



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13.09.2021

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

WEB COPY

Crl.RC(MD)No.262 of 2021

P.Varkeeshraja : Petitioner/Petitioner/De-facto
Complainant

Vs.

1.The Inspector of Police,
West Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.568 of 2017)

: R1/R1/Complainant

2.N.Nagarajan

: R2/R2/Accused

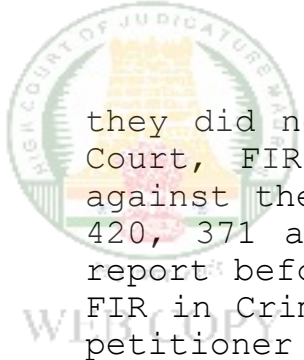
Prayer: Criminal Revision filed under section 397 r/w 401 & 482 of the Code of the Criminal Procedure, against the order, dated 30.09.2020 made in Cr.MP No.1402 of 2020 in Crime No.568 of 2017 on the file of the Judicial Magistrate No.2, Kovilpatti.

For Petitioner : Mr.S.P.Prakash
for Mr.S.Saravanan
For 1st Respondent : Mr.RMS.Sethuraman
Counsel for State Government
(Criminal side)
For 2nd Respondent : Mr.S.Vaigunth

O R D E R

This Criminal Revision is filed against the order, dated 30.09.2020 made in Cr.MP No.1402 of 2020 in Crime No.568 of 2017 on the file of the Judicial Magistrate No.2, Kovilpatti.

2.The case of the petitioner is that he is a Private Carriage Driver and one Nagarajan, who is the 2nd respondent herein is exporting manpower to abroad in the name of VISAKAN TRAVELS. The petitioner approached him for job, for which he gave Rs.75,000/-, on 16.06.2017. The 2nd respondent/A2 had given assurance to the petitioner that the monthly salary would be Rs.25,000/- with food and accommodation and job only for eight hours. On 13.07.2017, the petitioner went to Malaysia and joined the office of one Mr.Ramani as Driver. But in Malaysia, there was a dispute between Ramani and the petitioner. The petitioner reported the matter to Kolalambur Police, Malaysia and FIR was registered and thereafter, the petitioner returned back to India and made a complaint to the 1st respondent police, on 29.08.2017 against the 2nd respondent. But



they did not register case. Subsequently, on the direction by the Court, FIR was registered in Crime No.568 of 2017, on 08.11.2017 against the said Nagarajan for the offence under sections 406, 417, 420, 371 and 374 IPC. Thereafter, the 1st respondent filed a final report before the Judicial Magistrate No.2, Kovilpatti, closing the FIR in Crime No.568 of 2017 as "Action Dropped". Against which, the petitioner filed a protect petition in C.MP No.1402 of 2020 in Crime No.568 of 2017 on the file of the Judicial Magistrate No.II, Kovilpatti. The learned Magistrate, by order, dated 30.09.2020 dismissed the said petition. Challenging the said order, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.The learned counsel appearing for the petitioner/de-facto complainant argued that the final report is illegal, erroneous and un-sustainable in law and the Investigation Officer failed to appreciate the scope of fair investigation in a proper perspective manner, when the de-facto complainant produced relevant documents and eye witness by way of evidence to substantiate his allegations and the Investigation Officer failed to enquire about the FIR filed in Malaysia as against one Ramani under which the petitioner/de-facto complainant worked as "Driver" and the 2nd respondent/accused only sent the de-facto complainant to the said Ramani and the 2nd respondent/A2 has no Government Licence to export manpower to abroad and also did not produce any Licence in respect of Coal Import business and no valid reasons were given by the trial court for dismissal of the protect petition filed by the petitioner and there was prima facie case made out as against the accused and prays for allowing the Criminal Revision.

5.On the other hand, on the side of the prosecution, it is argued that the petitioner/de-facto complainant went to Malaysia and joined duty in the office of one Ramani as a "Driver" and due to dispute between the petitioner and the said Ramani, the petitioner/de-facto complainant came to India and then, the petitioner went to Malaysia and worked under Ramani and received salary and hence, there is no question of cheating and criminal breach of trust and in so far as section 371 of IPC is concerned, the petitioner/de-facto complainant made only bald allegations against the 2nd respondent and the non-examination of video CD and translation in Malay language FIR are not fatal to the prosecution case and only after perusing the records, the trial court correctly closed the case on the basis of the final report and prays that the Criminal Revision has to be dismissed.

6.The main contention of the petitioner/de-facto complainant is that prima facie case is made out as against the 2nd respondent/accused and hence, the negative final report can not be



accepted. The petitioner/de-facto complainant stated that A2 knowingly sent him to Ramani and A2 had bad intention to cheat him. Already the petitioner/de-facto complainant gave a complaint as against the said Ramani, from whom he was sent for driving, compelled him to do the work against his Will and FIR was registered as against the said Ramani and is still pending in Malaysia. Further, the petitioner stated in his complaint that the accused had the habit of selling the person as slaves and for that, FIR was registered and the Investigating Officer filed this negative final report.

7. On careful perusal of the records, it reveals that the de-facto complainant was sent by the 2nd respondent/A2 to Malaysia to work under one Ramani and the said Ramani appointed him as a Driver. But the petitioner stated that the 2nd respondent/accused sold him to Ramani as slaves and the said Ramani compelled him to do the work against his Will. Hence, it reveals that the 2nd respondent/A2 had bad intention to send the de-facto complainant to Ramani as slaves and Ramani compelled him to do the work as against his Will. Hence, it is held that prima facie case is made as against the 2nd respondent/accused. Further, the petitioner/de-facto complainant filed the protest petition, objecting the final report. Hence, this court comes to the conclusion that the protest petition can be treated as 200 Cr.P.C petition and further, the trial court may be directed to proceed with the petition under section 200 Cr.P.C as per law, after giving reasonable opportunity to the parties concerned.

8. In the result, this Criminal Revision is allowed. The impugned order, dated 30.09.2020 made in Cr.M.P No.1402 of 2020 in Crime No.568 of 2017 on the file of the Judicial Magistrate No.2, Kovilpatti, is set aside. The protest petition filed by the petitioner can be treated as the petition filed under 200 Cr.P.C and the trial court is directed to proceed with the case, as petition filed under section 200 Cr.P.C, as per law, after giving reasonable opportunity to the parties concerned.

Sd/-

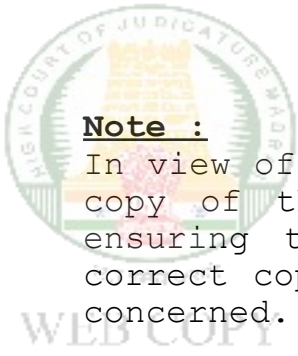
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1.The Judicial Magistrate No.2,
Kovilpatti.
- 2.The Inspector of Police,
West Police Station,
Kovilpatti,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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NSN (CO)
KB (21.09.2021) 4P 4C