IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.12.2020

PRONOUNCED ON : 30.12.2020

CORAM

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

Crl.R.C.No.1410 of 2017
and
Crl.M.P.No.13907 of 2017

S.Kamaraj ..Petitioner

vs.

State of Tamil Nadu rep by its
The Inspector of Police,
Central Crime Branch,
Salem District. ..Respondent
Crime No.34/2008

PRAYER: Criminal Revision Petition under Section 397 read with 401 of Code of Criminal Procedure to call for the entire records comprised in Crl.M.P.No.4182 of 2016 in C.C.No.136 of 2009 and set aside the order dated 06.03.2017made by the learned Judicial Magistrate No.II at Salem.

For Petitioner : Mr.Vimal B.Crimson
For respondent : Mr.K.Madhan,
Government Advocate (Crl. Side)

O R D E R

This criminal revision petition is filed against the order passed by the learned Judicial Magistrate No.II, Salem in Crl.M.P.No.4182 of 2016 in C.C.No.136 of 2009.

2. The Criminal M.P.No.4182 of 2016 was filed under section 239 Cr.P.C alleging that the defacto complainant preferred a complaint under section 200 Cr.P.C before the learned Judicial Magistrate No.II, Salem. Learned Magistrate forwarded the complaint to the respondent and FIR was registered in Crime No.34 of 2008, on the basis of this complaint the case in C.C.No.136 of 2009 was taken cognizance in the year 2009.

3. The petitioner is the second accused in this case. The allegation is that the petitioner while he was working as an Assistant Manager in Jullundur Motor Agency (Delhi) Limited in Salem branch, during the year 2018, he along with the first

accused misappropriated the amount to the tune of Rs.14,86,681/-. It is also the case of the complainant that A1 and A2 had given undertaking to pay this amount by collecting from retailers. However, the petitioner had never involved in the alleged offence, either personally or jointly with A1. Whatever transaction that had happened, was only a civil transaction and there is no criminal act involved to constitute a criminal offence. Absolutely there is no material to suggest that the petitioner and A1 joined together with an intention to cheat the defacto complainant and falsified the records and there is no materials to prosecute the petitioner by framing of charges against the petitioner to face the trial. The continuation of proceedings is nothing but an abuse of process of law.

4. However, allegations made in the petition have been disputed by the respondent in its counter and submitted that the petitioner and A1 conspired together and prepared bills in the names of agents and sold company products to some other persons, without delivering the products to the agents, committed breach of trust, cheating and misappropriated the amount of the company to the tune of Rs.15,10,517/-. The respondent collected sufficient materials through investigation and filed final report. Therefore, there are sufficient materials to proceed against the petitioner.

5. The learned Judicial Magistrate on considering the materials produced before him and after hearing the learned counsel for the parties, found that there are sufficient grounds to proceed against the petitioner and in this view of the matter dismissed the discharge petition. Against the said order of dismissal, this revision case is preferred.

6. The learned counsel for the petitioner submitted that, among other things, it is clear from the order of the learned Judicial Magistrate that the learned Judicial Magistrate had been carried away by the alleged letters of confession said to have been given by the petitioner . These alleged letter of confession had been given under compulsion and duress. Therefore, that letter has no evidentiary value. There is no material collected to show that the petitioner and the first accused had falsified the accounts and misappropriated the money. It is seen from the allegations made in the FIR and in the final report that the petitioner and the first accused in collusion with retail vendors have committed the offence alleged against them. The retailers who were shown as accused earlier, now have been shown as witnesses. The petitioner and the first accused are also similarly placed persons like those retailers.

If at all a criminal act had been committed, when the retailers had been excluded from the case as accused and shown as witness, how could the petitioner be prosecuted as an accused. If there is no liability attached to those similarly placed persons, it cannot be held that the petitioner and the first accused are criminally liable. It is also submitted by the learned counsel for the petitioner that the criminal complaint was not given immediately and there was delay in giving complaint and it creates a sound suspicion about the genuineness of the case. Learned counsel for the petitioner prayed for setting aside the order of Learned Judicial Magistrate and discharging the petitioner from this case.

7 . In response to the submission made by the learned counsel for the petitioner, learned public prosecutor submitted that after committing the misappropriation, the petitioner and the first accused had admitted their guilty and promised to repay the misappropriated amount by giving letter of undertaking. However, inspite of giving sufficient time, they have not repaid the misappropriated amount. Retailers had paid the amount due to the company. That is the reason why the retailers had not been added as accused but they have shown as witnesses in this case. The delay in the complaint was only because of the time taken by the petitioner on the guise of settling the matter. The police have collected materials against the petitioner and A1 to establish the case of breach of trust, cheating, falsification of accounts and misappropriation. Assuming that a criminal offence is made out against the retailers, the option is left open for adding them as accused during the course of trial. Therefore, learned public prosecutor submitted that in view of the candid admission made by the petitioner and the first accused and also incriminating materials collected during the course of investigation, there are sufficient materials against the accused to frame charges, under relevant provisions of law and he prays for dismissal of this revision case by confirming the order of the learned Judicial Magistrate.

8. The point to be considered is whether the order of the learned Judicial Magistrate in Crl.M.P.No.4182 of 2016 in C.C.NO.136 of 2009 requires to be interfered?

9. The following factors have to be kept in mind while framing charges or entertaining the discharge:

(1) The court need not have to go into evidentiary and probative value of the materials collected by the police during the course of investigation.

(2) The court is not required to go into the details of the investigation.

(3) The materials before the Court had to be accepted as true.

(4) The court should not appreciate the evidence.

(5) There is no need to conduct a mini trial at the time of framing charges.

(6) Rowing and fishing enquiry is impermissible.

(7) What has to be considered is whether the materials placed before the court discloses a strong suspicious against the accused and whether there is sufficient grounds to frame charges against the accused.

10. It is seen from the statement of one V.Babu who is the complainant in this case that the petitioner and the first accused were working as an assistant manager and sales representative, respectively, in the Salem Branch of Jullundur Motor Agency (Delhi) Limited. When the accounts of this company was audited by one G.Viswanathan between 15.11.2007 to 17.11.2007, it was found that there were lot of irregularities and falsification of accounts. The petitioner and the first accused who are the accused in this case admitted their guilty and gave letters of undertaking. They had misappropriated the money with the connivance of Lakshmi Automobiles, Salem, Sri Padmavthy Auto Centre, Dharmapuri and Mukundan Automobile, Dharmapuri. As a result, the company suffered loss of Rs.14,86,681/-. The petitioner and the first accused prepared bills in the name of various agents and did not send materials, but sent to the aforesaid persons. It is also seen from the statement of the Mukundan and Anand that they purchased the materials by believing the representations made by the petitioner and the first accused that special discount is offered. It is seen from the statement of Saravanan, susendra kumar that they have not been issued any receipt or statement with regard to their purchase.

11. As already said, at the stage of framing charge, the court is not expected to conduct rowing and fishing enquiry. The materials produced have to be accepted as true. The court cannot conduct a mini trial. If sufficient grounds are established to proceed against the accused on the basis of the materials produced, the court has no option except to frame charges under relevant provisions of law. It is clearly established before the learned Judicial Magistrate and this Court that there are sufficient materials in the form of statement and witness, letters of confession by the petitioner and other accused and other documents for framing charges under the relevant provisions of IPC, especially under section 120(b), 403, 409, 420, 468 and 477 (A) IPC against the petitioner.

12. In this view of the matter, this court finds that there is nothing to interfere with the order of the learned Judicial Magistrate and the order is confirmed and this criminal revision is dismissed. The learned Judicial Magistrate No.II, Salem is directed to frame appropriate charges and dispose the case at the earliest possible, preferably within a period of three months, from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Salem.

2.The Inspector of Police,
Central Crime Branch,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1410 of 2017
30.12.2020