

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.870 of 2012

Jayantilal Lukad  
Prop.M/s.J.J.Enterprises

... Petitioner

Vs.

1. Kantilal
2. Veeraram
3. The Inspector of Police  
Central Crime Branch,  
Team IX-A, Egmore, Chennai.

... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to call for the records in Crl.M.P.No.5834 of 2011 on the file of the learned III Metropolitan Magistrate, Geroge Town, Chennai dated 29/06/2011 and to set aside the same and to directed the 3rd respondent to investigate the same.

For Petitioner : Mr.P.Kumaresan

For Respondents : Mr.T.Shanmugarajeswaran R3  
Govt. Advocate (Crl.Side)

Mr.Rahul K. Jain  
for Vikram V.Jai R1 & R2

O R D E R

This revision has been filed to call for the records in Crl.M.P.No.5834 of 2011 on the file of the learned III Metropolitan Magistrate, Geroge Town, Chennai, dated 29.06.2011 and quash the same.

2. The revision petitioner is the defacto complainant. The case of the revision petitioner is that he has made a complaint before the respondent police against the respondents 1 and 2 for the offence under Section 406, 420 read with 34 IPC and the respondent police registered a case in Crime No.355 of 2011. After investigation, the case was closed as ''mistake of facts''. Hence, the petitioner has filed a protest petition under Section 173(8) Cr.P.C. before the learned III Metropolitan

Magistrate, George Town, Chennai, against the respondents and the same was taken on file in CrI.M.P.No.5834 of 2011, praying for further investigation. The learned Magistrate, after hearing the arguments, found that there was no sufficient materials have been placed by the revision petitioner either before the Court or the third respondent police. Holding that the dispute is of civil in nature and he can file a private complaint, the petition was dismissed.

3. Challenging the said order dated 29.06.2011, the defacto complainant/revision petitioner is before this Court by way of this revision.

4. The learned counsel for the petitioner would submit that the defacto complainant and the respondents 1 and 2 are known to each other. The respondents 1 and 2 are doing China toys business. They used to import China toys and sell the same. In that way, the defacto complainant is known to the respondents 1 and 2. Orally, they agreed that if the revision petitioner pays a sum of Rs.15,00,000/-, they would supply the China toys. He has paid a sum of Rs.15,00,000/- and believing him, he has also established his business and taken a shop for rent and spent a sum of Rs.4,00,000/- for infrastructures and also paid Rs.1,00,000/- as customs duty. After passing of days, neither the first respondent nor the second respondent supplied any goods, nor they repaid the amount. The defacto complainant came to know that the respondents cheated him. Both the respondents 1 and 2 with common intention cheated him and also committed the offence under Section 406 IPC and breached the trust. The petitioner made a complaint before the third respondent police and also produced material documents. The third respondent has not done the investigation properly and failed to file the charge sheet, but closed the case as 'mistake of facts'. Therefore, left with no other option, he filed a petition before the learned Metropolitan Magistrate, Chennai under Section 173 (8) Cr.P.C. seeking direction to the third respondent to conduct further investigation. The learned Magistrate failed to consider the materials placed by the revision petitioner and simply dismissed the petition on the ground that no sufficient materials was produced by the revision petitioner and further the dispute is civil in nature. Therefore, the learned Magistrate, dismissed the petition, which warrants interference.

5. The learned counsel for the respondents 1 and 2 would submit that there is no proof to show that the defacto complainant paid Rs.15,00,000/- and there is no documents to show that they have entered into an agreement either by way of partnership or any other business. The third respondent completed the investigation and found that there are no prima facie materials to lay a charge sheet against the respondents 1

and 2. Therefore, the case was closed as mistake of fact. Though the revision petitioner approached the learned Magistrate for a direction to the third respondent to do further investigation, the learned Magistrate rightly observed that no materials was produced before the police or Magistrate and the petitioner can file the protest petition, and dismissed the petition. The said order does not warrant interference.

6. The learned counsel for the third respondent would submit that absolutely there are no sufficient materials to order further investigation. Therefore, the learned Magistrate has rightly dismissed the petition.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and the learned Government Advocate (Crl. Side) and perused the materials available on record.

8. Admittedly, the revision petitioner filed a complaint before the third respondent police and the same was taken on file before the respondent police and registered as Crime No.355 of 2011. The third respondent investigated the matter and found that there was no case and no materials to connect the respondents 1 and 2 with the crime. Therefore, the case was closed as mistake of fact. The revision petitioner has not stopped with that. He filed a miscellaneous petition before the Magistrate in M.P.No.5834 of 2011 under Section 173(8) Cr.P.C. for further investigation, stating that he has paid a sum of Rs.8,00,000/- to the respondents 1 and 2 for the business and they have promised to supply China toys and after paying the money and also believing the words, he has established his business. Subsequently, the respondents 1 and 2 neither supplied any goods, nor returned the money. Therefore, the petitioner has approached the third respondent for investigating the matter and also filed a protest petition before the learned Magistrate. The learned Magistrate has also found that absolutely there are no materials to show that the revision petitioner paid a sum of Rs.8,00,000/- to the respondents 2 and 3 and further, the learned Magistrate observed that there are no materials to show that the respondents 1 and 2 have cheated the revision petitioner and the dispute is civil in nature and dismissed the petition. Even now, the petitioner has not produced any documents to show that the respondents 1 and 2 received a sum of Rs.15,00,000/- from the petitioner or otherwise, there was a business transaction and during the business transaction, the revision petitioner spent Rs.15,00,000/- believing the words of the respondents 1 and 2. In the absence of any supporting documents or any independent oral, evidence, this Court does not find any perversity in the order passed by the learned Magistrate. As rightly stated by the

learned Magistrate, the dispute is civil in nature. There is no merit in the revision.

9 The revision is liable to be dismissed. Accordingly, the revision is dismissed.

Sd/-  
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

rli

To

1. The III Metropolitan Magistrate,  
Geroge Town, Chennai
2. The Inspector of Police  
Central Crime Branch,  
Team IX-A,  
Egmore, Chennai.
3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.P.Kumaresan Advocate sr59444

+1cc to Mr.Vikram V.Jai Advocate sr58934

Cr1.R.C.No.870 of 2012

ev(co)  
aa11/02/2020

सत्यमेव जयते

WEB COPY