



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.11459 of 2017

Muruganantham

...Petitioner/Petitioner/Petitioner

Vs.

1) V.S.Vijay Nanthakumar

2) V.Thamilselvi

3. Subramaniyan

... Respondents/ Respondents/
Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the order passed in Crl.R.C.No.2 of 2017 dated 01.06.2017 on the file of the Sessions Judge of Trichirappalli Division, Trichirappalli by confirming the order passed in Crl.M.P. No.3199 of 2014 dated 17.10.2016 on the file of the Judicial Magistrate No.I, Trichirappalli.

For Petitioner : Mr.V.Illanchezian

For RR 1 to 3 : No Appearance

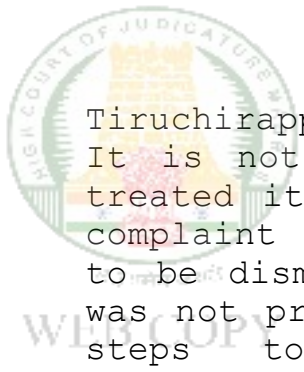
O R D E R

This petition has been filed against the order passed by the Court below dismissing the Criminal Revision Petition filed by the petitioner in Crl.R.C.No.2 of 2017, dated 01.06.2017, on the file of the Sessions Judge of Trichirappalli Division, Trichirappalli and confirming the order passed by the learned Judicial Magistrate-I, Trichirappalli dismissing the protest petition filed by the petitioner.

2. The petitioner filed a complaint before the Fort Police Station (Crime Branch) Trichirappalli city against the respondents and an F.I.R. came to be registered in Crime No.463/2013, for offences under Sections 420 & 506(i) of IPC. The police went ahead with the investigation and filed a closure report before the learned Judicial Magistrate - I, Trichirappalli, on the ground of mistake of fact.

3. Aggrieved by the said closure report, the petitioner filed a protest petition before the learned Judicial Magistrate-I,

<https://hcservices.ecourts.gov.in/hcservices/>



Tiruchirappalli. This protest petition was filed in the year 2014. It is not clear as to whether the learned Judicial Magistrate treated it as a protest petition or had treated it as a private complaint under Section 200 of Cr.P.C. The protest petition came to be dismissed on 17.10.2016 on the ground that the petitioner was not present before the Court and he was not taking effective steps to prosecute the petition. Aggrieved by the same, the petitioner filed a revision before the Sessions Court, Trichirappalli and the Sessions Court by an order dated 01.06.2017, dismissed the revision petition. Aggrieved by the same, the present petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the respondents had cheated the petitioner and caused wrongful loss to the petitioner to the tune of Rs.15,00,000/- (Rupees Fifteen lakhs). The learned counsel further submitted that the police had filed a closure report without properly investigating the case and by citing an irrelevant material which had no bearing in the case. The learned counsel further submitted that immediately after the closure report was filed, the petitioner filed a protest petition before the learned Judicial Magistrate-I, Trichirappalli. The learned Magistrate also took the sworn statement of the petitioner and it was adjourned from time to time. The petitioner was not able to be present before the Court since he was suffering from ill health. Therefore, the learned counsel submitted that one last opportunity may be given to the petitioner to prosecute the protest petition before the learned Judicial Magistrate Court and work out his remedy in accordance with law.

5. Heard the learned counsel appearing on behalf of the petitioner. Notice has been sent to the respondents and service is awaited.

6. The learned Judicial Magistrate-I, Trichirappalli on receipt of the protest petition, has three options available before him. This has been dealt in detail by this Court in **A.Rajendra & others vs. State** reported in **2019 1 L.W.(Criminal) 771**. It is not clear as to which option was chosen by the learned Judicial Magistrate-I, Trichirappalli. A reading of the order passed by the revision Court shows that a sworn statement was taken from the petitioner. However, a look at the dismissal order shows that a criminal miscellaneous petition has been dismissed. Therefore, this Court can safely come to a conclusion that the petition was treated only as a protest petition and it was not converted into a private complaint. While considering a protest petition, there is no requirement for the sworn statement of the complainant and the Court has to merely look into the F.I.R and the materials collected during the investigation and come to its



7. The protest petition filed by the petitioner has been dismissed for default due to the non-representation of the petitioner and it has not been dismissed on merits. Therefore, this Court is of the considered view that no notice is required to be given to the respondents. Since the case is remanded back to the trial Court, notice will be issued to the respondents and only thereafter, the protest petition will be heard and decided.

8. This Court is of the considered view that one last opportunity can be given to the petitioner to prosecute the protest petition on merits and in accordance with law. In view of the above, the order passed by the Judicial Magistrate-I, Trichirappalli in Crl.M.P.No.3199 of 2014 and confirmed by the Sessions Court, Trichirappalli in Crl.R.C.No.2 of 2017, is hereby set aside and the matter is remanded back to the learned Judicial Magistrate-I, Trichirappalli.

9. In the result, this Criminal Original Petition is allowed and Crl.M.P.No.3199 of 2014 is remanded back to the learned Judicial Magistrate-I, Trichirappalli. The learned Magistrate shall treat this petition as a protest petition and deal with the same in accordance with law after affording an opportunity to the respondents. The petition shall be disposed of within a period of three(03) months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Sessions Court,
Trichirappalli Division, Trichirappalli
2. The Judicial Magistrate No.I,
Trichirappalli.

+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-86430[F] dated 13/09/2019)

Order made in
Crl.O.P. (MD) .No.11459 of 2017
12.09.2019

_KM/ (03.10.2019) 3P 4C