



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.445 of 2015

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P.S.Jalaja

... Petitioner /Petitioner/
De facto Complainant

Vs.

1) State rep. by
The Inspector of Police,
South Gate Police Station,
Madurai.
(Crime No.866 of 2013)

... R-1/ R-1/ Complainant

2) Jothi

3) Kandasamy

4) Raja

5) Ganesh

... RR 2 to 5/ RR 2 to 5/
Accused 1 to 4

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.4, Madurai made in Cr.M.P.No.2642 of 2015 dated 14.08.2015 and set aside the same by allowing the present criminal revision petition.

For Petitioner : Mr.S.Veeranasamy
For R1 : Mrs.S.Bharathi,
Government Advocate (criminal side)
For RR 2 to 5 : No Appearance

O R D E R

This Criminal Revision Petition is filed seeking to set aside the impugned order passed by the learned Judicial Magistrate No.4, Madurai made in Cr.M.P.No.2642 of 2015 dated 14.08.2015.

2. The case of the prosecution is as follows:-

2.1. The petitioner is the de facto complainant and he registered a complaint with the Law Enforcing Agency in Crime No.866



of 2013 against the accused herein on 26.09.2013 for the offence under Sections 406, 420 & 120(b) of IPC.

2.2. Immediately after coming to know about the registration of F.I.R., the accused approached this Court for Anticipatory Bail by filing Crl.O.P.(MD) No.17061 of 2013, wherein this Court by its order dated 17.03.2014 dismissed the anticipatory bail application. Thereafter, the petitioner filed Crl.O.P.(MD) No.17482 of 2014, wherein this Court by its order, dated 05.11.2014 directed the Assistant Commissioner of Police, Crime Branch, Madurai city to monitor the investigation and ensure that the investigation is completed as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of the order and refused to grant the relief sought for by the petitioner (i.e.) to withdraw the case registered by the first respondent in Crime No.866 of 2013 and to entrust the same to the second respondent, viz. the Inspector of Police CBCID Special Cell, Viswanathapuram, Madurai City for conducting effective investigation.

2.3. Since no progress was made in the said petition, another Crl.O.P.(MD) No.23329 of 2015, dated 10.06.2015 was filed for the transfer of investigation to CBCID. However, the said petition was closed on the ground that, the Law Enforcing Agency conducted the investigation and the case has been closed as '*action dropped*'. As against the said closure report, the petitioner filed a protest petition before the trial Court and the trial Court had dismissed the protest petition. Challenging the same, the present criminal revision petition has been filed.

3. Learned counsel for the petitioner made the following submissions:-

- (i) Though, initially, this Court ordered notice to the first respondent and other private respondents/ accused, the said notice was returned with an endorsement stating '*no such address*';
- (ii) Immediately after filing of the case, the accused have vacated the premises and gone somewhere else. However, in the present case, the petitioner has filed against the decision of the trial Court, wherein the trial Court dismissed the protest petition, which is legally unsustainable one.
- (iii) There were several averments made in the protest petition. However, without examining any witnesses and without giving an opportunity to the petitioner to examine the witnesses, at the threshold, the trial Court has dismissed the protest petition, which is legally unsustainable one.
- (iv) Even the Law Enforcing Agency has referred the case as '*mistake of fact*' and it is contrary to the decision of this Court made in Crl.O.P.(MD) No.17482 of 20155,



wherein this Court has specifically directed the Assistant Commissioner of Police, Crime Branch, Madurai city to monitor the investigation. However, the investigation report did not reveal whether the Assistant Commissioner monitored the investigation or not.

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4. This Court is of the view that the accused have cheated the *de facto* complainant and collected huge sovereigns of gold jewels and huge amount, thereby inducing the *de facto* complainant to invest such amount in many other businesses. However, thereafter they did not pay any amount back to the petitioner and intensionally cheated the *de facto* complainant, after which they vacated their home from the said address. The trial Court without giving an opportunity to the *de facto* complainant to adduce evidence and produce records, at the threshold, had dismissed the protest petition, which is legally unsustainable one.

5. From the perusal of the records, it appears that this Court ordered notice to the private respondents. However, the private respondents were not available in the said address which was given at the time of complaint. Hence, considering the pendency of the petition before this Court from the year 2015, this Court is inclined to proceed with the case with the available records.

6. This Court infers that a *prima facie* case is available in view of the petitioner. However, without expressing any opinion, I am inclined to remand the matter back to the trial court to permit the petitioner to adduce evidence as per Section 200 Cr.P.C. If evidence does not disclose any *prima facie* case, then, the trial Court may take a decision as per Section 202 of Cr.P.C. The said exercise to be completed as expeditiously as possible.

7. With the above observation, the impugned order passed by the learned Judicial Magistrate No.4, Madurai in Cr.M.P.No.2642 of 2015 dated 14.08.2015, is set aside and the matter is remanded back, permitting the petitioner to adduce evidence and thereafter, the trial court may decide the case as per Section 202 of Cr.P.C. Accordingly, with the above direction, the Criminal Revision Case is disposed of.

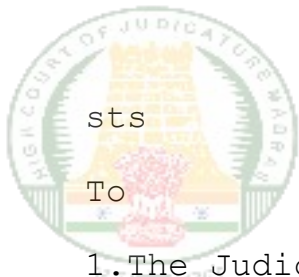
Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)



1.The Judicial Magistrate No.4,
Madurai.

2.The Inspector of Police,
South Gate Police Station,
Madurai.
(Crime No.866 of 2013)

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.R.C. (MD) No.445 of 2015
Dated:03.03.2020

PU(07/05/2020) 4P 4C