

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.RC.No.1524 of 2017
and
Cr1.M.P.No.15106 of 2017

1.S.Dheenadayalan
S/o. Selvaraj

2.Vijayalakshmi
W/o.S.Dheenadayalan ... Petitioners/Petitioners Accused

Vs

K.S.Saidu Mohamed
S/o.Abdul Razak ... Respondent/Respondent/Complainant

Prayer: This Criminal Revision Petition filed, under Section 397 r/w Section 401 Cr.PC, to set aside the order passed in C.R.P.No.99 of 2012 dated 20.10.2017 on the file of the learned I Additional District and Sessions Judge, Coimbatore, reversing the order passed by the learned Judicial Magistrate No.V, Coimbatore dated 03.10.2012 in C.M.P.No.4594 of 2012.

For Petitioner : Mr.V.V.Sairam
For Respondent : Mr.A.Chidambaram

ORDER

(The case has been heard through video conference)

The Criminal Revision has been filed by the Petitioner/Accused seeking to set aside the order passed in C.R.P.No.99 of 2012 dated 20.10.2017 on the file of the learned I Additional District and Sessions Judge, Coimbatore, reversing the order passed by the learned Judicial Magistrate No.V, Coimbatore dated 03.10.2012 in C.M.P.No.4594 of 2012.

2.The case of the prosecution in brief:

The petitioners /accused agreed to sell his property situated at Vellalur Village in Survey No.484, 486 and 487 measuring to an extent of 3.43 acres of land in Vellalur Village in Pollachi Chetty Palayam Road and entered into a sale agreement to the respondent / complainant on 29.06.2007 and received advance of Rs.20 Lakhs by cheque on various dates. Despite receiving the huge amounts as advance, the accused did

not execute the sale deed. Hence, the respondent / complainant gave a complaint to the police against the accused. Thereafter, the petitioners / accused had executed a sale deed dated 21.05.2010 in favour of the respondent / complainant in respect of 1.20 acres of land. On verification, it was found that the property had already been sold to several individuals by the petitioners / accused through their Power of Attorney one Jegadeesh and suppressing all the earlier transactions, the petitioners / accused had executed another sale deed in favour of the respondent / complainant. Finding that the fraud had been committed, and the respondent / complainant had been cheated, he preferred a police complaint to the Land Grabbing Wing, Coimbatore on 23.07.2011. Since no action was taken, the respondent / complainant filed Crl.O.P.No.1491 of 2012 before this Court seeking to direct the respondent police to register an F.I.R. based on the complaint. When the matter had come up before this Court for hearing, it was reported by the police that the complaint had been closed as civil in nature. Thereafter, this Court disposed of the petition, granting liberty to the respondent / complainant to proceed further as per the procedure known to law after getting the closure report. Since the police did not give closure report, the respondent / complainant without getting the closure report filed a private complaint u/s.200 Cr.P.C. against the petitioners / accused before the learned Judicial Magistrate No.V, Coimbatore. The learned Judicial Magistrate No.V, Coimbatore vide order dated 03.10.2012 had dismissed the complaint by passing the following order:

"Complainant present. Heard. Records Perused. On perusal of records, it is seen that already this complainant has filed a complaint before the Inspector of Police, B2, Police Station, Singanallur, Coimbatore and the said complaint was closed by the concerned police and the said fact was reported to the Hon'ble High Court in Crl.O.P.No.1491 of 2012. In the said Criminal O.P. the Hon'ble High Court directed the complainant to proceed as per the law after getting the said closure report. But the complainant without getting the said closure report now filed a fresh complaint before this Court and the same could not be entertained. Further, the said B2 Singanallur P.S. Does not fall with the jurisdiction of this Court. Therefore, this C.M.P. is closed with direction to the complainant to proceed as per the direction of the Hon'ble High Court in the said Crl.O.P."

3.Against the dismissal of the complaint, the respondent / complainant preferred a petition Criminal Revision Petition No.99 of 2012 before the learned I Additional District & Sessions Judge, Coimbatore, finding that the learned Magistrate has not examined the respondent / complainant and finding that

there was nothing wrong in the procedure adopted by the respondent / complainant by filing a private complaint without the closure report had set aside the order passed by the learned Judicial Magistrate No.V, Coimbatore vide order dated 03.10.2012 and directed the learned Magistrate to take the complaint on file and proceed as per the procedure contemplated under Chapter XV of Cr.P.C. without insisting for the closure report. Against which, the present revision has been filed by the petitioners / accused.

4.Learned counsel for the petitioners / accused would submit that the respondent / complainant had preferred a complaint before the police. The complaint was referred by the police as civil in nature and the closure report was also filed. Whereas, the respondent / complainant approached this Court by filing Crl.O.P.No.1491 of 2012 and this Court vide order dated 31.01.2012 granted liberty to the respondent / complainant to proceed as per the procedure which is known to law after getting closure report. Whereas the respondent / complainant without challenging the closure report by filing protest petition has straightaway filed a private complaint u/s.200 Cr.P.C. and thereby the learned Judicial Magistrate No.V, Coimbatore finding that the directions of the High Court have not complied with and closed the complaint with a direction to the respondent / complainant to proceed as per the direction of the High Court in the said Crl.O.P.No.1491 of 2012. Against which, the respondent / complainant filed a Revision and the Revisional Court without properly looking into the orders passed by this Court, had set aside the order passed by the learned Judicial Magistrate No.V, Coimbatore and directed the learned Magistrate to take the complaint on file, which is against the law and warrants interference of this Court.

5.Learned counsel for the respondent / complainant would submit that the closure report was not served on the respondent / complainant. It is the discretion of the respondent / complainant to exercise his option either by filing a protest petition or a private complaint u/s.200 Cr.P.C. The respondent / complainant has got enough and sufficient materials to prove his case. The learned Magistrate ought to have taken cognizance and followed the procedure contemplated under Chapter XV of Cr.P.C., whereas, the learned Magistrate without following the procedure contemplated under Chapter XV of Cr.P.C. closed the complaint with a direction to proceed as per the direction of the High Court. The learned Magistrate ought to have seen that the closure report was on his file and taken the complaint on file or if he has any doubt with regard to the jurisdiction, he should have taken steps in accordance with procedure. Whereas, he had straightaway closed the complaint, against which, the respondent / complainant preferred Revision

and the Revisional Court finding that the learned Magistrate has committed an error and finding that there are enough materials to take cognizance had rightly allowed the Revision by setting aside the order passed by the learned Judicial Magistrate No.V, Coimbatore in C.M.P.No.4594 of 2012. He would submit that no illegality has been committed by the Revisional Court and it does not warrant any interference.

6.Heard the counsels. Perused the materials on record.

7.In this case, the complaint given by the respondent / complainant to the police has been closed as civil in nature. However, the closure report had not been served on the respondent / complainant and thereby the respondent / complainant had filed a private complaint u/s.200 Cr.P.C. The learned Judicial Magistrate No.V, Coimbatore on filing of the private complaint should have followed the procedure as contemplated under Chapter XV of Cr.P.C. Whereas he had closed the complaint with a direction to the respondent / complainant to proceed as per the directions of the High Court in the said Crl.O.P.No.1491 of 2012 stating that the complaint has been filed without the closure report, against which the Revision has been filed. The Revisional Court considering the materials and finding that the learned Judicial Magistrate No.V, Coimbatore, had not followed the procedure in accordance with law had set aside the order and directed the learned Magistrate to take the complaint on file and proceed as per the procedure contemplated under XV of Cr.P.C. without insisting for a closure report by the police.

8.This Court does not find any infirmity in the order passed by the Revisional Court. It is the discretion of the respondent / complainant to either file a protest petition or a private complaint u/s.200 Cr.P.C. The learned Magistrate, ought to have followed the procedure as contemplated under Chapter XV of Cr.P.C., whereas, he had erroneously closed the complaint stating that it has been filed without obtaining the closure report.

9.In view of the above, this court does not find any infirmity in the order passed by the learned I Additional District & Sessions Judge, Coimbatore in Criminal Revision Petition No.99 of 2012 dated 20.10.2017.

10.In the result, the Criminal Revision Case stands dismissed. The order passed in Criminal Revision Petition No.99 of 2012 by the learned I Additional District & Sessions Judge, Coimbatore on 20.10.2017 is confirmed. The learned Judicial Magistrate No.V, Coimbatore shall take the complaint on the file and proceed as per the procedure contemplated under

Chapter XV of Cr.P.C. The case is of the year 2012, the learned Magistrate shall accord priority and dispose of the complaint within a period of six months from the date of 1st hearing. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1.I Additional District and
Sessions Judge
Coimbatore.

2.The Judicial Magistrate No.V
Coimbatore.

+1 cc to M/S.V.V.Sairam,Advocate Sr No.20208

+1 cc to M/s.A.Chidambaram,Advocate Sr No.20093

Crl.RC.No.1524 of 2017
and
Crl.M.P.No.15106 of 2017
29.03.2021

PL(CO)
RG.27.04.2021(5p.5c)



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