

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.882 of 2020
and Crl.M.P.Nos.8421 & 6025 of 2020

M.Selvaraj

... Petitioner

Versus

1. The State represented by
The Inspector of Police,
District Crime Branch,
Coimbatore.
Crime No.6 of 2018

- 2.Rahul Krishna Gopal
- 3.Nikitha
- 4.Krishna Gopal
- 5.Ramu
- 6.Sumathi
- 7.Narayan
- 8.S.Sekaran

... Respondents

(Respondents 2 to 8 are impleaded as per order in Crl.MP.No.8421 of 2020 in RC. 882 of 2020 dated 21.12.2020)

PRAYER: Criminal Revision petition is filed under Section 397 r/w.401 Cr.P.C seeking to set aside the order made in CMP No.3675 of 2019 dated 08.11.2019 on the file of the Judicial Magistrate, Sulur, Coimbatore District and allow this Criminal Revision Petition thereby direct the learned Judicial Magistrate, Sulur to issue process on the respondents.

For petitioner : Mrs.Kaaviya for
Mr.A.R.Suresh

For R1 : Mr.K.Madhan
Government Advocate (Criminal Side)

For R2 to R7 : Mr.N.Manokaran
For R8 : Mr.S.Vinoth Kumar

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order made in CMP No.3675 of 2019 dated 08.11.2019 on the file of the Judicial Magistrate, Sulur, Coimbatore

District and to direct the learned Judicial Magistrate, Sulur to issue process on the respondents.

2. The first respondent registered the case against the 8th respondent based on the complaint given by the defacto complainant in Crime No. 6 of 2018 for the offences under Sections 420, 406, 464, 380 and 120B IPC. The respondent police after registering the case, investigated the matter and lodged a final report before the learned Judicial Magistrate, Sulur, Coimbatore District, but thereafter, dropped the proceedings and the learned Magistrate also issued summons to the petitioner/defacto complainant. Therefore, the petitioner/defacto complainant filed the protest petition. After the enquiry, the learned Magistrate passed the order dismissing the protest petition and closed the FIR. Challenging the same, the petitioner/defacto complainant has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the petitioner/defacto complainant gave a complaint before the first respondent police, who registered the case in Crime No. 6 of 2018 for the offences under Sections 420, 406, 464, 380 and 120B IPC. Whereas after the investigation, Police simply filed the final report for dropping the proceedings. The learned Magistrate issued the notice to the petitioner and the petitioner has also filed objection by way of protest petition. The learned Magistrate failed to consider the grounds raised in the protest petition. In the petition, it is pointed out that the respondent police has not stated that there is no prima facie case meted out and there is no allegation, but the only ground they stated that during the pendency of the investigation, both the parties approached the first respondent police and entered into Memorandum of Understanding and compromised the matter. Therefore further proceedings was dropped. When the said report was filed before the Magistrate, the Magistrate rightly sent the notice to the petitioner. After receipt of the same, the petitioner filed protest petition raising contentions and also further insisted to probe into the matter. But the contentions raised was not accepted by the learned Magistrate. When there is a complaint and there is an allegation by the defacto complainant, and the witness also spoken about it, it is the duty of the Judicial Magistrate to take the protest petition on file especially when the petitioner denied the Memorandum of Understanding. Further, the petitioner has stated that police obtained the signature in the said Memorandum of Understanding by threatening under coercion. Therefore, these facts have not been taken into consideration by the learned Magistrate and therefore the order passed by the Magistrate is liable to be set aside.

4. The learned counsel for the respondents 2 to 8 would submit that after filing the complaint, it was found that the complaint is in the nature of civil dispute and the petitioner also entered into Memorandum of Understanding. The matter is of purely civil dispute. Further, the petitioner has falsely given the complaint and at the time of investigation, they entered into the compromise and the petitioner has stated that they are not pressing the complaint and therefore under these circumstances, the first respondent police filed a final report before the Magistrate for dropping the proceedings and the Magistrate also rightly sent notice and considering the signature found in the MOU, the petitioner also admitted the signature but not denied his signature found in the MOU. Once the petitioner admitted that payments received by him and that he received sale consideration and also executed the document, later on, the petitioner has stated that the value of the property is more than 2 crores and as such, he has denied the MOU. Even though the petitioner approached during the investigation, the petitioner himself came to the Police Station and signed the Memorandum of Understanding. After investigation, the Investigating Officer laid a charge sheet before the Magistrate and based on the MOU, they dropped the proceedings and the Magistrate also considered the point that it is civil dispute between both the parties. The learned counsel further submits that the learned Magistrate also pointed out that if the Memorandum of Understanding obtained by the respondent police by threatening or coercion, the defacto complainant must take necessary steps to challenge the Memorandum of Understanding before the competent court and failed to do the same. The learned counsel submits that there is no reason set out by the petitioner to set aside the impugned order.

5. Heard and perused the records.

6. Admittedly the petitioner/defacto complainant filed complaint before the first respondent police against the respondents 2 to 8 and registered the case in Crime No.1 of 2018 for the offences under section 420, 423, 406 and 34 IPC and a case in Crime No.6 of 2018 for the offence under section 420, 406, 464, 380, 120B IPC filed against the petitioner and there is case in counter. The police registered the case, investigated the matter and laid the charge sheet before the Judicial Magistrate, Sulur.

7. Admittedly in this case, the respondent police produced MoU and according to the first respondent, both have entered into compromise and they executed MoU. Based on the MoU, they filed the final report that they are dropping the proceedings. However the petitioner/defacto complainant denied the same when the notice is sent to him. After sending notice to the defacto

complainant/petitioner, he filed the protest petition before the Magistrate. Therefore, at this stage when the petitioner himself stated before the learned Magistrate by coercion and threatening, executed the MoU, the learned Magistrate ought to have directed the first respondent to enquire into the matter. However, instead of giving direction to the first respondent, the learned Magistrate simply closed the complaint and also dismissed the protest petition. However, the learned Magistrate has not observed anything that the matter is civil dispute or that there is no cause of action arose. But simply stated that only based on the MoU, the learned Judicial Magistrate closed the complaint. It is pertinent to note that the defacto complainant is questioning the MoU itself stating that it was executed in the Police station by threatening and coercion when they called for enquiry. At that time, they threatened and obtained signature in the MoU. Under these circumstances, this court is of the view that the order passed by the learned Magistrate is liable to be set aside. Accordingly, the impugned order is set aside.

8. In the result, this Criminal Revision case is disposed of with the following direction:-

The respondent police is directed to investigate the case afresh in a fair manner and file a charge sheet in accordance with law. The Superintendent of Police, District Crime Branch is directed to monitor the investigation to be conducted by the Inspector of Police. After completing the investigation, the respondent Police is expected to file a charge sheet within three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mpa

To

1.The Judicial Magistrate,
Sulur, Coimbatore District.

2.The Superintendent of Police,
District Crime Branch,
Coimbatore.

WEB COPY

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

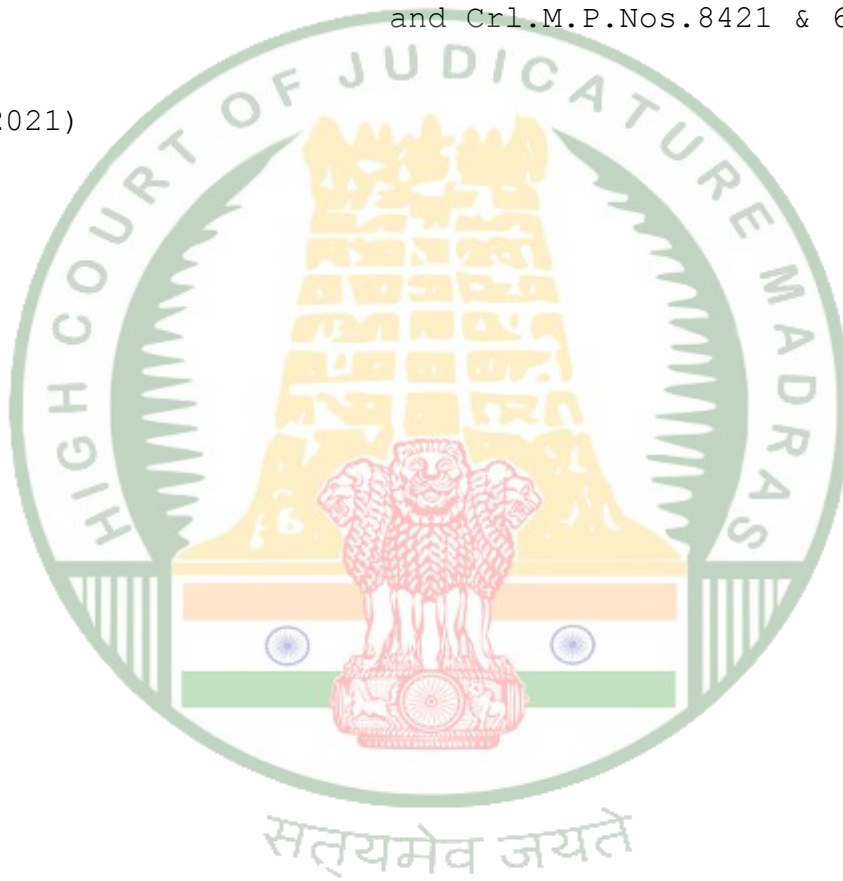
4.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.6765

+1cc to Mr.A.R.Suresh, Advocate, S.R.No. 6742

Crl.RC.No.882 of 2020
and Crl.M.P.Nos.8421 & 6025 of 2020

RLD(CO)
GN(17/04/2021)



WEB COPY