



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.R.C(MD) .No.666 of 2013

WEB COPY

A. Sekar

... Petitioner

Vs

S. Kannan

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 Code of Criminal Procedure, to call for the records and to set aside the order of the learned Judicial Magistrate, Melur dated 24.06.2013 made in C.C.No.78 of 2010 of closing the private complaint filed by the petitioner and discharging the accused by stopping the proceedings and to restore the case against the respondent.

For Petitioner : Mr.B. Jeyakumar

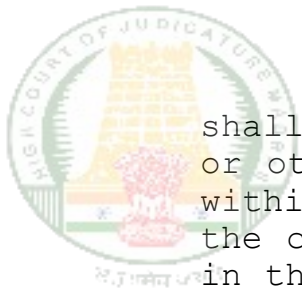
For Respondent : Mr.N. Rahamadhulla

ORDER

The revision petitioner herein is the complainant in C.C.No.78 of 2010, on the file of the learned Judicial Magistrate, Melur, Madurai District. The complaint was closed by invoking the power under Section 258 Cr.P.C., by order dated 24.06.2013, by the trial Magistrate. Against which, the respondent / complainant has preferred the present revision.

2. As rightly contended by the learned counsel for the petitioner that the said provision under Section 258 Cr.P.C., can be invoked only in police cases. But, the case on hand is a private complaint. A learned Judge of this Court in Cr1.R.C(MD). No.45 of 2012, at paragraph No.6, observed as follows:

"6. A reading of the Section will show that the provision applies to case instituted otherwise than upon a complaint and the said section does not get attracted to a case instituted on a private complaint. Section 204 Cr.P.C., deals with the issue of process. It is not confined to cases instituted on private complaints alone. Section 204 Cr.P.C., applies to cases instituted otherwise than upon complaint as well. The duty of issuing process is that of the court. The complainant in a complaint case cannot be found fault with for any lapse or failure on the part of the Court or annex copies of the documents necessary to accompany the summons. Sub-clause(3) of Section 204 Cr.P.C., directs that every summons or warrant issued in a proceeding instituted upon a complaint made in writing, such summons or warrant shall be accompanied by a copy of the complaint. Sub-Section (4) says that no process



shall be issued until the fees for issuing any process or other fees are paid and , if such fees are not paid within a reasonable time and the failure on the part of the complainant to make payment of such fees may result in the dismissal of the complaint. It is not the case of the petitioner that no process fee was paid by the complainant and still the Magistrate chose to issue process instead of dismissing the complaint for non-payment of process fee. Even otherwise, the same shall be the matter between the Court and the proceedings for no fault on the part of the respondent / complainant. For any omission on the part of the Court to forward the copies of the complaint along with the summons to be served on the accused, the complainant cannot be penalised by dropping the proceedings, which shall have the effect of the dismissal of the complaint."

The said decision is squarely applicable to the facts of the present case.

3. The order passed by the Court below is perverse and the same is liable to be set aside and is accordingly set aside. The matter is remitted back to the trial Court for passing appropriate orders, within a period of three months from the date of receipt of a copy of this order.

4. Accordingly, this revision petition is allowed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The learned Judicial Magistrate, Melur

+1 CC to Mr.N.RAHAMADULLAH, Advocate (SR-68904[F] dated 14/06/2019)

Cr1.R.C(MD) .No.666 of 2013
12.06.2019

TRP

MK (05.07.2019) 2P 3C