

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1377 of 2018

Ashok Giri

... Petitioner

Vs.

State Rep by the Inspector of Police,
J-8, Neelankarai Police Station,
Neelankarai,
Chennai 600 115.

... Respondent

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order passed in C.M.P.No.3541 of 2017 in Crime No.3317 of 2012 on the file of the Judicial Magistrate, Alandur and set aside the same and direct further investigation by a different agency or a superior police officer.

For Petitioner : Mr.S.Anantha Narayanan
For Respondent : Mr.G.Harihara Arun Somashankar,
Government Advocate (Crl.side)

O R D E R

The present revision case has been filed against the dismissal of protest petition filed by the petitioner herein by the learned Judicial Magistrate, Alandur in C.M.P.No.3541 of 2017 in Crime No.3317 of 2012.

2. The facts which gave rise to the filing of the present criminal revision case are stated hereunder:-

(i) The petitioner herein is a defacto complainant, filed a complaint before the Neelankarai Police Station on 30.05.2012, with regard to the missing of the Deutsche Bank unfilled cheque bearing cheque No. 4000041359800028, for which, the respondent

police issued C.S.R.No.53/CSR/J8/12 dated 30.05.2012. According to the complainant, the cheque was stolen by one D.S.R.A.P.Pradap Singh from his office and the cheque was presented before the Bank concerned. After receiving the intimation from the Bank authority, the petitioner/defacto complainant has given instructions to the Bank to stop payment. Thereafter, a complaint was registered against the said D.S.R.A.P.Pradap Singh by the petitioner herein and a case was registered by the police concerned under Section 420 of I.P.C. A final report was filed with an endorsement "mistake of facts". The protest petition was filed against the respondent police, closing the case as "mistake of facts".

(ii) The learned Judicial Magistrate, after hearing both sides and after perusing the facts and materials placed on record, had come to the conclusion that there was no basis in regard to the allegations of the defacto complainant/petitioner herein. The learned Judicial Magistrate while dismissing the protest petition, had given an elaborate reasoning in regard to the transaction between the defacto complainant/ petitioner herein and the accused D.S.R.A.P.Pradap Singh. The reasons as set forth by the learned Judicial Magistrate in paragraph No.4, is extracted hereunder:-

"4. points :

Heard both sides. On perusal of record, the petitioner lodged a complaint stating that the accused stolen his cheque and fraudulently filled out it with the intention of cheating him. During the investigation conducted by the respondent/police, as per the R.C.S.report, it is noticed that the defacto complainant is a Managing Director of Vaishnovi Infrastructure Engineering Pvt.Ltd. on 15.02.2011. The disputed cheque bearing No.155808 dated 14.01.2012 was issued to the defacto complainant as salary for Professional Legal Services rendered in such company as Director. On perusal of document produced along with the R.C.S.Report, on 05.06.2012, the accused issued legal notice to the defacto complainant stating that on 14.01.2012, the disputed cheque was issued to him for Professional Legal Services rendered by him and it was dishonoured due to the stop payment made by the defacto complainant, therefore, the accused called upon the defacto complainant to pay the said amount within 15 days. Without objecting the issuance of such cheque, on 06.06.2012, the defacto complainant issued letter to the accused calling upon particulars of Professional Legal Services rendered by the accused. It was replied by the accused on 16.06.2012 stating that the fees for the period of 18 months starting from November 2010 to April 2012 yet to be settled.

Afterwards, on 18.06.2012, the defacto complainant issued legal notice contrary to his earlier own notice stating that the accused was resigned from the company as Director on 24.08.2011, and disputed cheque was stolen from the custody of defacto complainant. It was denied by the accused on 22.06.2012 by way of his reply. Meanwhile, on 13.05.2012, the complaint was lodged by the defacto complainant. Further, it is noticed that the accused filed a complaint u/s 138 of N.I.Act before the XIV Metropolitan Magistrate Court, Egmore in CC.36/2012 on 06.12.2012. All these records clearly establish that the accused was worked under the defacto complainant as Director and the arrears of salary was available. It was requested by the accused and the defacto complainant instructed him to produce particulars regarding non-payment of such professional fees. During the course of such communication, the cheque was issued and subsequent letter issued by the defacto complainant does not deny the disputed cheque to the accused. In these circumstances, the burden is on the accused to prove his fact. There is no evidence placed before the Court in support of his averment regarding when and where his cheque was lost. Further, there is no documentary evidence placed before this Court substantiating his plea of cheating caused by the accused. On perusal of R.C.S.Report along with annexed documents, it clearly establishes that there is no prima facie regarding alleged offence of cheating against the accused. Hence, this Court is of the considered view that this petition deserves to be dismissed."

3. From the above, it is very clear that the reasons which form the basis of the final decision by the learned Judicial Magistrate, are well founded and acceptable both legally and factually and the same need not call for interference from this Court. The case of the petitioner that there was no proper investigation, cannot also be accepted, since the police concerned has indeed investigated the case and on the basis of the materials, they found that there was no truth in the complaint filed by the petitioner herein. The entire action of the defacto complainant/petitioner herein appears to avoid being shown as accused in the complaint filed under Section 138 of the Negotiable Instruments Act by the accused D.S.R.A.P.Pradap Singh.

4. In fact, the learned Judicial Magistrate has given a clear reasoning as extracted above. There was absolutely no material to show that the petitioner herein was being cheated by the accused, since the learned Judicial Magistrate has given a clear finding of facts in regard to the accusation of the

petitioner herein. Therefore, this Court does not think that it is a fit case for entertaining the present criminal revision case. Therefore, the same is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The learned Judicial Magistrate,
Alandur.

2.The Inspector of Police,
J-8, Neelankarai Police Station,
Neelankarai,
Chennai 600 115.

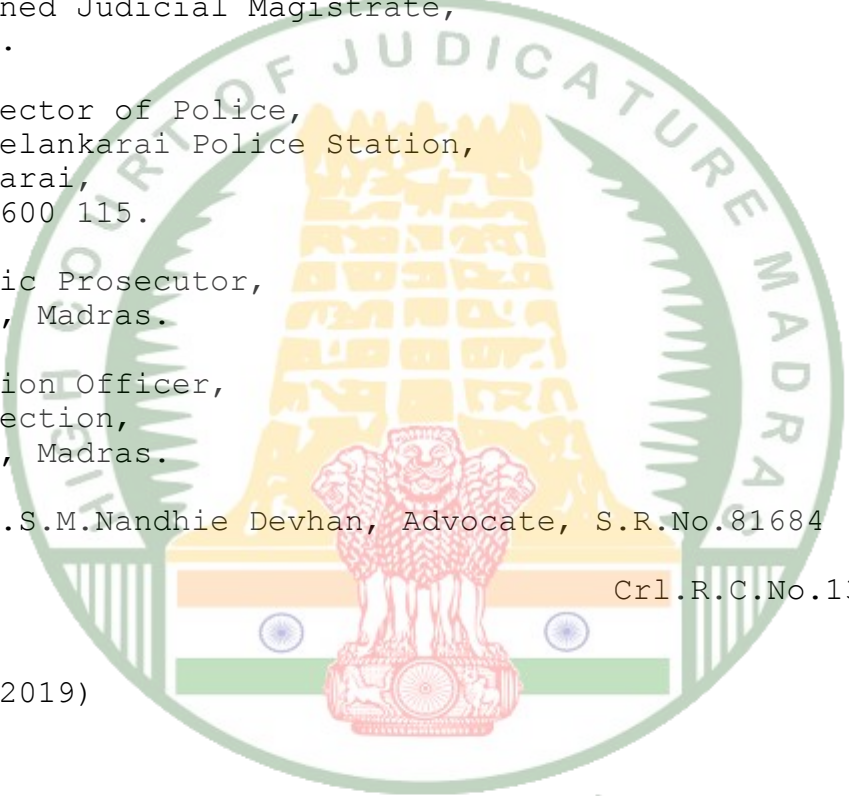
3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to Mr.S.M.Nandhie Devhan, Advocate, S.R.No.81684

Cr1.R.C.No.1377 of 2018

AK(CO)
GSP(10/01/2019)



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