

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl. R.C.No.1316 of 2015

R.Devadoss

... Petitioner

Vs

1.State by,  
The Inspector of Police,  
Central Crime Branch (TEAM-II)  
Veppery, Chennai.

2.P.Nappinai

3.P.Baburaj

4.P.Rajasekar

5.H.Vijayalakshmi

6.P.Rajaram

... Respondents

(R2 to R4 are impleaded as per order  
dated 11.03.2016 in Crl.MP.939/16  
in Crl.RC.No.1316/15)

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to call for the records and set aside the order passed by the learned XIth Metropolitan Magistrate, Saidapet in Crl.M.P.No.3417 of 2015 dated 31.08.2015 in C.C.No.8764 of 2004 in Cr.No.468 of 2002 on the file of the Respondent/The Inspector of Police, Central Crime Branch, Team-II, Egmore, Chennai.

For Petitioner : Mr.G.Ilamurugu

For Respondents : Mr.R.Suriyaprakash (for R1)  
Government Advocate (Crl. Side)

Mr.P.Kannan (for R2 to R6)

## ORDER

This criminal revision petition is preferred by the Revision Petitioner/accused against the order passed by the Learned XI Metropolitan Magistrate, Saidapet in Crl.M.P.No.3417 of 2015 order dated 31.08.2015 in C.C.No.8764 of 2004 wherein the learned judicial Magistrate allowed the petition under section 311 of Cr.P.C.

### 2.Brief case of the Petitioner/Accused:

The respondent/defacto complainant preferred a private complaint against the revision petitioner/accused under Section 200 of Cr.P.C. before the learned XI Metropolitan Magistrate, Saidapet, under Sections 406 and 420 of I.P.C. alleging that the accused misappropriated and cheated Rs.85 lacks by making bogus title to the properties and executing false sale agreement. The learned Magistrate forwarded the same to the Commissioner of Police and in turn the same was forwarded to the respondent to register FIR.

3.The respondent police registered a case against the revision petitioner in Cr.No.468 of 2002 under Section 420 of IPC and after investigation, the final report was filed before the learned XI Metropolitan Magistrate, Saidapet under Sections 406 and 420 of I.P.C. dated 13.12.2004.

4.After filing charge sheet, PW1, the defecto complainant died and thereafter his son PW 2 and revision petitioner jointly filed a petition to compound the case under Section 320(2) of Cr.P.C. along with permission petition in Crl.M.P.Nos 2201 of 2015 and 2202 of 2015 dated 09.06.2015. Both petitions were allowed by the learned trial Court and PW2 was also cross examined. In his cross examination, PW2 deposed that as per prior instruction of his father, there was amicable settlement arrived between both the parties and there was no such further action taken against the Revision Petitioner. The Public Prosecutor without any sufficient reason filed a hand written application before the trial Court in Crl.M.P.No.3417 of 2015 under Section 311 of Cr.P.C. to reopen the case and recall the PW1 for chief examination. The petition under Section 311 of Cr.P.C. is filed without substance and the learned Magistrate without applying his mind, simply allowed the petition and passed non-speaking order. The revision petitioner has no other alternative except to approach this Court to call for the records and set aside the order passed by the learned XI Metropolitan Magistrate, Saidapet in Crl.M.P.No.3417 of 2015 order dated 31.08.2015 in C.C.No.8764 of 2004.

5.The learned counsel for the revision petitioner submits that the lower Court ought to have seen that the respondent filed a petition under Section 311 of Cr.P.C. to recall PW1 and prayed to re-open the case which is contrary to each other. Since the PW1 is no more and PW2 only filed compound petition and given statement and apart from that the case also still pending and posted for further witness. But the respondent sought for re-open the case. Hence the petition filed by the respondent is not maintainable.

6.The learned counsel for the revision petitioner submits that the lower Court failed to consider that the petition filed by the respondent police, did not contain any basic ingredients or proper reasons for re-call the witness or re-open the case. Because the witnesses already examined and without any sufficient reasons section 311 of Cr.P.C. will not arise.

7.The learned counsel for the revision petitioner submits that the learned Magistrate while passing order should have passed a detailed speaking order. But in this case the learned Magistrate passed non-speaking order which is totally illegal and liable to be set aside.

8.The learned counsel for the respondent supported the order passed by the learned Judicial Magistrate.

9.I heard Mr.G.Ilamurugu, learned counsel for the revision petitioner, Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the 1<sup>st</sup> respondent and Mr.P.Kannan, learned counsel for the respondents 2 to 6 and perused the entire materials available on record.

10.This Court vide order dated 11.03.2016 directed the revision petitioner to implead the respondents 2 to 6 and heard the contentions of the counsel appeared on behalf of the respondents 2 to 6.

11.It is seen from the records that in this case out of 18 witnesses 14 witnesses were examined and the case is pending trial for edge of judgment.

12.During the course of trial, the case was referred by the learned XI Metropolitan Magistrate, Saidapet for settlement on

14.02.2015 in Lok Adalat. At that time, the revision petitioner voluntarily came forward to settle the issue amicable. Since the defacto complainant was died, the accused entered into compromise with his son PW2.

13.On 06.08.2015, the learned Assistant Public Prosecutor, XI Metropolitan Magistrate Court, Saidapet filed a petition to re-open the case and recall the witness under Section 311 of Cr.P.C. since the revision petitioner/accused did not comply with the conditions agreed. When the application under Section 311 of Cr.P.C. came up for hearing before the learned XI Metropolitan Magistrate Court, passed an order as follows:

"Court filed, Enquiry heard both sides. To arise at a correct decision this petition is allowed in the interest of justice"

14.It is no doubt, the order of the learned Judicial Magistrate is an non-speaking order. But the facts and circumstances surrounded in this case do not warrant this Court to interfere in this criminal revision.

15.Accordingly, this Criminal Revision Case filed by the petitioner/accused is dismissed and the learned trial Court is directed to dispose the C.C.No.8764 of 2004 within a period of four months from the date of receipt of a copy of this order.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The XIth Metropolitan Magistrate,  
Saidapet, Chennai.

2. The Inspector of Police,  
Central Crime Branch (TEAM-II), Veppery, Chennai.

+1 cc to M/s.G.R. Associates, Advocate Sr.No.20533

CrI. R.C.No.1316 of 2015

CSL/28.01.2019