statement, the Judicial Magistrate-3, Salem, dismissed the private complaint under Section 203 of I.P.C holding that the allegations made in the complaint and the statement of the defacto complainant and another did not disclose of any offence and further there are also no other materials to substantiate the allegations of the defacto complainant and rejected the complaint.

6. The Learned Counsel appearing for the revision petitioner contended that admittedly, there was a telephonic conversation between one Arunachalam and the first respondent herein and the veracity of conversation can only be decided at the time of trial.

7. However, there is prima facie case to show the nexus between the defacto complainant and the first respondent. Therefore submitted that the Trial Court ought not to have dismissed the complaint at the initial stage itself.

8. Whereas, the learned counsel appearing for the respondent contended that there is absolutely no materials whatsoever available on record to substantiate their allegations. Therefore, the entire complaint itself is filed

only to blackmail the Government servant who is working in the Police Department to demand money as ransom.

9.The alleged conversation said to have been recorded by the brother in law of the revision petitioner, cannot be taken into consideration for any purpose in law. The third party recording such conversation of a private individual is against the Telegraphic Act as well as the Information Technology Act. Therefore, such documents cannot be given any credence in the Court of law. Even if it contains all the so called conversation by the revision petitioner, it would reveal only a loan transaction and the defacto complainant has already received a sum of Rs.14,00,000/-. Therefore this fact clearly shows that this complaint is nothing but to black mail the Government Servant.

10.Hence, it is submitted that there is no materials, to take cognizance of the offence under section 168 and 169 of I.P.C. and there is no error in the order passed by the Trial Court.

11.In the light of the above submission, from the complainant and the statement of defacto complainant i.e. brother in law, it makes it clear that there are some financial dealings. However to substantiate the above dealings there was no documentary evidence available on record. In the absence of any materials to show at least that the defacto complainant has parted with some amount, mere allegation in the complaint and statement made in the court itself is not sufficient to infer such allegations.

12.When a person comes to the court with allegations, which are serious in nature and tries to put the person for criminal trial, allegation has to be substantiated with materials. Mere oral accusation is not at all sufficient to take cognizance of the criminal offence particularly against a Government Servant without any materials.

13.Another contention of the Learned Counsel appearing for the revision petitioner is that there was a conversation between the defacto complainant and the first respondent. This court is unable to comprehend how the third party recorded the alleged conversation between the first respondent and himself. The legality of such transactions itself is in doubt. Further, materials as to how such conversations were recorded, what was the device used and who was in control of such device at the relevant point of time have not been furnished. In the absence

of these materials, the alleged conversation cannot be given importance in the eye of law. Evidence in the form of electronic evidence has to pass the test of Information Act as well as Section 65(B) of the Indian Evidence Act itself.

14. On a perusal of the materials produced before the Court, absolutely there was no semblance of any materials to make the alleged conversation admissible evidence in the Court of Law. Therefore, this court is of the view that such materials without confirming the procedure set out in the Information Technology Act as well as under Section 65(B) of Indian Evidence Act cannot be allowed to be used as admissible evidence.

15. It is further to be noted that even assuming that those aspects can be tested only at the time of trial but a bare perusal of the contents alleged conversation produced by the revision petitioner would disclose that the defacto complainant had already received a sum of Rs.14,00,000/- towards the said amount. This fact, clearly indicates, that the allegations projected by the defacto complainant in the complaint that the first respondent did not pay even a single pie is nothing but falsehood. The complaint itself was filed for taking cognizance offence under Section 168 and 169 of I.P.C., section 168 of I.P.C deals with Public Servants bound to not to engage trade, Section 169 deals with Public Servant unlawfully buying or selling the property.

16. On a perusal of Section 168 and 169 of I.P.C., this court is of the view, that the allegations set out in the affidavit has not been established.

17. In view of the above, this court does not find any infirmity or illegality in the order of the Trial Court in dismissing the complaint. Hence this revision is dismissed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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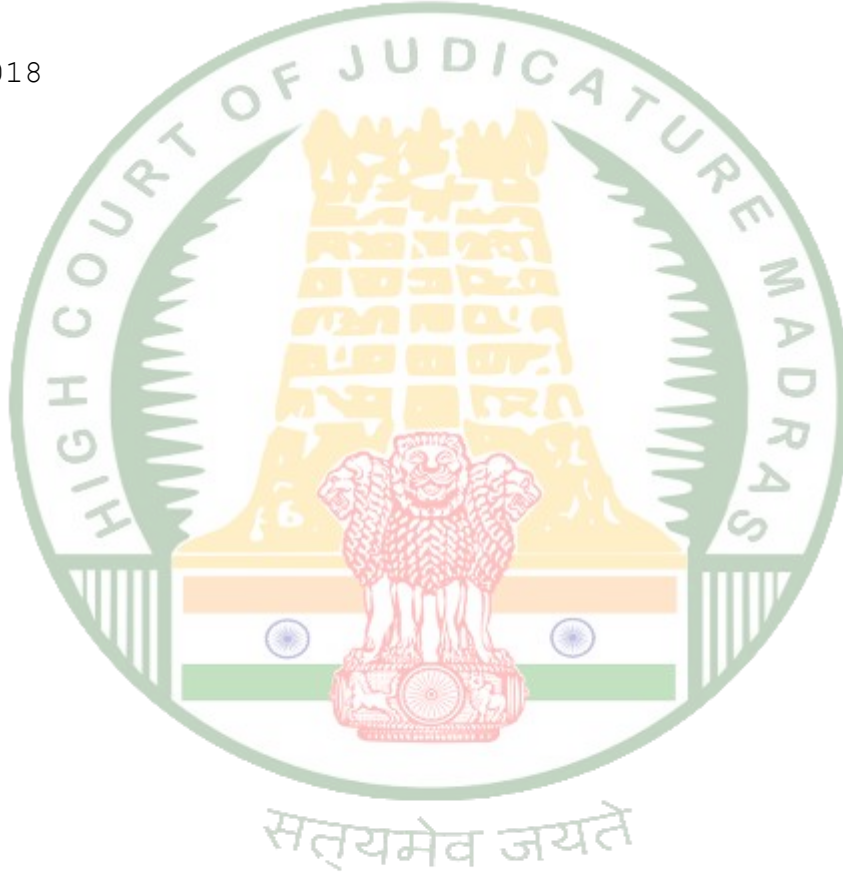
To

The Judicial Magistrate No.3,
Salem.

+1 cc to Mr.V.Balu Advocate sr 9938
+1 cc to Mr.P.Tamilavel Advocate sr 10572

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