



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.10.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.632 of 2021
and
Crl.M.P.No.10451 of 2021

Ganesh @ Rajaganesh ... Petitioner/Accused (A3)
Versus

The Inspector of Police,
District Crime Branch,
Villupuram District,
Crime No.12 of 2009.

... Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 Criminal Procedure Code, to call for the records pertaining to the order made in C.M.P.No.1091 of 2020 dated 15.04.2021 passed by the learned Judicial Magistrate No.I, Villupuram, Villupuram District and set aside the same by allowing the above Criminal Revision Petition.

For Petitioner : Mr.K.Chandru

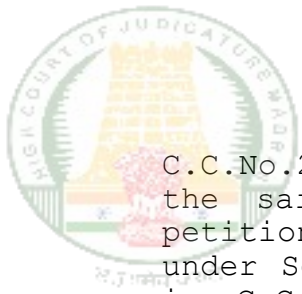
For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed against the order dated 15.04.2021 passed in C.M.P.No.1091 of 2020 by the learned Judicial Magistrate No.I, Villupuram, Villupuram District.

2.The case of the prosecution is that A1 is the Marketing Manager and Regional Sales Manager of M/s.Bengal Tools Ltd., Agro Division, Chennai, which sells power tillers to its dealers. One K.C.Bhakthavachalam/A1 is said to have misappropriated a sum of Rs.1,70,72,069/- and he was charged for the said offence. Further A2 to A5 are the dealers of the said company. The petitioner herein, who was arrayed as A3, is alleged to have misappropriated a sum of Rs.23,10,948/- and thereby he has committed an offence under Section 420 IPC.

3.The respondent police initially registered a case in Crime No.12 of 2009 against A1 for the offence under Sections 408 and 420 IPC. After investigation, they filed a charge sheet against A1 and four other accused before the learned Judicial Magistrate No.I, Villupuram and the same was taken on file in



C.C.No.250 of 2019. The petitioner herein is arrayed as A3 in the said case. During the pendency of the said case, the petitioner herein filed a petition in C.M.P.No.1091 of 2020 under Section 239 Cr.P.C seeking to discharge him from the case in C.C.No.250 of 2019 before the Court below. The learned Judicial Magistrate, after enquiry dismissed the petition on 15.04.2021. Challenging the said order, the petitioner is before this Court by way of Criminal Revision Case.

4.The learned counsel for the petitioner would submit that in First Information Report the name of the petitioner was not shown as an accused and there is no specific overt act attributed against the petitioner. He would further submit that there is a civil dispute between the first accused/A1 and the de facto complainant and the petitioner herein is nothing to do with the said dispute and he has been falsely implicated in the said case. The learned Magistrate without appreciating the entire materials, simply dismissed the petition on the ground that while recording statement of the witnesses under Section 161 Cr.P.C., some of the witnesses have named the petitioner. However, there is no prima facie materials against the petitioner to constitute offence under Section 420 IPC and hence, the order passed by the learned Magistrate is liable to be set aside.

5.The learned Government Advocate (Crl.Side) for the respondent would submit that though the name of the petitioner was not shown as an accused in First Information Report, after investigation, it reveals that the petitioner also involved in the commission of the offence. He would further submit that L.Ws.28 to 30 clearly stated about the role of the petitioner in the commission of the offence. Therefore, the trial Court rightly appreciated the entire materials and found that there was prima facie materials against the petitioner herein and dismissed the petition.

6.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

7. Admittedly the respondent police registered the case in Crime No.12 of 2019 against the petitioner herein and four other accused. The petitioner herein arrayed as A3 and he filed a petition in C.M.P.No.1091 of 2020 before the learned Judicial Magistrate No.I, Villupuram seeking to discharge him from the case in C.C.No.250 of 2019, which was dismissed by the Court below on 15.04.2021.

8.The scope of 239 Cr.P.C is very narrow to decide the matter. At time of deciding the petition under Section 239 Cr.P.C, the Court has to see the charge sheet filed by the prosecution under Section 173(3) Cr.P.C and also the documents annexed with, but, not the defence taken by the accused and the



documents produced by the accused at this stage. Further the Court cannot conduct roving enquiry at this stage on the materials produced along with final report and only has to see whether there is any prima facie allegations or incriminating materials against the accused. The Court would be justified in framing charges, if the prosecution has sown the seed in the form of some incriminating material which has got the potential to develop itself into a full-fledged one during trial.

9. On a careful perusal of the entire materials, it would reveal that the name of the petitioner/A3 was not shown as an accused in the First Information Report, however, during the investigation, the list of witnesses have clearly spoken about the specific role played by the petitioner/A3. This Court finds that there are prima facie materials against the petitioner and this Court cannot conduct roving enquiry at this stage. However, the defence taken by the accused can be decided after trial but, not at this stage.

10. In view of the above this Court does not find any perversity or illegality in the order passed by the learned Magistrate and hence, this Criminal Revision Case is dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

11. The learned Judicial Magistrate No.I, Villupuram is directed to complete the trial within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ms

To

1. The Judicial Magistrate No.I,
Villupuram, Villupuram District.

2. Do through the Chief Judicial Magistrate, Villupuram.

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

4. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.K.Chandru, Advocate Sr.NO. 53982

Crl.R.C.No.632 of 2021
and

Crl.M.P.No.10451 of 2021

SR II (CO)
A.SK(25.10.2021)



WEB COPY