

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.18049 of 2018

Maheswari

.. Petitioner

Vs

1.Kannadasan
2.Mallika
3.Murali
4.Sekar
5.Kala

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records on the file of the III Additional Sessions Judge, Salem, in respect of order dated 03.04.2018 passed in Criminal Revision Petition No.13 of 2017 confirming the order of the learned Judicial Magistrate No.6, Salem in CMP.No.76 of 2017 dated 05.01.2017 and to set aside the same and further direct the above complaint filed u/s 200 Cr.P.C. to restore the case to the file of the Judicial Magistrate-cum-District Munsif of Valapady and direct the Magistrate to commit the case to the Court of Sessions to be taken on file for trial.

For Petitioner : Mr.K.Ramanraj

O R D E R

The petitioner filed a private complaint alleging offences under Section 147, 447, 379, 294[b] and 506[1] IPC and Section 3 of TNPPDL Act before the learned Judicial Magistrate-VI, Salem, which was taken on file as CMP.No.76 of 2017. For proceeding further, the Magistrate went through the records and by a detailed order, dismissed the private complaint at the threshold under Section 203 Cr.P.C. Challenging the said order, the petitioner invoked the revisional jurisdiction of the Sessions Court under Section 397 Cr.P.C. by filing Criminal Revision Petition No.13 of 2017. The Sessions Judge ordered notice to the respondent/accused and after hearing both sides, by a detailed order dismissed Criminal Revision Petition No.13 of 2017 on 03.04.2018, holding that there was no prima facie material for the trial Court to take cognizance of the offences

alleged. Challenging the orders, the petitioner/complainant is before this Court.

2.Heard Mr.Ramanraj, learned counsel for the petitioner/accused, who placed strong reliance on the following judgments:

- i. A.Vimala Vs. N.Alaguvel Nadar reported in [2010]1 MLJ [Cr1] 48.
- ii.P.R.Murugaiyan Vs. Jayaveera Pandia Nadar reported in 1977 Cr.LJ 1700.
- iii.M.Govindaraja Pillai Vs. Thangavelu Pillai [deceased] & Others reported in [1983] 1 MLJ [Cr1] 646.
- iv.State rep. by the Deputy Superintendent of Police, Erode Town Erode District Vs K.P.S.Jayachandran, Inspector of Police, Formerly Erode North Police Station reported in [2009] 1 MLJ [Cr1] 517 .

3.When a private complaint is filed, it is the duty of the Magistrate to find out, if there is any material for him to take cognizance of the offences alleged under Section 190 Cr.P.C. In this case, the Magistrate has found on facts that there are no materials for taking cognizance of the offence and issuing process to the accused. Therefore, the Magistrate dismissed the private complaint by a detailed order dated 05.01.2017.

4.The complainant elected to move the Sessions court under Section 397 Cr.P.C. in Criminal Revision Petition No.13 of 2017. The Sessions Court went into the facts of the case and also found that there are no prima facie materials for taking cognizance of the offences alleged in the complaint and therefore, dismissed the revision petition on 03.04.2018, by confirming the order passed by the Magistrate.

5.Under Section 397[3] Cr.P.C., once a party has invoked the Sessions Court jurisdiction, he is precluded from approaching the High Court. However, in extraordinary circumstances, where it is shown that the orders passed by the Courts below suffers from jurisdictional errors or perverse illegality, the power of this Court under Section 482 Cr.P.C. can be invoked. In this case, on facts both the Courts found that there is no prima facie material to proceed further in the complaint, since it was found to be purely a civil dispute between the parties.

6.Mr.Ramanraj contended that since TNPPDL Act is triable by Sessions Court, an enquiry under Section 202 Cr.P.C. ought to have been conducted by the Magistrate.

7.It is true that after taking cognizance of the offence,

if the Magistrate finds that the offence is triable by Sessions Court, an enquiry under Section 202 Cr.P.C. is imperative. Where the Magistrate finds that there are no materials for taking cognizance, he is perfectly justified in dismissing the complaint at the threshold, since taking cognizance of an offence is indeed a very sacrosanct act and should not be done without due application of mind as held by the Supreme Court in Mehmood-Ul-Rehman Vs Khazir Mohammad Tunda and Others reported in 2015[4] SCALE 381. In such view of the matter, this Court does not find any reason to interfere in the orders passed by the Courts below and this petition is dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

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To

1.III Additional Sessions Judge,
Salem.

2.Judicial Magistrate No.VI, Salem.

+lcc to Mr.K.Ramanraj, Advocate SR.No.46853

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