

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.516 of 2018

Santha ... Petitioner/Accused 1
Vs

1. Dr.N.Gunaseelan ... 1st Respondent/Complainant

2. The Inspector of Police,
Gobichettipalayam Police Station,
Erode District. ...2nd Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. seeking to set aside the order dated 5.4.2018 passed in Crl.M.P.No.4482 of 2017 by the learned Judicial Magistrate No.I, Gobichettipalayam.

For petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.N.Manokaran for R1
Mr.G.Harihara Arun Somasankar
Govt.Advocate (Crl.side) -R2

ORDER

The above Criminal Revision Petition has been filed against the order dated 5.4.2018 passed in Crl.M.P.No.4482 of 2017 by the learned Judicial Magistrate No.I, directing the first respondent to register the case and investigate the same at the instance of the first respondent herein.

2. The first respondent is the complainant. He lodged a complaint against the petitioner and 4 others for the alleged offences under Sections 120(b), 147, 465, 471, 420 r/w 149 IPC. The learned Magistrate, after adverting to the averments contained complaint and the materials placed in support of the complaint, by impugned order, dated 5.4.2018, directed the second respondent to investigate the case and file a report.

3. The revision petitioner, who is one of the accused,

challenges the order passed by the learned Judicial Magistrate principally on the ground that originally when an FIR was registered at the instance of the first respondent herein against the petitioner and other accused, this Court, vide order dated 1.4.2016 in Crl.O.P.No.6874 of 2013 has quashed the proceedings in C.C.No.61 of 2013. According to this Court, no case was made out since the document in question, namely, Will executed by the Testator which is alleged to be forged one, was not filed at all and therefore, there could not be any offence, which could be decided beyond all reasonable doubt. The learned counsel for the revision petitioner would refer para 11 of the order passed by this Court in the above said Crl.O.P., which reads as under:

"11. In view of the above stated facts and circumstances, I am of the view that it is a fit case to quash the entire proceedings in C.C.No.16/2013 on the file of the Judicial Magistrate Court No.1, Gobichettipalayam, Erode District. Further, while taking cognizance of the offence, the learned Trial Judge had decided the matter on preponderance of probabilities. However, in the criminal proceedings, the offence has to be decided beyond all reasonable doubt. Moreover, once the document is not placed before the Court, it is a mere waste of time to proceed with the matter further."

4. Therefore, the learned counsel would submit that when the FIR was quashed by this Court for the aforesaid reasons, strangely, the learned Judicial Magistrate on the same set of facts, has ordered investigation by the impugned order, which is not sustainable in law.

5. Per contra, Mr.N.Manokaran, learned counsel appearing for the first respondent would submit that the Will which was filed in a civil suit between the parties, was in the custody of the revision petitioner and therefore, the first respondent was not in a position to produce the same. Subsequently, on learning about the filing of the Will in question in civil proceedings, a certified copy of the same has been obtained by the first respondent and thereafter, a complaint was filed. According to the learned counsel, the learned Magistrate, has therefore, taken into consideration the same and rightly ordered investigation of the case.

6. The learned counsel would also submit that the present revision petition is not maintainable since it was only a direction by the learned Judicial Magistrate under Section 156 (3) Cr.P.C. and that the challenge to the order passed by the

Judicial Magistrate is pre-mature and not maintainable as per the ratio laid down by the Hon'ble Supreme Court. He would rely upon a decision of the Hon'ble Supreme Court reported in "(2017) 1 SCC 640 (HDFC Securities Ltd. and others versus State of Maharashtra and another)". According to the learned counsel, an order under Section 156 (3) Cr.P.C., is only a direction to investigate and therefore, the petitioner and other accused cannot be said to be aggrieved by said order and therefore, there is no cause of action for them to file the present revision petition.

7. This Court, upon consideration of the submissions of the learned counsel appearing for the first respondent and also the pleadings of the revision petitioner, is of the view that there is force in the contention put forth on behalf of the first respondent that the revision petition cannot be maintained in view of the law laid down by the Hon'ble Supreme Court in the aforementioned decision. The learned Judicial Magistrate has taken into consideration the various materials including the Will which was filed by the first respondent/complainant and merely ordered the investigation by the police and to file a final report. Till a final report is filed and the learned Magistrate takes cognizance of the same, the petitioner/accused cannot be said to be aggrieved as held by the Hon'ble Supreme Court, and hence, the present revision petition is too premature to be entertained and challenge by the petitioner herein has to necessarily fail.

8. For the above said reasons this Court does not think that the present Revision Case is maintainable in law in view of the categorical ruling of the Hon'ble Supreme Court (cited supra) on the said aspect. Therefore, the Civil Revision Case is dismissed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Suk

TO

1. The Judicial Magistrate No.1,
Gobichettipalayam,
Erode District.

2.The Inspector of Police,
Gobichettipalayam, Police Station,
Erode District.

3. The Public Prosecutor,
High Court, Madras.

Copy TO

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 3908

CRL.REV.CASE NO.516 OF 2018

SSV(CO)
GN(19/02/2019)