

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.01.2019

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

CrI.R.C.Nos.951 & 952 of 2017

R.Palaniswamy

.. Petitioner in
both the Cases

Vs

1. S.I.Jagadeesan
2. P.Muthukumar
@ Muthuvaduganathan
3. P.Gurukrishnan
4. M.D.Mohan
5. A.Chenniappan
6. A.Kandasamy
7. S.Palanisamy
8. S.Govindaraj
9. P.Subramanian
10.R.Velusamy
11.The Inspector of Police,
CBCID - OCU, Coimbatore City,
(Investigation Office of Cr.No.16/2008)
Corporation Commercial Complex III Floor,
Dr.Nanjappa Road,
Coimbatore-641 018.

.. Respondent in
both the Cases

Prayer : Criminal Revision Cases are filed under Section 397 r/w 401(1) of Cr.P.C. seeking to set aside the common order dated 4.5.2017 in C.M.P.Nos.1358 of 2015 passed by the learned Chief Judicial Magistrate, Coimbatore and in Crime No.16 of 2008 on the file of the CBCID-OCU Police, Coimbatore and direct the Court below to proceed in accordance with law.

For petitioner : Mr.N.Umapathi

For Respondents : Mr.S.B.Viswanathan for R1toR6
Mr.K.C.Karl Marx for R2,4,5&7
Mr.R.Sreerangan for R9

COMMON ORDER

These Criminal Revision Cases arise out of the common order, dated 4.5.2017 passed by the learned Chief Judicial Magistrate, Coimbatore in C.M.P.Nos.1358 of 2015 in Crime No.16 of 2008 on the file of the CBCID-OCU Police, Coimbatore.

2. The revision petitioner is the defacto complainant who filed a complaint on 18.08.2008 before the Superintendent of Police, Coimbatore and on the basis of the complaint, a case in Crime No.16 of 2008 was registered by D.C.B. Police Coimbatore on 13.10.2008 against the respondents/accused under Sections 120 (B), 166, 167, 423, 468, 471 and 420 IPC.

3. According to the petitioner/defacto complainant, originally, the Sub Inspector of Police attached to DCB, had acted dishonestly along with the superior with a view to help the accused and therefore, a transfer petition was filed before this Court in Crl.O.P.No.21295 of 2009 seeking to transfer the investigation from DCB Police to some other independent agency. On 28.10.2009, this Court passed an order, transferring the investigation of the case to CBCID Police. In pursuance of the said order, 11th respondent herein, has taken up the investigation and according to the petitioner/defacto complainant, he also acted dishonestly in order to help the accused. Ultimately, a final report was filed in Crime No.16 of 2008, referring it as a mistake of fact.

4. In the above circumstances, the petitioner/defacto complainant raised his objection against the final report by filing a protest petition before the trial Court. The trial Court, vide its common order dated 4.5.2017, dismissed the protest petition, stating that the documents which were relied on by the parties, did not disclose any offence as against the respondents/accused. The trial Court, after adverting to the various materials placed before it, has held as follows:

"This Court is of the considered opinion that on perusal of the documents and investigation records placed by the Investigating Agency before this Court, there is no need for further investigation, since the investigation conducted properly in a unbiased manner.

This Court also want to mention that the Investigating Agency after thorough investigation in all the aspects came to the conclusion, that the Sub-Registrar and the other accused also not having

any role in the case and there is no sufficient and incriminating evidence as against all the accused mentioned in the FIR and concluded and filed Referral Final Report as "Mistake of Fact". This Court feels that the detailed investigation conducted by the Investigating Agency need not be mentioned here further.

This Court on careful and combined perusal of the Referral Final Report and Protest petition filed by the Defacto Complainant, it is crystal clear that the channel of investigation made by the Investigating Agency could not be a defective one and no fault could be find as against the Investigating Agency as alleged by the Defacto Complainant and the grounds raised in the protest petition are not having any strength and there is no prima facie grounds to proceed as against the accused for the offences under Sections 120B, 166, 167, 423, 468, 471 and 420 IPC and in the result the Referral Final Report filed by the Complainant Police in Cr.No.16/2008 of CBCID, OCU, Coimbatore is accepted and recorded as "Mistake of Fact" and the protest petition filed by the Defacto Complainant in CMP.No.1358/2015 stands dismissed."

5. As against the above dismissal order, the present revision cases have been filed.

6. Mr.N.Umapathi, learned counsel appearing for the revision petitioner, at the out set, would submit that the trial Court has not followed the procedure as contemplated in the Code of Criminal Procedure as admittedly, the defacto complainant was not examined nor any other witnesses were examined in support of the protest petition. According to the learned counsel, the learned Magistrate has taken a decision without examining the defacto complainant, but based on the documents alone and such procedure is contrary to the provisions of Code of Criminal Procedure. In support of his contention, the learned counsel would rely on a decision of this Court rendered in Cr1.R.C.(MD) No.379 of 2015, dated 9.9.2015, wherein, the learned Judge of this Court has allowed the Revision Case on the ground that the learned Magistrate has not followed the procedure as contemplated under Section 200 Cr.P.C. and passed the order without examining the witnesses. The learned counsel would draw reference to paragraph 6 of the order, which is extracted as under:

" 6. A perusal of the order passed by the learned Magistrate would reveal that the learned Magistrate has chosen to accept the final report without looking into the protest petition at all and it is for the Magistrate to examine the complainant and the witnesses on oath and to find out whether there is any substance in the protest petition. But without resorting to the said course, learned Magistrate has accepted the final report and has chosen to reject the protest petition without assigning any reasons. Learned Magistrate ought to have treated the protest petition as a private complaint as contemplated under Section 200 Cr.P.C. and to have examined the witnesses before passing the order. That procedure has not been followed by the learned Magistrate and therefore, the order passed by the learned Magistrate, dismissing the protest petition is liable to be set aside."

7. The learned counsel would also rely on yet another decision of this Court in CrI.R.C.No.399 of 2015, dated 29.4.2015, wherein, a learned Judge of this Court has held that sworn in statement of the complainant and the evidence of witnesses need to be examined before a decision is taken by the learned Magistrate, particularly, when a negative decision is taken. The learned counsel would rely on paragraphs 9 and 10 of the said order, which are extracted hereunder:

"9. Above all one important aspect is that if the learned Magistrate proposed to accept the negative Final Report, he is bound to give notice to the de facto complainant inviting his objections, if any. Thereafter if any objection is filed, which is popularly known as 'protest petition' and such a protest petition has to be proceeded further like a private complaint. The procedure contemplated under Sections 200-202 Cr.P.C., has to be followed.

"10. Upon consideration of the sworn statement of the complainant and of his witnesses, if any or documents, if any, if the Court finds a prima facie case, it can take the case on file issuing summons to the accused under Section 204 Cr.P.C. If there is no prima facie case, then he can dismiss the petition under Section 203 Cr.P.C."

8. Therefore, the learned counsel would submit that the order passed by the learned Magistrate is contrary to the procedure contemplated under Section 200 Cr.P.C. and the same is liable to be interfered with on that ground alone.

9. The learned counsels appearing on behalf of the respondents/accused, strongly objected to the contentions raised on behalf of the petitioner/defacto complainant, stating that the order passed by the learned Magistrate is well founded and does not call for any interference of this Court. The learned counsels for the respondents would also submit that the learned Magistrate concerned relied on number of documents as indicated in the order itself and found that there was no material proceed against the accused and therefore, the finding of fact rendered by the learned Magistrate need not to be interfered with unless the same is found to be perverse and unreasonable and in this case, the finding is on the basis of relevant materials and therefore, the petitioner/defacto complainant is not entitled to succeed on the basis of the above contentions.

10. At this, the learned counsel appearing for the petitioner/defacto complainant would submit that the question of objection by the respondent/accused does not arise at this stage since the learned Magistrate concerned has not taken cognizance of the complaint and issued summons. In any case, since the impugned order has been passed without resorting to the procedure contemplated in Cr.P.C., the matter needs to be remitted back to the learned Magistrate for passing orders afresh in terms of the provisions of Cr.P.C.

11. This Court is in agreement with the submissions made on behalf of the petitioner/defacto complainant that admittedly, the learned Magistrate has not examined the complainant nor any witness on his behalf with reference to the documents relied on by the trial Court. Such procedure adopted by the learned Magistrate is contrary to Section 200 Cr.P.C. and also contrary to the principles laid down by this Court in the aforementioned two decisions cited by the learned counsel for the petitioner. As rightly contended by the learned counsel for the petitioner, at this stage, it is not open to the respondents/accused to raise any objection since the learned Magistrate concerned has not taken cognizance of the complaint at all and proceeded to issue summons. While so, it does not lie in the mouth of the respondents/accused to resist the plea made by the petitioner for remanding the matter to the learned Magistrate for fresh consideration in terms of Section 200 Cr.P.C.

12. For the above said reason, the Revision Cases are allowed and the common order dated 4.5.2017 in C.M.P.Nos.1358 of 2015 and in Crime No.16 of 2008 on the file of the CBCID-OCU Police, Coimbatore, passed by the learned Chief Judicial

Magistrate, Coimbatore is hereby set aside. The matters are remitted back to the learned Magistrate for fresh consideration after examining the complainant and other witnesses if any and comply with the purport and scope of Section 200 Cr.P.C. before passing the orders afresh in the matter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Suk

To

- 1) The Chief Judicial Magistrate,
Coimbatore.
- 2) The Inspector of Police,
CBCID-OCU, Coimbatore City,
Coimbatore.
- 3) The Special Public prosecutor,
CBI, High Court, Madras

+2 ccs to M/s.R.Sreerangan, Advocate, S.R.No.9368, 9369

+2 ccs to M/s.N.Umapathy, Advocate, S.R.No.9360, 9359

+1 cc to M/s.Karl Marx, Advocate, S.R.No.8690

COMMON ORDER IN
CRL.REV.CASE 951 & 952 OF 2017

RR(CO)
SSM(01/03/2019)