



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	02.07.2019
Date of Order	20.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.303 of 2018

Kannan : Revision Petitioner/
Petitioner

Vs.

1.Nagaraaj
2.G.T.Mani @ Thulasi Mani
3.Jeyapaul
4.Selvaraj
5.Maruthamuthu
6.V.Narayanasamy : Respondents/Respondents

Prayer: Criminal Revision has been filed under Section 397(1) r/w 401 of the Criminal Procedure Code, against the order, dated 16.02.2018 passed in Cr.M.P.No.38 of 2018 by the District Munsif-cum-Judicial Magistrate, Vedachanthur, Dindigul District.

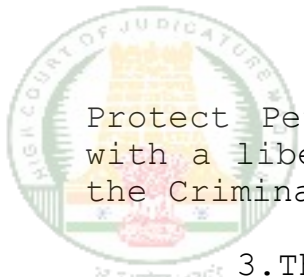
For Revision Petitioner : Mr.R.Ramasamy

For Respondents : Mr.J.Lawrance

O R D E R

This Criminal Revision is directed against the order, dated 16.02.2018 passed in Cr.M.P.No.38 of 2018 by the District Munsif-cum-Judicial Magistrate, Vedachanthur, Dindigul District.

2.The petitioner lodged a complaint before the District Crime Branch, Dindigul alleging that the respondents had created a forged Will, dated 09.06.1994 by impersonating and fabricating the signature of his father/Govindasamy. The alleged Will was produced as document Ex.D13 in O.S.No.65 of 2009 on the file of the District Munsif, Vedachanthur and the same was rejected by the said court. Thereafter, the petitioner moved this court and based on the order of this court, First Information Report came to be registered in Crime No.7 of 2015 by the respondent police for the offence under Sections 120(b), 406, 420, 465, 467, 468 and 471 IPC and after enquiry, final report was filed as '**Action Dropped**' on 08.12.2015. Thereafter, notice was issued to the petitioner, who had filed



Protect Petition and subsequently, it was withdrawn on 09.06.2017 with a liberty to file a complaint under Section 200 of the Code of the Criminal Procedure and the FIR was closed on 14.07.2017.

3.The petitioner filed a private complaint under Section 200 r/w 190(1)(b) of the Criminal Procedure Code in Cr.M.P.No.38 of 2018 before the District Munsif-cum-Judicial Magistrate, Vedachanthur, Dindigul. The said petition was dismissed by the learned Judge on 16.02.2018 holding that the petitioner has no right to protest against the closure of the Police as '**Action Dropped**'. Challenging the said order, the petitioner is before this court.

4.Heard both sides and perused the materials available on record.

5.The petitioner filed a private complaint under Section 200 r/w 190(1)(b) of the Code of Criminal Procedure. The learned Judicial Magistrate dismissed the petition stating that the petitioner has to file protest petition as against the closure of the police case as 'Action Dropped'. But the petitioner stated that he already filed protest petition as against Action Dropped and for that, the respondents filed their objection. The petition was disposed with liberty to file private complaint under Section 200 of the Code of the Criminal Procedure and hence, the petitioner filed this private complaint under Section 200 of the Code of the Criminal Procedure and prays for allowing the criminal revision.

6.The learned counsel appearing for the respondents argued that only the case was closed as 'Action Dropped'. The petitioner has no right to file the private complaint for the same occurrence and prays that the criminal revision has to be dismissed. For that, the learned counsel appearing for the respondent relied upon the judgment reported in **1998(1) CTC 329 (A.Krishna Rao Vs. L.S.Kumar)**, wherein it has been held as follows:-

"3.It was argued on the side of the third accused/petitioner that since the referred charge sheet has been filed by the police in the earlier complaint given by the complainant and after passing the orders on the referred charge sheet, the second complaint filed in respect of the same occurrence is not maintainable to substantiate this argument, the 3rd accused/petitioner has submitted some decisions of this Court.

In Murugesan v. Kothandam, 1969 L.W. Cr1. 268 this Court in similar circumstances quashed the proceedings in the second complaint stating that when the Sub-Inspector has



investigated the case under Section 156(3), Cr.P.C. and submitted his report under Section 173 (2), Cr.P.C. referring the case and subsequent complaint for the very same occurrence would not be maintainable.

In Ramasubbu v. State, The Through The Inspector of Police? Palani Taluk, 1987 L.W. Crl. 79 this Court held that when the police was filed a report under Section 173, Cr.P.C, the Magistrate got the option under Section 173(3), Cr.P.C. either to agree or to disagree and to give further direction to the police. When once the Magistrate has recorded his findings as mistake of fact in the R.C.S. which is a judicial order, thereafter he cannot entertain the second complaint and if entertained the same is not maintainable."

7.This court has carefully perused the entire materials available on record.

8.The petitioner already lodged a complaint before the District Crime Branch, Dindigul alleging that the respondents have created a forged Will, dated 09.06.1994 by impersonating and fabricating the signature of his father and based on the direction of this court, First Information Report was registered and after investigation, the case was closed as 'Action Dropped'. The petitioner filed protest petition as per RCS No.2 of 2017. For that, objection was filed on the side of the respondent and it was recorded and the petition was disposed with a liberty to the petitioner to file a private complaint under Section 200 of the Code of the Criminal Procedure.

9.In view of the above facts, the order passed by the trial Judge directing the petitioner with a direction to file a protest petition is not correct. Hence, the ruling cited by the learned counsel appearing for the respondents is not made applicable to the instant case on hand.

10.For the reasons stated above, this court is of the considered view that the order passed by the trial court needs interference of this court, by remitting the matter back to the trial court. Accordingly, the impugned order passed by the trial court is liable to be set aside.



11.In the result, this criminal revision is allowed. The impugned order, dated 16.02.2018 passed by the District Munsif-cum-Judicial Magistrate, Vedachanthur, Dindigul, is set aside. The case is remitted back to the trial court for fresh disposal. The trial court is directed to take up the case and dispose of the same purely on merits and in accordance with law, after giving opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order and report the same to the Registry without fail.

Sd/-

Assistant Registrar (Ad-I)

// True Copy //

Sub Assistant Registrar(CS)

er

To

The District Munsif-cum-Judicial Magistrate,
Vedanchandur.

+1 CC to M/s.J.LAWRANCE, Advocate SR-88175.

Crl.RC (MD) No.303 of 2018
20.09.2019

CS(21.10.2019) 4P 3C