



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 18.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO.567 OF 2019

Marimuthu

.. Petitioner

- Vs -

1.State rep. By
The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar,
Virudhunagar District.
(Crime No.315 of 2018)

2.M/s Super Breeding Form
rep. By one of its Partner
A.Palanisamy,
S/o Arumuga gounder
Having its Office at D.No.1/252
Chitampalam, Venkittapuram Post,
Palladam - 641 664,
Tiruppur District.

.. Respondents

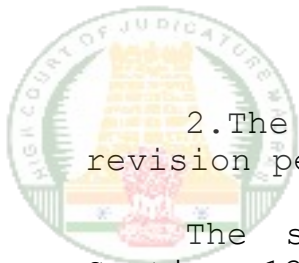
Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, to call for the records in Cr.M.P.No.802 of 2019 on the file of the learned Judicial Magistrate No.1, Virudhunagar, Virudhunagar District and set aside the order dated 08.07.2019.

For Petitioner : Mr.A.Thiruvadikumar

For Respondents : Ms.Anantha Devi
Govt. Advocate (crl.side) (for R1)
Mr.M.Kannan (for R2)

ORDER

The present criminal revision petition has been filed against the order passed by the learned Judicial Magistrate No.I, Virudhunagar, Vidhunagar District in Cr.M.P.No.802 of 2019 dated 08.07.2019.

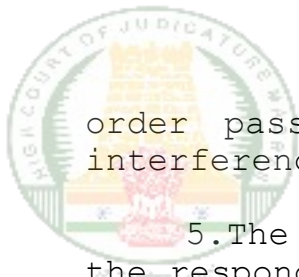


2.The facts, which gave rise to the filing of the present revision petition are briefly stated herein.

The second respondent has filed a private complaint under Section 138 of Negotiable Instruments Act against the petitioner herein for dishonoring the cheque issued in his favour. When the said complaint was pending before the trial Court concerned, the petitioner herein, who was an accused in that case, had filed a complaint before the respondent police for complaining that his cheque, which was involved in the private complaint filed by the second respondent herein, was stolen. Thereafter, he approached this Court and filed Crl.O.P(MD)No.20845 of 2018 and sought a direction. This Court, by order dated 26.11.2018, has directed the petitioner herein to file a protest petition and the learned Judicial Magistrate No.I, Virudhunagar was directed to take the protest petition and pass order within a period of one month from the date of receipt of a copy of the order. In pursuant to the direction issued by this Court, the learned Judicial Magistrate passed the order in the protest petition dismissing the same on the ground that already a private complaint is pending against the petitioner herein under Section 138 of Negotiable Instruments Act and the subject matter of cheque involved in the private complaint is the same as the subject matter of the protest petition and therefore, it is always open to the petitioner herein to take that defence before that Court and after outcome of the said private complaint, he can always pursue the subject matter of protest petition thereafter. As against the order of dismissal, the present criminal revision petition has been filed.

3.The learned counsel for the petitioner would strenuously contend that once the protest petition has been filed, the Magistrate after converting the same into the private complaint shall proceed with the matter. But unfortunately, the Magistrate has erroneously dismissed the petition accepting the closure report filed by the respondent police. According to him, the decision of the learned Magistrate is contrary to the settled legal position and the same call for interference by this Court.

4.The learned counsel for the second respondent would vehemently contend that the entire exercise by the petitioner herein is only to drag the private complaint proceedings pending against him before the trial Court and therefore, rightly, the police, who investigating the case, has filed the closure report on the ground that action is kept pending, in view of the private complaint pending against the petitioner at the instance of the second respondent herein, the Judicial Magistrate accepted the said report, as the right of the petitioner herein is not completely negatived and it can be exercised after the outcome of the private complaint pending against him. Therefore, there is nothing wrong with the



order passed by the trial Court and it does not call for any interference from this Court.

5.The learned Government Advocate (criminal side) appearing for the respondent police would also support the argument of the learned counsel for the second respondent.

6.I have considered the rival submissions of the learned counsel for the petitioner as well as the learned counsel for the second respondent.

7.This Court is in agreement with the submission made on behalf of the second respondent that the Magistrate has passed a detailed order on a pragmatic consideration of the issue on hand. Once a private complaint is filed against the petitioner herein by the second respondent, the complaint by the petitioner herein that the cheque being stolen, can always be pending till the outcome of the private complainant against the petitioner at the instance of the second respondent. There is a right to pursue his protest petition, in case, the private complaint filed against him ends in his favour. At the same time, in the guise of filing a complaint that the cheque was stolen, the petitioner is trying to drag the private complaint proceeding filed by the second respondent herein. Hence, the petitioner's complaint that already his cheque was stolen and was misused appears to be a counterblast to the private complaint filed by the second respondent herein. Therefore, the Judicial Magistrate has decided to pass the pragmatic order in order to protect the rights of both the parties. This Court does not find anything wrong with the approach of the learned Judicial Magistrate

8.In the above said circumstances, this Court finds the revision petition lacks *bona fide* and also lacks merits and substance and hence, the same is dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.1, Virudhunagar,
Virudhunagar District.

2.The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar, Virudhunagar District.



3. The Government Advocate (crl.side)
Madurai Bench of Madras High Court,
Madurai.

4. The Chief Judicial Magistrate, Virudhunagar,

5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

copy to
The Judicial Magistrate, Palladam.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-99122[F] dated
18/11/2019)

+1 CC to M/s.M.KANNAN, Advocate (SR-99208[F] dated 18/11/2019)

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TR(16.12.2019) 4P 10C