



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.7 OF 2020

AND

CRL.M.P.NO.29 OF 2020

G.Janarthanan

... Petitioner/Respondent/Accused

Vs.

State rep. by Inspector of Police

District Crime Branch

Dharmapuri

Crime No.2 of 2012

Dharmapuri District

... Respondent/Petitioner/Complainant

Prayer: The Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code praying to call for the records relating to the order dated 25.11.2019 made in CrI.M.P.No.5158 of 2018 in C.C.No.271 of 2016 on the file of the learned Judicial Magistrate No.2, Dharmapuri (Full Additional Charge), set aside the same by allowing this criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Sugendran
Government Advocate
(CrI. Side)



ORDER

The Criminal Revision Case has been filed against the order dated 25.11.2019 made in CrI.M.P.No.5158 of 2018 in C.C.No.271 of 2016 passed by the learned Judicial Magistrate No.II, Dharmapuri (Full Additional Charge) and to set aside the same.

2. The petitioner is the accused, the respondent is the complainant. The respondent police registered a case in Crime No.2 of 2012 against the petitioner for the offence under Sections 420, 465, 468, 479, 406 and 409 IPC. After investigation, they laid charge sheet before the District Munsif cum Judicial Magistrate, Pappireddipatti for the offences under Sections 409, 468, 471 and 420 of IPC. The learned Magistrate taken the charge sheet on file in C.C.No.271 of 2016 and during pendency of the case, the respondent filed a petition in CrI.M.P.No.5158 of 2018 for further investigation and the said petition was allowed by the learned Magistrate by order dated 25.11.2019. Challenging the said order, now the petitioner / accused has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the case was registered in the year 2012. On earlier occasion, the respondent had filed a petition in CrI.M.P.No.381 of 2014 on the file of Judicial Magistrate, Harur, for reinvestigation and the said petition was dismissed on 26.10.2015 and the respondent not challenged the said order and that the order has attained finality. Subsequently, the defacto complainant also filed a petition in CrI.M.P.No.961 of 2001 invoking Section 173 (8) of Cr.P.C. for further investigation. The said petition was subsequently dismissed as not pressed and that order also ended in finality. Subsequently, the respondent filed a petition in CMP.No.5158 of 2018 invoking Section 173 (8) Cr.P.C. for further investigation. The learned Magistrate, on a finding that there is no material evidence collected in the case and in order to collect the material evidence, the said petition was ordered to carry on further investigation. Once the respondent approached the court for the purpose of reinvestigation and when that petition was dismissed and the respondent not challenged that order and the same ended in finality, subsequently, they cannot invoke Section 173 (8) in



WEB COPY

other form i.e., for further investigation. Even on merit also, the prosecution has no case. The petitioner pleaded that he is the absolute owner of the property and he has given the property as capital for partnership firm and neither he dedicated the property nor he transferred the property in the name of the firm. Further already, investigation has been completed and charge sheet has also been filed and after filing the charge sheet, even the petitioner filed a petition for discharge and the same was dismissed. The respondent and the defacto complainant also approached the trial court by way of petition for reinvestigation and they also failed in their attempts during the year 2014 and 2015 and after 10 years, the respondent cannot invoke Section 173 (8) for further investigation. The learned Magistrate failed to consider these facts and the earlier dismissal orders passed in similar petitions which were filed by the respondent and defacto complainant which also ended in finality. Therefore the present revision has been filed challenging the order dated 25.11.2019 passed in CrI.M.P.No.5158 of 2018, wherein, the learned Magistrate allowed the petition for same relief. In other words, the impugned order is not legally sustainable. Therefore, the order passed by the learned Magistrate is liable to be set aside and the petitioner is age old lady and thereby, the trial has to be expedite.

4. The learned Government Advocate (Criminal Side) would submit that the respondent had earlier filed a petition only for reinvestigation and that was dismissed then. Subsequently, the respondent filed the petition for further investigation. In order to examine the bank officials and to collect the material particulars, the trial court has come to the conclusion that unless reinvestigation is ordered, the respondent cannot put forth their case and that mere conducting further investigation would not prejudice the petitioner. The Magistrate also rightly found that the earlier petition was filed for reinvestigation and that was dismissed, but the present petition filed by the respondent is only for further investigation and no prejudice would be caused. Therefore, the learned Magistrate rightly allowed the petition and ordered for further investigation. Therefore, there is no merit in the revision.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (CrI. Side) and perused the records.



WEB COPY

6. Admittedly the petitioner is the accused. The respondent prosecution registered the case in C.C.No.271 of 2016 pending on the file of the learned Judicial Magistrate No.II, Dharmapuri. During the pendency of the case, the respondent approached the trial court by filing a petition for reinvestigation and the same was dismissed in CrI.M.P.No.381 of 2014 on 26.10.2015. Subsequently the defacto complainant also filed a petition invoking Section 173 (8) in CrI.M.P.No.961 of 2017 and the same was dismissed as not pressed. Subsequently, the respondent filed a petition in CrI.M.P.No 5158 of 2018 for further investigation and the said petition was allowed. The learned counsel for the petitioner contended that in CrI.M.P.No.381 of 2014, the very same Magistrate passed the order on 26.10.2015 rejecting the prayer of reinvestigation and the said order attained finality and thereby, the respondent cannot invoke Section 173(8) for the very same relief. Further, he would submit that the right to speedy trial is guaranteed in the Fundamental Right under Article 21 of the Constitution of India. Now trial is pending without any progress for 10 years. The petitioner is aged about 75 years and he is being harassed and humiliated and tortured by the respondent. It is settled proposition that an act which cannot be done directly, cannot be allowed to be done indirectly. It is further contended that the learned Magistrate failed to consider the earlier application filed by the respondent which was dismissed and allowed the subsequent petition filed for further investigation which is against the law.

7. The main allegation is that 'Jayasree Theater' was reconstituted on 29.09.1984 and the petitioner became one of the partner for the share of the capital and sold 18,000 Sq.ft. vacant site in which, the theater was constructed and the petitioner suppressed the same and obtained loan from the State Bank of India in the name of his son. Whether the petitioner has suppressed the earlier fact and in order to cheat the person, obtained loan by misrepresentation and suppression of material facts, that would be revealed only after investigation. However, the respondent/prosecution stated that they have not investigated the matter in that aspect and therefore, they require further investigation. Only on the directions for further investigation, further investigation will be conducted by the prosecution and no prejudice will be caused to the petitioner. However considering the age of the petitioner and



the dispute is pending for more than 10 years, the prosecution has to expedite the investigation within the stipulated time. Therefore, this court finds that though prima facie there is allegation and the prosecution failed to investigate in those aspects, as such, though reinvestigation is not necessary, further investigation would meet the ends of Justice and therefore, the learned Magistrate allowed the petition. Though the earlier petition filed by the respondent for reinvestigation was dismissed, that may not attract Section 300 of Cr.P.C. by allowing petition for reinvestigation.

8. Therefore, considering the facts and circumstances of the case, this court does not find any perversity in the order passed by the Magistrate in allowing for reinvestigation. Further, considering the age of the petitioner and also the litigation is pending for more than 10 years, the respondent police is directed to complete further investigation and file additional charge sheet before the Magistrate and file a compliance report before this Court within a period of two months from the date of receipt of copy of this order.

9. On receipt of the additional final report, the learned Magistrate is directed to complete framing of additional charges if any, and complete the trial within a period of four months from the date of filing of the additional charge sheet by expediting the trial in accordance with law on day to day basis without any further delay.

10. With the above directions, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

ksa-2



1. The Judicial Magistrate No.II,
Dharmapuri (Full Additional Charge)

2. The Chief Judicial Magistrate,
Dharmapuri.

3. The Inspector of Police,
District Crime Branch,
Dharmapuri.

4. The Public Prosecutor,
High Court, Madras.

Copy To

1. The Registrar(Judicial)
High Court, Madras - 104.

2. The Section Officer,
Criminal Section,
High Court, Madras - 104.
(For tracking or receipt of report)

+1cc to Mr.N.Manokaran, Advocate, S.R.No.50428

Cr1.RC.No.7 of 2020
and
Cr1.M.P.No.29 of 2020

VSN-II(CO)
RLP(04/10/2021)