

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.558 of 2016

V.Elango

...Petitioner

Vs.

1. Narayanan

2. The State

Inspector of Police
F5, Choolaimedu Police Station
Choolaimedu
Chennai - 94.
(Crime No.449/2006)

...Respondents

Prayer: The Criminal Revision case filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order passed in M.P.No.2702 of 2008 in C.C.No.418 of 2008 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, dated 11.12.2013.

For Petitioner : Mr.S.Anburaja

For Respondents: Mr.R.Ravichandran
Government Advocate (Crl. Side)
For R2

ORDER

The learned counsel for the petitioner and the learned Government Advocate (Criminal Side) were present.

2. The learned counsel for the petitioner would submit that the petitioner had preferred a complaint before the 2nd respondent police, against the 1st respondent. The 2nd respondent filed a complaint in Crime No.449 of 2006. After completion of investigation the respondent police filed charge sheet, before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, and the same was taken on file in C.C.No.418 of 2008.

3. He further submitted that during the pendency of the trial in C.C.No.418 of 2008, the first respondent herein filed a petition in M.P.No.2702 of 2008, before the learned XVII Metropolitan Magistrate, Saidapet, Chennai to discharge the 1st respondent from facing the prosecution in the above mentioned case. The learned XVII Metropolitan Magistrate, Saidapet, Chennai, after giving due opportunities to both the parties the learned XVII Metropolitan Magistrate, Saidapet, Chennai allowed the M.P.No.2702 of 2008, on the ground that there is no prima facie document is available for the loan obtained by the 1st respondent.

4. Aggrieved against the order of the learned XVII Metropolitan Magistrate, Saidapet, Chennai in M.P.No.2702 of 2008 dated 11.12.2003, the petitioner herein preferred the present Criminal Revision Case. Though, the respondent police has not preferred the Criminal Revision Case, the petitioner / defacto complainant is before this Court to set aside the order of the learned XVII Metropolitan Magistrate, Saidapet, Chennai in M.P.No.2702 of 2008.

5. Heard the learned counsel for the petitioner, the learned Government Advocate (Criminal Side) appearing for the 2nd respondent and perused the materials available on record.

6. It is well settled proposition of law, that at the time of considering the petition to discharge the accused, the Court has to consider the materials filed by the prosecution under Section 173 of Cr.P.C, but not the defence taken by the accused. In this case, a perusal of entire materials available on records, this Court finds that prima facie materials are available to proceed the case further against the 1st respondent. The learned XVII Metropolitan Magistrate, Saidapet, Chennai, failed to consider the materials produced alongwith charge sheet.

7. Therefore, this Court is inclined to set aside the order passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai, in M.P.No.2702 of 2008 dated 11.12.2003, in C.C.No.418 of 2008 and the learned Magistrate is directed to frame the charges against the 1st respondent herein and proceed the case further in accordance with law. Since, the matter is pending from the year 2008, the learned Magistrate is directed to dispose of the case within six months from the date of receipt of copy of this order.

8. With the above direction, The Criminal Revision Case is allowed.

Jer

Sd/-
Assistant Registrar (CS-VIII)

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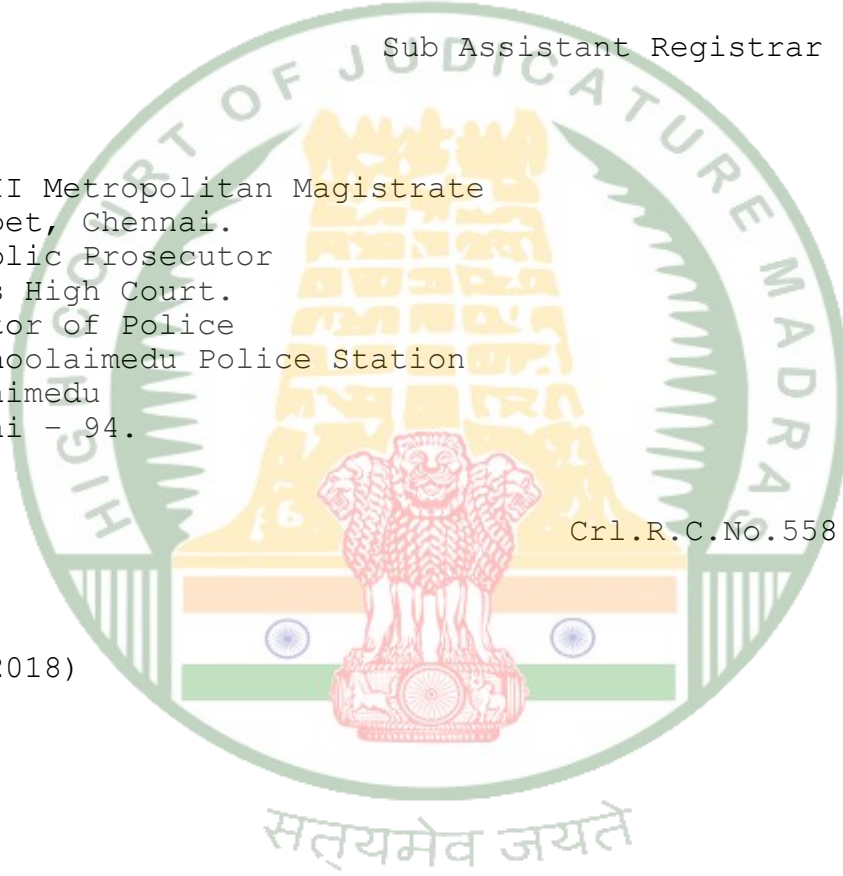
Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate
Saidapet, Chennai.
2. The Public Prosecutor
Madras High Court.
3. Inspector of Police
F5, Choolaimedu Police Station
Choolaimedu
Chennai - 94.

Cr1.R.C.No.558 of 2016

(CS-VIII)
EU (25/09/2018)



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