

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018
DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1338 of 2014

C.Raghavan

.. Petitioner

Vs

1.State Rep. by
Inspector of Police,
CBCID, Metro
Alandur Municipal Building,
Municipal Complex,
Chennai-600 016.

2.Sivarajan

3.V.Anandhi

4.Varadharajan

5.V.Sasikala

... Respondents

(Respondents 2 to 5 are impleaded as per
the order of this Court dated 12.08.2015
made in M.P.No.1 of 2015 in
Crl.RC.No.1338 of 2014)

Prayer: Criminal Revision Case filed under Sections 397(1) and
401 of the Criminal Procedure Code, against the order passed by
the XI Metropolitan Magistrate, Saidapet, Chennai in
Crl.M.P.No.4257 of 2012 dated 28.05.2014.

For Petitioner : Mr.S.Saravana Kumar

For Respondents: Mr.T.P.Savitha (for R1)
Government Advocate (Crl.Side)

Mr.V.S.Gavaskar (for R2 to R5)

JUDGMENT

This Criminal Revision Case is filed by the petitioner
against the order passed by the learned XIth Metropolitan

Magistrate, Saidapet, Chennai in CrI.M.P.No.4257 of 2012 dated 28.05.2014, opposing the closure report filed by the respondent police.

Brief case of the petitioner:-

2.The revision petitioner is an Engineering Graduate entered into a fake partnership firm created by the accused namely Sivarajan (A1) V.Anandhi (A2) , Varadharajan (A3) and V.Sasikala (A5) in the name and style of "Clever Soft Solutions Ltd". The accused A1 to A4 fraudulently obtained a sum of Rs.27,60,000/- in different dates from the petitioner and cheated him and committed him breach of trust. Hence the petitioner lodged a complaint on 21.07.2008 against the accused A1 to A4 and a case in Cr.No.569 of 2008 was registered by the Inspector of Police, CBCID under sections 406 and 420 of IPC. As the Inspector of Police did not take necessary action for filing the charge sheet, the revision petitioner voluntarily filed documents and list of witnesses before the learned Magistrate. Further on detailed investigation, the Inspector of Police instead of filling the final report filed its closure report referring the case of the petitioner as "mistake of fact". The revision petitioner preferred protest petition in CrI.M.P.No.4257 of 2012 and the same was dismissed by the learned XIth Metropolitan Magistrate, Saidapet dated 28.05.2014 against which the revision is filed.

3.The learned Counsel for the Revision Petitioner submits that the learned trial Court had passed the impugned order only on the basis of the Report filed by the Respondent Police and not on the materials collected during the course of investigation under section 202 of Cr.P.C. and committed manifest error on the part of law resulted miscarriage of justice against the petitioner.

4.The learned Counsel for the Revision Petitioner submits that the learned trial Court had failed to see that the materials collected during the enquiry and the statement by the petitioner in the complaint under section 200 of Cr.P.C. are the sufficient grounds to proceed with the case against the accused.

5.The learned Counsel for the Revision Petitioner submits that the learned trial Court failed to see the scope of under section 200 of Cr.P.C. to see whether any prima facie offence in this case is made out or not and it could not discuss the evidence and give its own findings.

6.The learned Counsel for the Revision Petitioner submits that the learned trial Court had failed to see and exercise its jurisdiction vested under section 190(1)(b) Cr.P.C. even when the Investigation Officer refer the case as mistake of fact and the Jurisdiction Magistrate is having power to cognizance of the case under section 190(1)(b) of Cr.P.C. through the material which constitute the ingredients of offence under Sections 406 and 420 of IPC.

7.The learned Counsel for the Revision Petitioner submits that the Lower Court failed to see that the respondent police has referred the case as mistake of fact only on the basis of Memorandum of Understanding. The accused had cleverly approached the complainant with meager amount of Rs.4 Lakhs when the actual liability is of Rs.27,60,000/- and created a Memorandum of Understanding and subsequently he has not acted as per the Memorandum of Understanding and on this ground itself the order passed by the Lower Court is liable to be set aside.

8.The learned Counsel for the Revision Petitioner submits that the learned trial Court had failed to see that in pursuant to the Memorandum of Understanding dated 09.06.2010 the accused ought to discharge the balance amount of Rs.23,60,000/- and had given undertaking and gave three cheques for the said sum to the petitioner and in which the petitioner could not realize any of the above cheques and one among the cheques is a defective cheque dated 07.12.2010 for a sum of Rs.10 Lakhs to cheat petitioner, wantonly created material alteration in the cheque, clearly shows the offence under Sections 406 and 420 of IPC is made out in this case.

9.The learned Counsel for the Revision Petitioner submits that the learned trial Court had failed to see that the Investigation Officer had categorically stated in his counter that the accused had received a sum of Rs.27,50,000/- from the petitioner and there is no finding that whether the company is still existence in the above said address and running the business and that the respondent police has not conducted proper investigation to file charge sheet against the accused.

10.The Revision Petitioner is directed by this Court to implead the respondents 2 to 4 / Accused Nos.1 to 4 and accordingly the application for impleading was allowed by this Court on 12.08.2015.

11. After conclusion of investigation, the closure report was filed showing respondent Nos. 2 to 5 in Column No. 2 as not sent up for trial. The learned Metropolitan Magistrate accepted the closure report and dismissed the objection raised by the Petitioner. Feeling aggrieved by the order of the learned Metropolitan Magistrate, releasing the respondent Nos. 2 to 5, the petitioner has preferred the present revision petition to set aside the impugned order dated 28.05.2014.

12. In view of the decision of the Hon'ble Apex Court in Bhagawant Singh v. Commissioner of Police (AIR 1985 SC 1285), when a Magistrate gets a negative report he has to choose between one of the following four courses:-

1. To accept the report and drop the proceedings.
2. To direct further investigation to be made by the police.
3. To investigate himself or refer for the investigation to be made by another Magistrate under Section 159 of Cr.P.C.
4. To take cognizance of the offence under Section 200 of Cr.P.C. as a private complaint which the materials are sufficient in his opinion and if the complainant is prepared for that course.

13. This Court has gone through 161(3) statement as well as the final report closing the case as mistake of fact. It is to be pointed out at this juncture that the 1st respondent is none other than partners and admittedly, litigations are pending between them. Under these circumstances, at this stage, it is not possible to come to a conclusion that it is a case which can be said to be predominantly of a civil in nature. In order to appreciate the intention of the parties their subsequent conduct is material. If the intention of the respondent was not to deceive the petitioner at the very first instance, then he could have offered for refund of the amount pending as per MOU.

14. The grievance expressed by the petitioner is that his statement has not been properly recorded. However, in the considered opinion of this Court, it is not so. The statement of relevant witnesses and in fact, one of the witnesses has also spoken about the transactions between the petitioner and the respondent.

15. In 2006 CRI.L.J 1433 (Sita Ram and others vs. State of U.P. and another), dismissal of the protest petition came to be set aside, for the reason that the concerned Magistrate has not discussed any evidence collected by the investigating officer

during investigation and he has not even made reference to such findings. But in the case on hand, the Jurisdictional Magistrate has referred to the statement recorded by the Jurisdictional Police under Section 161(3) of Cr.P.C. and reached the conclusion.

16. In 2012 CRI.L.J.1309 SC (Vasanthu Dubey vs. State of Madhya Pradesh), the Hon'ble Supreme Court has laid down the proposition that de hors the closure report of the case filed by the police/investigating agency, the Jurisdictional Court can take cognizance on applying its mind independently to the case.

17. This Court, with regard to the said proposition laid down by the Hon'ble Supreme Court, is of the view that there cannot be any difficulty in accepting the same. But the facts of the present case would disclose that the learned Metropolitan Magistrate has not duly applied his mind to the materials collected by the investigating agency during the course of investigation and wrongly concluded that the closure report filed by the police is acceptable and dismissed the protest petition.

18. I have given my anxious consideration to the judgments cited by the learned counsel for revision petitioner hereunder:

1. AIR 1985 SC 1285 (Bhagwant Singh v. Commissioner of Police and another)
2. 2015 AIR (CRIMINAL) 274 (Sonu Gupta v. Deepak Gupta & Ors.)
3. (1996) 2 CTC 118
4. 2014-3-MLJ-Cr1-701
5. (2015) 3 MLJ (Cr1) 417 (Antony Gomes v. State represented by the Inspector of Police, Anti Land Grabbing Special Wing, District Crime Branch, Kancheepuram District and Others)

19. From the foregoing analysis of the various provisions and interpretation of the Sections as laid down by this Court and other High Courts as well as the Hon'ble Apex Court Judgments cited, it is clear that the order passed by the learned Metropolitan Magistrate is illegal and deserves to be set aside. The case shall be taken up again now by the learned Metropolitan Magistrate Saidapet, Chennai and then the matter shall be proceeded further in accordance with law. It is made clear that learned trial Court shall not be guided by any observations made by this Court while passing appropriate order in the matter. It

is further expected of the learned Metropolitan Magistrate Saidapet, Chennai to decide the criminal case on the file of the respondent police in Crime No.569 of 2008 cognizance for the offences under Sections 406 and 420 of IPC afresh as early as possible. The Criminal Revision is allowed accordingly.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vs
To

- 1.The XI Metropolitan Magistrate,
Saidapet, Chennai.
 2. The Inspector of Police
CBCID Metro, Alandur Municipal Building
Municipal Complex, Chennai 16
 3. The Public Prosecutor
High Court, Madras 104.
 4. The Section officer
Criminal Section, High Court, Madras 104.
- +1 CC to Mr.R.Saravanakumar, advocate sr 81172.

Cr1.R.C.No.1338 of 2014

NRJK(CO)
SP(11/12/2018)

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