



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1262 of 2019 and
Crl.M.P.No.17033 of 2019

P.Murugaiyan

...Petitioner/Accused

-Vs-

1.The Inspector of Police,
Nedungadu Police Station,
Karaikkal District,
Puducherry - 609603

2.The Soundarraja Mills Employees
Co-Operative Credit Society Ltd.,
No.P.353, Nedungadu represented by its authorized
Member Signatory, P.Ravindran
Nedungadu, Karaikkal District,
Puducherry - 609 603.

...Respondents/Complainant & Defacto Complainant

Criminal Revision Case filed under Sections 397 read with
Section 401 of Cr.P.C. to set aside the order dated 23.04.2019
made in Crl.M.P.No.2752 of 2018 in FIR No.52 of 2005 on the file
learned Judicial Magistrate No.II, Karaikal.

For Petitioner : Mr.T.Sathyamoorthy

Respondents : Mr.Bharatha Chakravarthy
Public Prosecutor (Pondy) for R1

O R D E R

The petitioner is the second accused in Crime No.52 of 2005.
After investigation, the first respondent police closed the
complaint filed by the second respondent herein, against which,
the second respondent filed protest petition in Crl.M.P.No.2752
of 2018 before the learned Judicial Magistrate No.II, Karaikal,
and the learned Magistrate after hearing both the parties, by an
order dated 23.04.2019, ordered further investigation in Crime
No.52 of 2005. Against the said order of further investigation,
the accused in the above crime, has filed the present revision
before this Court.

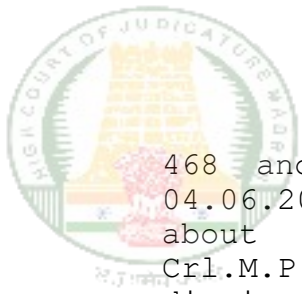


2 The learned counsel appearing for the petitioner would submit that even though, the petitioner herein was impleaded as second respondent in the above protest petition, he was not given opportunity either to file his counter or defend the case. The learned Magistrate, without giving any opportunity to the petitioner, simply ordered further investigation, which amounts to violation of principles of natural justice. Hence the petitioner need not undergo ordeal of investigation in the above crime, which alleged to have committed in the year 1999. Therefore, the order of further investigation passed by the learned Magistrate is liable to be set aside.

3 The learned Public Prosecutor (Pondicherry) appearing for the first respondent would submit that initially the second respondent, since could not recover the documents of the Society, which were in the illegal custody of the petitioner, has filed a private complaint against the petitioner and as ordered by the Court below, the complaint was registered in Crime No.52 of 2005 and the Magistrate, after due enquiry closed the same as mistake of fact. Aggrieved against the same, the second respondent filed miscellaneous petition seeking reopen of his complaint and the Magistrate dismissed the petition. Thereafter, the petitioner approached this Court, and this Court by order dated 18.06.2015, granted liberty to the petitioner to approach the Court below by way of protest petition. Hence the petitioner, as ordered by this Court, has filed protest petition, and the Magistrate by order dated 23.04.2019 ordered further investigation, which is impugned in the present revision. The order of further investigation passed by the Magistrate would not cause any prejudice to the petitioner and hence the same does not call for any interference of this Court.

4 Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor (Pondicherry) appearing for the first respondent police and perused the materials available on record.

5 It is seen that initially, the second respondent Society/defacto complainant has lodged complaint against the petitioner to the Deputy Registrar, Co-operative Department, Karaikal, regarding non returning of various ledgers and books of accounts, which were in the personal custody of the petitioner, who happened to be the Secretary of the Society at the relevant point of time. Since all the efforts taken by the Sub Divisional Magistrate went in vain, the second respondent Society was directed to take action against the petitioner as per law and hence the second respondent has filed a complaint against the petitioner and since, there was no action on the complaint, the Society has filed private complaint, which was registered in Crime No.52 of 2005 for the offence under Sections



468 and 477 A of IPC. The above complaint was closed on 04.06.2009 as mistake of fact and the Society on coming to know about the same, has filed miscellaneous petition in CrI.M.P.No.1867 of 2013 before the Court below, which was dismissed on 11.04.2014. Aggrieved against the same, the second respondent Society has approached this Court and this Court by order dated 18.06.2015 granted liberty to the Society to file a protest petition. As directed by this Court, the Society has filed protest petition and the learned Magistrate, after hearing both the parties, by an order dated 23.04.2019, has ordered further investigation, which is impugned in this present revision by the petitioner/accused.

6 It is settled proposition of law that at the time of giving complaint or at the time of filing charge sheet, it is not necessary to hear the accused and power of investigation is duly vested with the Investigating Officer and if during investigation, the Investigating Officer feels presence of the accused is necessary, he will summon as per the procedures and found any prima facie, he can file remand report and proceed with the investigation. Further, it is not necessary to follow uniform procedures in all the cases, it depends upon the facts and circumstances and nature of the case. Therefore, in a considered view of this Court, the order of further investigation passed by the Magistrate would not cause any serious prejudice to the petitioner and this Court does not find any reason to interfere with the order of further investigation passed by the learned Magistrate.

7 Accordingly, this criminal revision is dismissed. Consequently connected miscellaneous petition is closed. Further, it is stated by the learned Government Advocate (CrI.Side) that already investigation started and so far 48 witnesses have been examined and since this Court granted stay, investigation could not be progressed. Considering the fact that the allegation is of the year 1999 and now 48 witnesses have been examined, the first respondent police is directed to complete the investigation in Crime No.52 of 2005 within a period of three months from the date of receipt of a copy of this order and file a charge sheet.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Karaikal.

2.The Inspector of Police,
Nedungadu Police Station,
Karaikkal District,
Puducherry - 609603.

3.The Public Prosecutor (Pondy),
High Court of Madras.

+1cc to Mr.T.Sathiyamoorthy, Advocate Sr No.36902

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AKII (CO)
PR (14/09/2021)