



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 05.07.2021

Delivered on: 04.08.2021

CORAM

WEB COPY

THE HONOURABLE **MR.JUSTICE G.ILANGOVAN**

CrI.O.P.(MD)Nos.5201, 5206 & 5221 of 2021

and CrI.R.C.(MD)Nos.285 & 286 of 2021

and

CrI.M.P.(MD)Nos.2995, 2996, 3002, 3003, 3009 and 3010 of 2021

and CrI.M.P.(MD)Nos.2804, 2805, 2808 & 2809 of 2021

CrI.O.P.(MD)No.5201 of 2021

Vijayakumar

... Petitioner/Defacto complainant

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.19 of 2019)

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in RCS.No.599 of 2020 on the file of the learned Judicial Magistrate, Theni District and quash the same as against the petitioner.

CrI.O.P.(MD)No.5206 of 2021

Vijayakumar

... Petitioner/Defacto complainant

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.22 of 2019)

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in RCS.No.597 of 2020 on the file of the learned Judicial Magistrate, Theni District and quash the same as against the petitioner.



CrI.O.P. (MD)No.5221 of 2021

Vijayakumar

... Petitioner/Defacto complainant

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.21 of 2019)

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in RCS.No.598 of 2020 on the file of the learned Judicial Magistrate, Theni District and quash the same as against the petitioner.

CrI.R.C. (MD)No.285 of 2021

Vijayakumar

... Petitioner/Defacto complainant

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.21 of 2019)

... Respondent/Complainant

Prayer : Criminal Revision petition filed under Section 397 r/w 401 Cr.P.C., to call for the records of the learned Judicial Magistrate, Theni in RCS.No.598 of 2020 dated 22.03.2021 and to set aside the part one of the order taking cognizance of offences under Sections 174 & 177 IPC and directing the petitioner to execute bond by an order dated 22.03.2021.

CrI.R.C. (MD)No.286 of 2021

Vijayakumar

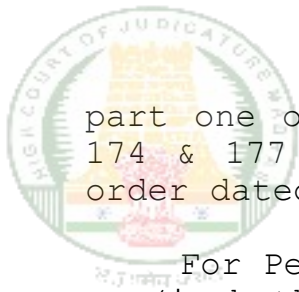
... Petitioner/Defacto complainant

Vs.

The State by
The Inspector of Police,
District Crime Branch,
Theni.
(Crime No.19 of 2019)

... Respondent/Complainant

Prayer : Criminal Revision petition filed under Section 397 r/w 401 Cr.P.C., to call for the records of the learned Judicial Magistrate, Theni in RCS.No.599 of 2020 dated 22.03.2021 and to set aside the



part one of the order taking cognizance of offences under Sections 174 & 177 IPC and directing the petitioner to execute bond by an order dated 22.03.2021.

For Petitioner : Mr.M.Karunanithi

(in both Crl.OPs. &
Crl.RCs.)

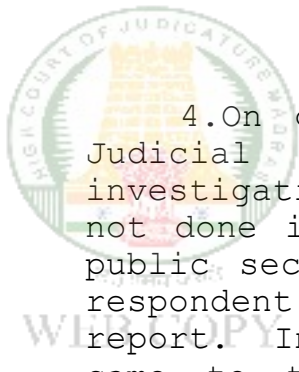
For Respondent : Mr.R.M.Anbunithi,
(in both Crl.OPs. & Additional Public Prosecutor.
Crl.RCs.)

COMMON ORDER

Since common question of law and facts arise in all these criminal original petitions and criminal revision cases, common order is passed.

2.Brief facts of the case are that the petitioner is the defacto complainant in the First Information Reports in Crime Nos.19 of 2019, 21 of 2019 and 22 of 2019. The common allegation in all the complaint is that the accused persons in all FIRs committed the offence of forgery, cheating, misappropriation and obtained loan from the State Bank of India, Theni Branch. Complainant is the Regional Manager of the Bank. The Bank was lending loan for Produce Marketing Loan from 2005 onwards. All the accused in FIRs were owning separate accounts in their individual names. They have also obtained loan as mentioned in the complaint on various dates. For the purpose of obtaining loan, they by manipulating and forged documents to show as if they are the owners of the agricultural products obtained loans. Later it came to know that the agricultural products did not belong to the accused persons. Recovery proceedings were initiated in all the cases wherein a portion of loan amount was recovered. Remaining portion have to be recovered. So on the basis of this, separate crime numbers, namely, Cr.Nos.19 of 2019, 21 of 2019, 22 of 2019 were registered on the file of the respondent herein for the offence punishable under Sections 120(b), 406, 468, 471, 420 IPC. Investigation was taken up by the respondent in all three cases. During the course of investigation, it was found that complaint given by this petitioner is not true and the documents produced by the accused persons for the purpose of obtaining loan found to be genuine documents and so closure report was filed by stating that further action is dropped, before the Judicial Magistrate, Theni separate RCS notices, were also served upon the petitioner also.

3.During the course of investigation, it is the allegation of the Investigation Officer to the effect that the petitioner did not co-operate for the investigation and produce documents. So this specific allegation in the final report caused this problem.



4. On going through RCS notice and final report, the learned Judicial Magistrate, Theni came to the finding that the investigation done by the respondent is not acceptable and it was not done in correct direction and finding that huge amount of the public sector bank has been defrauded, find it fit to direct the respondent to further investigate the matter and file the final report. In the course of the order, the learned Judicial Magistrate came to the conclusion that the petitioner has given a false statement before the Investigating Officer and did not co-operate for the enquiry by producing proper documents. On that ground, he was of the opinion that offences under Sections 174 and 177 IPC are made out against this petitioner and consequently, he issued notices on 09.11.2020 stating that there is *prima facie* ground made out on the basis of the final report filed by the respondent to take cognizance of the offence punishable under Sections 174 and 177 IPC against the petitioner and hence, directed the petitioner to appear before the Court and give objections on 02.12.2020. Challenging this notices, criminal original petitions in CrI.O.P.(MD)Nos.5201, 5206 & 5221 of 2021 have been filed. Similarly, challenging RCS notices taking cognizance of the offence, criminal revision cases in CrI.R.C.(MD)Nos.285 & 286 of 2021 have been filed. In all the matters the petitioner wants to set aside the show case notice as well as set aside the order of taking cognizance.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent/Police.

6. Point arises for consideration is common as to whether the notices issued by the learned Judicial Magistrate, Theni is sustainable and illegal. Perusal of orders passed by the learned Judicial Magistrate show that, as mentioned earlier, he is not convinced with the finding recorded by the respondent/Police and he is of the opinion that huge amount of the public sector has been cheated by the accused persons and hence, further investigation is required. There is no problem in directing the respondent/Police to investigate the matter further by considering the facts and circumstance of the case. But at the same time, he has chosen to treat the final report as a complaint under Section 2(d) of Cr.P.C., to take cognizance under Sections 174 and 177 IPC, solely on the ground that the petitioner has given wrong statement before the Investigating Officer knowing fully well that his information is wrong. The learned Judicial Magistrate held that knowing fully well that deposit receipts submitted by the accused persons are genuine, the defacto complainant given wrong statement before the first respondent with other forged receipts and vouchers. On the basis of this, the learned Judicial Magistrate found that further investigation is required. Having found that it is a fit case for further investigation, the learned Judicial Magistrate, has issued notice for taking cognizance under Sections 174 and 177 IPC, which itself is self contradictory and inconsistent with the direction also. On the sole ground of inconsistent and contradictory finding



whether final report filed by the respondent/Police can be taken as a complaint as defined in Section 2(d) of Cr.P.C.

7.The learned counsel for the petitioner submitted that in various judgments it is held that the final report, in the circumstance of the case, ought not to have treated as complaint as defined in Section 2(d) Cr.P.C., and for the reason stated above, I am not going into those aspects. On the sole ground of inconsistent and contradictory findings, all the criminal original petitions and criminal revision cases are liable to be allowed. Impugned notices in all the matters are set aside. Cognizance has been taken by the learned Judicial Magistrate, Theni. So criminal revision cases in CrI.R.C.(MD)Nos.285 & 286 of 2021 are liable to be dismissed as unnecessary in view of the allowing of the criminal original petitions.

8.The respondent/Police is directed to complete the further investigation in all the matters and file final report within a period of three months from the date of receipt of a copy of this order. Thereafter, a compliance report shall be filed before the Registry by the respondent/Police.

9.With the above observations, all the criminal original petitions are allowed. In view of the allowing of the criminal original petitions, criminal revision cases are dismissed as not necessary. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

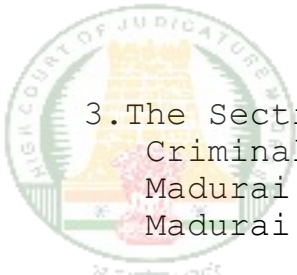
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant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

To

1.The Judicial Magistrate,
Theni.

2.The Inspector of Police,
District Crime Branch,
Theni.



3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SRINIVASA RAGAVAN, Advocate (SR-25477[F] dated
06/08/2021)

Crl.O.P.(MD)No.5201, 5206 & 5221 of 2021
04.08.2021

MGJ(08.10.2021) 6P 6C