

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.441 of 2018
and
Crl.M.P.Nos.5323 and 16693 of 2018

A.Chidambaram

...Petitioner

Vs.

1. The State rep. by
The Inspector of Police,
Team-IXA,
Central Crime Branch,
Vepery, Chennai.

2. The Deputy Commissioner of Police,
Chennai Central Crime Branch,
Vepery, Chennai-7.

3. Annamalai Subramanian

...Respondents

The Criminal Revision Case is filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the order made in Crl.M.P.No.7091 of 2013 dated 02.03.2018 passed by the learned XI Mertopolitan Magistrate, Saidapet, Chennai in Crime No.355 of 2008 on the file of the Inspector of Police, Team - IXA, CCB, Vepery.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Muniyapparaj

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl. Side) for R1&R2
Mr.P.L.Narayanan, for R3

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O R D E R

This Criminal Revision has been filed to set aside the order made in Crl.M.P.No.7091 of 2013 dated 02.03.2018 passed by the learned XI Mertopolitan Magistrate, Saidapet, Chennai.

2. The case of the prosecution is that the third respondent and his wife Meena have been living in U.K. for the past 30 years. The third respondent wanted to invest their income

derived in U.K. to the property in and around Chennai and on the representation his relatives one Chidambaram, a real estate broker and instructed him to buy lands for him and his wife. The third respondent handed over his wife's signatures in blank papers to the petitioner from 2001 and 2008 and they invested a sum of Rs.4 Crores approximately. Later the petitioner in collusion with relative of one Muthuraman and Jaganathan purchased lands by misappropriating the money given by the third respondent and agitating by not getting him to the lands to the third respondent. During the course of investigation, it was ascertained that the third respondent is a close relative of the petitioner Muthuraman.

3. As the third respondent wanted to invest his funds in the landed properties in and around Chennai, on the representation of the petitioner, in the year 1999, the third respondent had purchased the property at Okkiyam Thoraipakkam and later purchased the property at Pallikaranai.

4. The third respondent wanted to sell the land situated at Pallikaranai. The third respondent obtained a power of attorney from his wife in the name of the petitioner. one acre of land in pallikaranai was sold to one Rajagopalan and the sale proceeds of Rs.36.52 lakhs were taken by the petitioner. Later the amount was handed over to the said Meena. During the year 2006, the petitioner by using the power of attorney given to Muthuraman registered the property situated at Pudhupakkam Village. The petitioner instructed to purchase 7.94 acres in Pudhupakkam Village in the name of Meena the wife of the third respondent had purchased only 2.69 acres in the name of the wife of the third respondent the said Meena and fraudulently registered the remaining property in his own name without the knowledge of the said third respondent. The petitioner had also obtained the power of attorney from the wife of the third respondent in the name of Jaganathan, Thiruporur and later registered the property of land measuring 2.69 acres to his name. When the investigation was in progress, on 16.06.2008 the third respondent had given a withdrawal letter to the Inspector of Police, Team III, Central Crime Branch stating that he had entered into a memorandum of understanding with the petitioner as the matter has been settled amicably due to the intervention of the elders of the families and also received a sum of Rs.5 Crores by way of Demand Draft No.543396 and as full and final settlement from the petitioner.

5. Further the investigation reveals that on 14.06.2008 there was a memorandum of understanding between the third respondent and the petitioner to be settled the amount of Rs.5 Crores. In this memorandum of understanding, further reveals that there are three civil suits filed against the third respondent in O.S.No.89, 90 and 91 of 2008 by the petitioner and

also he has given another complaint against the third respondent before the IX Team of Central Crime Branch in Crime No.113 of 2008 under Section 420, 506(i) and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interests Act, 2003. In the memorandum of understanding, the terms and conditions was entered by both the parties agreed to withdrawn all the cases by them before the Civil Courts and CCB and the receipt of Rs.5 Crores was acknowledged by the third respondent.

6. After giving withdrawal letter before the respondent police, the third respondent filed the CrI.O.P.No.19896 of 2009 before this Court. This Court has given a direction to the respondent police to file a final report within a period of three months. Based on the directions, the said Jaganathan and Muthuraman and the petitioner have filed anticipatory bail before this Court in CrI.O.P.Nos.22031 and 22032 to 22034 of 2009. This Court has also granted anticipatory bail to all the persons. The third respondent has filed an intervening application and Rs.5 Crores received from the petitioner.

7. Again on 08.10.2009, the third respondent preferred the second complaint and suppressed all the previous matters between the petitioner and the third respondent. Without knowing the facts, the case was registered once again with all set of facts, on 09.10.2009 by the III Central Crime Branch in Crime No.496 of 2009 under Section 419, 420, 465 read with 471 IPC. There were two cases registered against the petitioner. Since two cases were registered against the petitioner, the petitioner filed a CrI.OP.Nos.24979, 25193 and 25044 of 2009 to quash the proceedings. On 12.03.2010, this Court quashed the complaint pertaining to Crime No.496 of 2009 and dismissed the CrI.O.P.Nos.24979, 25044 of 2009 in respect of Crime No.355 of 2008 and directed the respondent police to complete the investigation. While the investigation was in progress, the investigation reveals that the third respondent and the accused has entered into an agreement. Therefore, the dispute between the parties are civil in nature and there is no scope to launch a criminal prosecution.

8. The third respondent being NRI and working as Doctor and his wife is also NRI and not adopting any norms in executing the Power of Attorney. The respondent Police treat the case as civil in nature and file the final report before the learned XI Metropolitan Magistrate, Chennai on 19.02.2012. The learned Magistrate sent a notice to the defacto complainant on 05.08.2011. Since no body was present, after perusing the record, the negative final report filed by the respondent police, has been accepted and the case was closed.

9. Again on 11.11.2011, the third respondent preferred a

third complaint before the Deputy commissioner of police and also filed a petition in CrI.OP.No.30204 of 2011 for direction and subsequently, the same was withdrawn before this Court. On 31.01.2012 the third respondent filed another petition before this Court in CrI.OP.No.2750 of 2011 for further investigation. This Court on 09.02.2012, closed the petition. The third respondent filed the complaint in Crime No.355 of 2008 has been closed as civil in nature and he has filed the second protest petition that was also dismissed. The third respondent has filed two protest petitions before this Court to reopen its own order and to set aside the order passed by the Court and they have also filed the third protest petition, which was allowed for further investigation under Section 156(iii) Cr.P.C. The case covered in Crime No.355 of 2008 in the manner known to law. Aggrieved with the said order, the petitioner has filed the present revision case before this Court.

10. According to the third respondent/defacto complainant, the investigation officer failed to conduct the proper and unbiased investigation, in spite of the orders of this Court dated 12.03.2010. The investigation officer having a legal mandate that he should collect all possible evidences to unearth the truth before the Court of law. He purposefully acted on sting of the accused persons. Without doing a lawful investigation, he simply closed the investigation as civil in nature. Based on the un-trust worthy, unlawful, alleged memorandum of understanding dated 18.10.2010 styled as ''Sammadha Udanpadikkai'' and also he has not followed the norms and directions of this Court also. Simply the Investigation Officer filed the negative final report and the Magistrate without following the procedure closed the protest petition. Therefore, it cannot be treated as third protest petition. Therefore, the trial Court while taking into consideration all the facts and circumstances of the case and directions of this Court, found that the final report filed by the investigating agency is not in accordance with law. The Magistrate has not proceeded the final report in accordance with law and closed the final report without giving any valid reasons. Therefore, they have filed the petition for direction before this Court and after obtaining the direction and filed the protest petition before the learned Magistrate, which is not either as a second or third protest petition, as per the directions of this Court, they filed the protest petition which was considered by the Magistrate and allowed.

11. Heard the learned senior counsel for the petitioner as well as the respondent and perused the materials available on record.

12. On a perusal of the records, it is seen that the third

respondent lodged two sets of complaint before the Central Crime Branch and the same were registered in Crime No.355 of 2008 and 496 of 2008. During the investigation of those cases, the parties have approached this Court with different reliefs covered in Crl.OP.Nos.19896, 24979, 25193 and 25044 of 2009. Finally, by the order dated 12.03.2010, this Court quashed the second FIR covered in Crime No.496 of 2009 registered the case at the instance of the third respondent permitted the investigation officer to proceed with the investigation in respect of Crime No.355 of 2009. This Court while quashing the Crime No.497 of 2009, directed the respondent police to re-investigate the Crime No.355 of 2008 and there is a prima facie allegation made out against the accused.

13. The learned counsel for the third respondent submitted that the accused with duress and coercion obtained several letter from the third respondent herein/defacto complainant and placed those letters before the investigating officer. Similar stand was taken by the third respondent before this Court. During the hearing in Crl.OP.NOs.24979, 25193 and 25044 of 2019 and the said factum was discussed in the order dated 12.03.2010. After considering the aspects, this Court has directed to investigate the case registered in Crime No.355 of 2008. Even then, the investigating officer failed to comply the direction of this Court, without doing the investigation in the manner known to law on the allegation levelled in the complaint, he simply relied on an unregistered ''Sammatha Udanpadikkai'' allegedly executed on 18.10.2010 and concluded the investigation as the dispute is Civil in Nature. The investigating officer concluded his investigation and formed an opinion that the case is civil in nature, resulted with negative final report before the Magistrate. Without doing any further investigation, the Investigating Officer submitted a report before the Magistrate and also after filing the report, notice has sent to the third respondent through professional courier and the same has been returned as ''Continue Door Locked''. After receipt of the final report, the Magistrate issued notice to the third respondent dated 28.06.2011. The learned Magistrate passed an order as ''Notice sent to the defacto complainant. Not present. Records perused. Final report accepted. Case closed as Civil Nature.'' Subsequently, the third respondent, after coming to the knowledge of the result of the investigation, he approached the learned Magistrate by way of protest petition.

14. The learned Magistrate passed an order dated 22.06.2012 stating that the petitioner called absent. FIR already closed on 05.08.2011 after giving notice to the petitioner. Hence, this petition was dismissed. Therefore, the above said proceedings reveals that no opportunity was given to the third respondent and no speaking order was passed and the order passed by the

learned Magistrate on 22.06.2012 was not on merits.

15. The learned counsel for the third respondent submitted that this protest petition is not on the third complaint, further he would state that the third respondent filed neither the third complaint nor the third protest petition. Despite this Court given a direction to the respondent police for further investigation and without doing further investigation in the manner known to law, simply they accepted the memorandum of understanding (Sammadhana Udanpadikkai) and filed the final negative report. Unfortunately, the learned Magistrate has also accepted. The third respondent filed the protest petition and the same was also dismissed on the technical grounds not on the merits. Therefore, the respondent filed the protest petition in CrI.M.P.No.7091 of 2013 before the learned XI Metropolitan Magistrate. The learned Magistrate, after hearing the matter and gone through the entire materials and discussed elaborately and allowed the protest petition and directed the investigating officer to conduct further investigation under sections 156(3) of Cr.P.C in the case covered Central Crime Branch in Crime No.355 of 2008. Against which the petitioner has preferred the present revision.

16. On reading of the entire materials and also the orders passed by this Court and the Magistrate in various proceedings and various stages, it is clear that the third respondent is working as Doctor in U.K. While he was in service in U.K., he wanted to invest his income in the landed property situated in and around Chennai. Therefore, the third respondent approached the petitioner and the petitioner has also agreed for the same. For which the third respondent sent a sum of Rs.4 Crores to the petitioner to purchase the land in his name and his wife's name. The petitioner has also accepted and has invested the money in purchasing the land, but the main allegation is that as agreed the petitioner has initially purchased the land. Subsequently he has deviated the fund and also obtained power of attorney and signatures in the papers and which was mis-used by the petitioners through his friends and also misused the power of attorney. After filing the complaint, the petitioner returned Rs.5 Crores. But still the third respondent alleged that out of the money sent by the third respondent, he purchased the various property and utilized the power of attorney given by his wife in the name of the petitioner. They have not sold the property and also they purchased the property about 7 ½ acres and actually they registered 2.69 acre in his wife's name, remaining land was registered by their name. They have misappropriated the fund by misusing the power of attorney. That was not properly investigated by the respondents 1 and 2, without investigating the matter, the Investigating Officer only relied on the memorandum of understanding and filed final negative report

stating that the dispute is civil in nature. This Court allowed the Crl.O.P.No.19896 of 2009 filed by the third respondent and allowed to investigate the case in Crime No.355 of 2008 and even then investigating officer has not done the investigation properly. Therefore, the allegations leveled against the petitioner is not purely civil in nature when the third respondent alleged several allegations against the petitioner. The first and second respondents have to investigate the matter thoroughly in accordance with law. Since the earlier protest petition filed by the third respondent was dismissed not on merits, the Magistrate had taken the petition filed by the third respondent on file in Crl.M.P.No.7091 of 2013. After hearing the arguments of both sides and considering the allegations levelled in the complaint and nature of dispute involved in the case in crime No.355 of 2008 allowed the petition and directed the respondents police to investigate the matter under 156(3) of Cr.P.C.

17. Under these circumstances, there is no perversity in the order passed in Crl.M.P.No.7091 of 2013 dated 02.03.2018 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and no merit in the revision. Hence, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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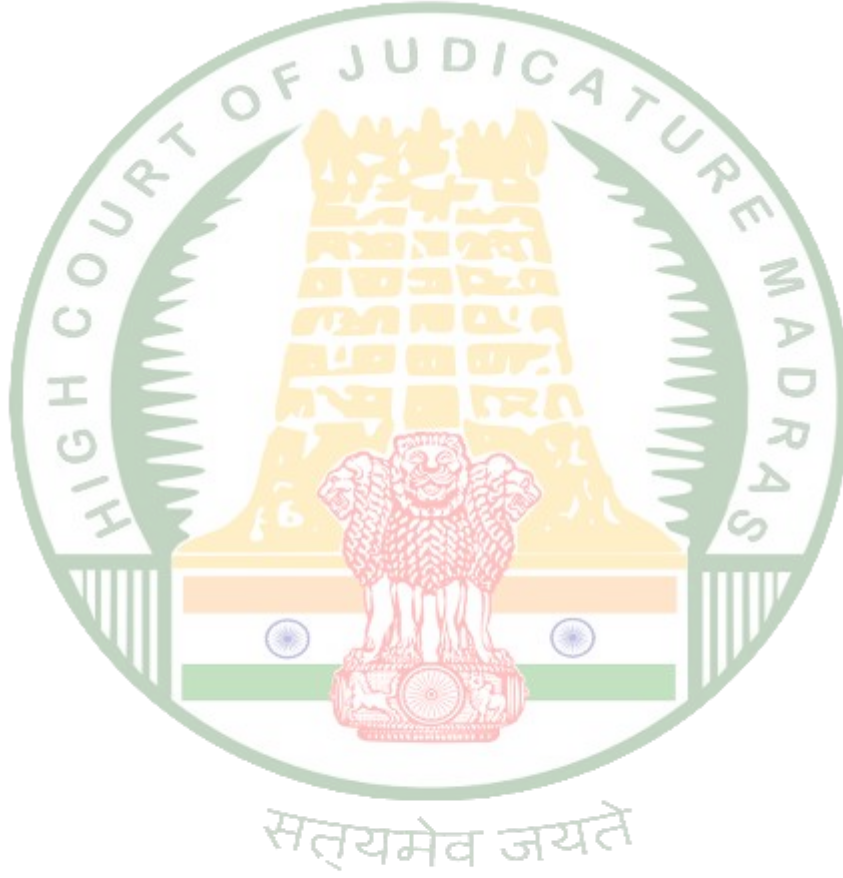
1. The XI Metropolitan Magistrate,
Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Inspector of Police,
Team-IXA,
Central Crime Branch,
Vepery, Chennai.
4. The Deputy Commissioner of Police,
Chennai Central Crime Branch,
Vepery, Chennai-7.
5. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.L.Narayanan, Advocate, Sr.No. 30169
+2 cc to Mr.R.Muniyapparaj, Advocate, Sr.No. 30354,30381

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