

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.1407 OF 2018

D.Kumar

...Petitioner/Complainant

Vs

1. Nandagopal
Inspector of Police
Anti Land Grabbing,
Thiruvallur.

2. Leo Francis
S.I of Police
Anti Land Grabbing,
Thiruvallur.

... Respondents/Accused

PRAYER:

Criminal Revision Case filed under Article 397 r/w 401 of Criminal Procedure Code to call for the records of the case in C.M.P.No. 6163 of 2017 on the file of the learned Judicial Magistrate I Thiruvallur and reverse the order dated 04.08.2018 passed therein and direct the Judicial Magistrate I to issue process to the Accused.

For Petitioner : Mr.G.A.Thiyagarajan

For Respondents : No appearance

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to call for the records of the case in C.M.P.No. 6163 of 2017 on the file of the learned Magistrate I, Thiruvallur and reverse the order dated 04.08.2018, passed therein and direct the learned Judicial Magistrate I, Thiruvallur, to issue process to the Accused and try them in accordance with law.

2. The petitioner herein filed a complaint before the learned Judicial Magistrate I, Thiruvallur against the respondents under Section 156(3) of the Criminal Procedure to direct the Police to take action against the Respondents 1 and 2 therein for offences punishable under Sections 294 B, 323, 324

and 506 II of I.P.C. After considering the evidences adduced and the exhibits marked, the learned Magistrate held that when there is no clear proof on the assault happened to the petitioner by the police, the Court cannot take cognizance against the alleged accused and dismissed the said petition under Section 203 of Criminal Procedure Code, against which the petitioner has filed the present revision case before this Court.

3. The learned counsel for the petitioner would contend that the case was registered against the complainant. Therefore, he was taken to the Police Station and assaulted by the Police. The learned Judicial Magistrate dismissed the petition, on the ground that the entry made in the accident register shows that "assault by an unknown person" and therefore, the case of the petitioner was not proved.

4. The learned counsel for the petitioner would further submit that all the witnesses have clearly spoken about the involvement of the respondents, whereas the learned Magistrate failed to consider the same and has only given importance to the entry made in the accident register that "assaulted by an unknown person". Substitute service was taken to the respondents. However, none appeared on their behalf.

5. Heard both sides and perused the materials available on record. Initially, the complaint was lodged by one Kalavathi as against the revision petitioner. During the investigation, the petitioner was taken to the Police Station in the name of investigation. The Police assaulted the petitioner, they slapped on his ears due to which he suffered pain over the cheek and ear. The Doctor has given the medical report to that effect and he has also stated that at the time of the admission in the Hospital, the petitioner had stated as "assault made by an unknown male at 05.30 pm near SP Office on 15.10.2017".

6. The learned Judicial Magistrate No.1, Thiruvallur stated that allegedly two persons found to have been assaulted. But, only one person i.e., the petitioner alone has filed the complaint, while, the other person was examined only as a witness to the case PW2. The other person has not been included as complaint.

7. Even though, the revision petitioner has stated that the respondents have physically assaulted him and exceeded their limit, and made a complaint before the learned Judicial Magistrate No.1, Thiruvallur, the learned Judge simply dismissed the petition on the ground that one of the victims has not filed complaint.

8. Another person who stated to have been assaulted by the respondents has been shown as a witness ie., PW2. The petitioner and one Murugan stated that the respondents have assaulted them. But, in the accident register it is stated as "assaulted by an unknown person". However, the learned Judicial Magistrate No.1, Thiruvallur should have directed to make an enquiry in this regard and investigate the matter. But without doing so, the learned Magistrate simply dismissed the petition on the ground that one of the victim was not shown as the complainant, but he was only shown as witness in the present case. Therefore, the order passed by the learned Magistrate is set aside and is remitted back to the learned Magistrate, who has to consider the matter, records and the evidence of the witnesses afresh and proceed further with the complaint, in accordance with law.

9. With these directions, the Revision case stands disposed of.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The learned Judicial Magistrate I,
Thiruvallur
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.G.A.Thiyagarajan, Advocate, S.R.No.34368

Cr1.R.C.No.1407 of 2018

SJ(CO)
CS/23/10/2019

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