

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.11.2018
Pronounced on : 26.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.712 of 2017 and
Crl.M.P.No.6740 of 2017

1. Shanmugam
2. Sampath ...Petitioners/Accused No 1 & 2

Vs.

1. Senthilkumar ... 1st Respondent/Defacto Complainant
2. State represented by its
The Inspector of Police,
E1, Mylapore Police Station,
Chennai 600 004
(Cr.No.2021 of 2013) ...2nd Respondent/Complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for records in Crl.M.P.No.3029 B of 2016 in C.C.No.266 of 2017 dated 13.03.2017 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioners : Mr.B.Kumar, Senior Counsel for
M/s.R.Karthikeyan

For Respondents: Mr.S.N.Subramani for R1
Mr.Hari Hara Arun Soma Sankar,
Govt. Advocate (Crl.Side) for R2

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ORDER

The facts which give rise to file this revision are stated hereunder:

A complaint was lodged by the defacto complainant, the first respondent herein, against the petitioners/accused before the second respondent on 14.11.2013. On the basis of the

complaint, a case was registered by the second respondent against the petitioners in Cr.No.2021 of 2013 for the alleged offences under Sections 294(b), 323 and 506(i) of Indian Penal Code on 14.12.2013. It appears that the second respondent conducted a thorough investigation into the complaint and finally found that there was no substance in the complaint and therefore a report was filed on 31.08.2016 by the second respondent and the case in C.C.No.266 of 2017 was closed as "mistake of fact". The first respondent being aggrieved in closure of the case as against the petitioners, filed a protest petition on 06.10.2016 before the XVIII Metropolitan Magistrate, Saidapet, Chennai, in CrI.M.P.No.3029 of 2016. The learned Magistrate recorded the statement of the first respondent/defacto complainant on 22.12.2016 and also statement of one Murugesan on 19.01.2017. Thereafter, it appears that the learned Magistrate passed an order on 02.02.2017 taking cognizance of the protest petition filed by the first respondent/defacto complainant. Subsequently, on 28.02.2017, summons were issued to the petitioners for their appearance for the alleged offence under Sections 294(b), 323 and 506(i) of IPC. The said order of the learned Magistrate is under challenge in this criminal revision case.

2 Mr.B.Kumar, the learned Senior Counsel appearing for the petitioners at the outset would submit that the learned Magistrate has erred in entertaining the protest petition and issuing summons to the petitioners without there being any worthwhile evidence in support of the allegations of the first respondent/defacto complainant. He would draw the attention of this Court to the order passed by the learned Magistrate dated 02.02.2017, wherein, the learned Magistrate has not given any reason for taking the complaint on file, except stating that there was some altercation between the petitioners and the first respondent. The learned Senior Counsel would submit that on the other hand, the second respondent conducted a thorough investigation and enquiry into the complaint. In the course of enquiry, the second respondent enquired five witnesses and upon considering all of their evidences, the second respondent had come to the categorical conclusion that there was no truth in the allegations of the first respondent and the allegations of the first respondent was stage managed, in order to extract more money from the petitioners. According to the learned Senior Counsel, the conclusion arrived at by the second respondent was based on the evidences given by various persons, who were subjected to enquiry by the second respondent and such conclusion by the second respondent was casually overlooked by the learned Magistrate, without any contra material, by taking the complaint on file by passing the impugned order.

3 In the course of arguments, the learned Senior Counsel

would also draw the attention of this Court to Section 95 of IPC, which reads as under:

"95. Act causing slight harm –
Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

According to the learned Senior Counsel appearing for the petitioners/accused, the incident could have attracted only the ingredients as found in Section 95 of IPC and for which no offence could be made out under the provisions of IPC. In the said circumstances, the second respondent had rightly closed the case as "mistake of fact" and such closure report cannot be unsettled by the learned Magistrate, without any contra strong evidence for taking the complaint on file. The learned Magistrate has acted merely on the basis of the statements given by the first respondent/defacto complainant and one Murugesan and their statements are not supported by any other material whatsoever. Therefore the order passed by the learned Magistrate is liable to be interfered with in the present criminal revision.

4 On behalf of the second respondent, counter has been filed narrating the above facts. The criminal revision case however is sought to be resisted on behalf of the first respondent/defacto complainant on the ground that there was material to support the case of the defacto complainant. Before advertng to the merits of the case, the learned counsel would submit that the revision case, against the order passed by the learned Magistrate by entertaining the protest petition, is not maintainable and in support of his contention, he would rely on the decision of the Hon'ble Supreme Court reported in (2004) 7 SCC 338. According to him, the only remedy available to the petitioners is under 482 of Cr.P.C and not the revision. In reply to the same, the learned Senior Counsel would submit that originally the case was filed under Section 482 of Cr.P.C., but however, on the basis of the objection raised by the Office, the case was converted into revision. The learned Senior Counsel would submit that in any event, as there was no appeal provision, revision would lie and the revision petition was entertained by this Court.

5 This Court is in agreement with the submissions made by the learned Senior Counsel on the question of maintainability of the revision.

6 As regards merits of the case, the learned counsel for the first respondent would submit that the first respondent was

manhandled by the petitioners on the date of occurrence i.e. on 14.11.2013 and in the altercation, he was injured and was also admitted in the Hospital. According to him, unfortunately, because of the status of the petitioners, which according to the first respondent, necessitated the second respondent to close the case. According to the first respondent, the petitioners are influential persons politically and therefore their status had decided the action taken by the second respondent in their favour. According to the learned counsel, the learned Magistrate has appreciated the evidences in proper perspective and felt that there is substance in the complaint and therefore the complaint was taken on file and summons were issued to the petitioners. Such order passed by the learned Magistrate does not call for any interference.

7 This Court has considered the rival submissions made by the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent and the learned Government Advocate (Crl.Side) appearing for the second respondent. As could be seen from the closure report filed by the second respondent, the second respondent has conducted thorough investigation and enquired into the allegations made by the first respondent and in fact had even examined five witnesses. On the basis of their statements, the second respondent had come to the conclusion that there was no substance or truth in the allegations and such allegations were made for achieving the collateral purpose by the first respondent. The conclusion reached by the second respondent appears to be well founded and does not call for any interference from this Court. On the other hand, the conclusion reached by the learned Magistrate appears to be on the basis of the statements made by the first respondent and his friend one Murugesan, which were not corroborated by any other material whatsoever. It appears that the learned Magistrate has taken the complaint on file on the basis of sketchy and slender piece of evidence, not supported by any worthwhile material. Moreover, it appears that the complaint was filed as early as on 14.11.2013 and the complaint was taken on file as late as on 02.02.2017 and summons were issued on 28.02.2017.

8 As rightly pointed by the learned Senior Counsel appearing for the petitioners at best, the incident could have attracted only Section 95 of the IPC, as it appears that there was a minor scuffle and altercations between the first respondent and the petitioners, in respect of settlement of amounts due, in respect of transactions, which took place between them. Such minor scuffle and altercation between the petitioners and the first respondent is being blown out of proportion by the first respondent in order to achieve his own whims.

9 This Court is of the considered view that it was clear case of the first respondent, making a mountain out of a mole hill. The closure report by the second respondent is very clear and this Court does not find any infirmity. On the other hand, the order passed by the learned Magistrate on 02.02.2017 taking the complaint on file cannot be countenanced both in law and in facts and therefore the same is liable to be interfered with. For the above said reasons, the criminal revision is allowed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The XVIII Metropolitan Magistrate Court,
Saidapet, Chennai.
2. The Inspector of Police,
E1, Mylapore Police Station,
Chennai - 4.
3. The Public Prosecutor,
High court, Madras.

+1cc to Mr.S.N.Subramani, Advocate, S.R.No. 80631

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No. 80527

Cr1.R.C.No.712 of 2017

VBA (CO)
GN(10/12/2018)

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