

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Petition No.109 of 2015

N.Krishnamoorthy

.. Petitioner

Vs.

1. Salapuri

2. Venkatesan

.. Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the learned Judicial Magistrate No.V, Salem, in C.M.P.No.4774 of 2013, dated 04.02.2010.

For Petitioner

: Mrs.R.Hemalatha

ORDER

Being aggrieved by the dismissal of the complaint, filed under Section 200 Cr.P.C., the present revision case is filed.

2. The case of the complainant/petitioner is that when the 1st

respondent has constructed a house, adjacent to his house, she did not obtain any prior permission from Salem Municipal Corporation and in that process, his house was damaged. When he questioned the same, she was not bothered. Therefore, the petitioner was constrained to file a suit in O.S.No.980 of 2011, on the file of the learned Additional District Munsif Court-II, Salem, claiming compensation of Rs.80,000/-, towards damage of the building. Coming to know of the said fact, the 1st respondent, with the help of the Inspector of Police, Cyber Crime, Salem, 2nd respondent herein, has lodged a complaint with Ammapet Police Station. Thereafter, the 2nd respondent, used to call him, on so many occasions and insisted him to compromise the matter amicably, with the 1st respondent, otherwise, the 2nd respondent would foist a false case against him. Apprehending arrest, the petitioner has approached the learned District and Sessions Judge and obtained an anticipatory bail. He was to sign before the Cyber Crime, Salem. Whenever, the petitioner appeared on the said police station, he was insisted to withdraw the suit and also threatened that another case would be registered against him. In the abovesaid circumstances, the petitioner was constrained to file a private

complaint, before the learned Judicial Magistrate No.V, Salem, against the respondents herein, for the offences, under Sections 120(B), 211, 219, 220 and 506(I) IPC. Without considering the statements of the petitioner, witness, Sankar and other relevant records, the learned Judicial Magistrate No.V, Salem , has rejected the complaint. Aggrieved by the same, the present revision case is filed.

3. Inviting the attention of this Court to the contents of the complaint, dated 29.07.2013, Mrs.R.Hemalatha, learned counsel for the petitioner submitted that despite the production of material documents and statements, the learned Magistrate, has dismissed the complaint, without any valid reason.

Heard the learned counsel for the petitioner and perused the materials available on record.

4. Adverting to the statement of witnesses and the material

documents, the learned Magistrate, while framing a question, as to whether, the petitioner has made out a prima facie case, to proceed against the respondents, has observed that the complainant is an Advocate. The main allegation made in the complaint is that the 2nd respondent had exerted pressure, on the petitioner, to withdraw the suit in O.S.No.980 of 2011, filed by him, on the file of the learned Additional District Munsif Court-II, Salem, against his adjacent owner, viz., 1st respondent. A suit has been filed for damages against her.

5. Though the petitioner, in his complaint, dated 29.07.2013, has mentioned that an offences, under under Sections 120(B), 211, 219, 220 and 506(I) IPC, has been committed by the respondents, after perusing the contents of the complaint and the petitioner's statement, the learned Judicial Magistrate, has found that there was nothing to indicate commission of an offence, under Section 120(B) IPC. The Court below has also observed that both the complaint and the sworn statement, did not even indicate, as to what was the conspiracy between the respondents.

6. The learned Judicial Magistrate has also observed that though

one Mr.Arumugam, was initially cited as witness, in the complaint to support the contention that the Jeep driver of the Inspector of Police, Cyber Crime, Salem, 2nd respondent herein, had asked him, as to whether, the petitioner had arrived at a compromise or not. Lateron, the petitioner had examined one Mr.Sankar, as Witness No.2. The Court below has also raised a question, as to why, the petitioner has not examined the said Arumugam, instead of examining Shankar. At this juncture, it should be noticed that Shankar, the witness examined, was not the person, named in the complaint. Some other person, Arumugam, has been examined as PW.2.

7. As rightly observed by the Court below, if Arumugam alone had the knowledge of the jeep driver of the Inspector of Police, Cyber Crime, Salem, speaking to the petitioner about the case, between the petitioner and the first respondent, it is not known, as to how, another person, had been examined by the petitioner. That be the case, the testimony of Arumugam, could be only hearsay.

8. Though the complainant had deposed that on 22.04.2012, at

10.00 P.M., when he went to the Police Station, the 2nd respondent asked him, as to whether, instead of appearing before the Police Station, for affixing the signature, the petitioner would compromise the matter and further submitted that he had recorded the conversation in the Compact Disc, he has not produced any disk, before the learned Judicial Magistrate.

9. Though the petitioner has also alleged commission of offences, under Section 506 IPC., before the Court below, he has not given any statement, to that effect. After perusal of the complaint and considering the statements of the petitioner and the witness, the learned Judicial Magistrate has also found that there was no prima facie material to proceed against the respondents, under Sections 211, 219 and 220 IPC. For the reasons, stated supra, the Court below has dismissed the complaint, under Section 203 Cr.P.C.

10. In **Nirmaljit Singh Hoon v. State of West Bengal** reported in

AIR 1972 SC 2639 : (1973) 3 SCC 753, the Hon'ble Supreme Court held that the object of Section 200 of the Code of Criminal Procedure, requires examination of the complainant and the witnesses, to find out, whether, there is *prima facie* case against the person accused of the offence in the complainant and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person.

11. The words, “sufficient grounds” under Section 203, have to be construed to mean the satisfaction that a *prima facie* is made out against the person accused, by the evidence of witnesses entitled to a reasonable degree of credit; they do not mean sufficient ground for conviction. (Reference can be made to a decision in **Nirmaljit Singh Hoon's** case (cited *supra*)]

12. In **Nirmaljit Singh Hoon's** case (cited *supra*), the Supreme Court further held that Section 203 of the Code, consists of two parts. The first part lays down the materials which the magistrate must

consider, and the second part says that if after considering those materials there is in-his judgment no sufficient ground for proceeding, 'he may dismiss the complaint.

13. Dismissal of the complaint under section 203 of Code of Criminal Procedure could only be, (i) after considering the statements on oath of the complainant and of the witnesses and (ii) the result of the inquiry or investigation under section 202 of Code of Criminal Procedure. Instant case falls under Category I. The Magistrate, after considering the statement of the complainant and witnesses and other materials, produced before him, has found that there is no case against the accused person, in proceeding further in the matter, he has to dismiss the complaint.

14. Reading of the impugned order, makes it clear that there was no ground to proceed against the persons accused of committing offence and hence, the Magistrate has rightly dismissed the complaint, under Section 203 Cr.P.C. The impugned order does not warrant any

interference.

15. In view of the above, the Criminal Revision Case is dismissed.

No costs.

25.02.2015

Index: Yes

Internet: Yes

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To

The Judicial Magistrate No.V,
Salem.

S. MANIKUMAR, J.

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