

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	09/08/21
DELIVERED ON	02/09/21

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI**
Cr1.RC(MD)No. 284 of 2016

WEB COPY

E.R.Sheik Dawood

...Petitioner/Petitioner

Vs.

1. Chitra
2. B.Sathish
3. R.Sankarammal

...Respondents/Respondents

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the order passed by the learned Judicial Magistrate No.IV, Trichy, dated 27.02.2014 in Cr1.M.P. No.1393 of 2014 and allow the petition.

For Petitioner : Mr.K.Sivabalan
For Respondents : Mr.M.Jegadeesh Pandian

ORDER

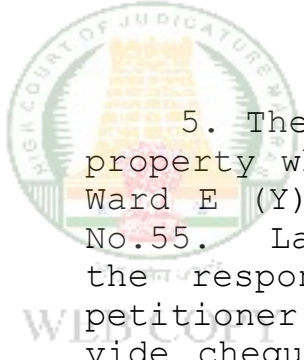
This criminal revision case has been filed against the dismissal order, dated 27.02.2014 in Cr1.M.P. No.1393 of 2014, passed by the learned Judicial Magistrate No.IV, Trichy.

2. The revision petitioner has filed a private complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate No.IV, Trichy, against the respondents herein.

3. The learned counsel appearing for the revision petitioner would submit that the learned Magistrate has wrongly concluded that the revision petitioner ought to have avail remedy for dishonor of cheque through Negotiable Instruments Act alone and though alternative remedy is available there is no bar on Criminal Law to take the cognizance. He would further submit that the learned Magistrate came to the conclusion that it is the civil dispute which is erroneous and hence, the dismissal order is liable to be set aside. He would further submit that the learned Magistrate has failed to follow the procedure laid down under 202 of Cr.P.C. and therefore, he prays to allow the Criminal Revision Case.

4. Heard on either side and perused the material documents

<https://hservices.ecourt3.gov.in/hservices/available-on-record>.



5. The case of the revision petitioner is that he had a house property which is situated in old Town Survey No.778, Trichy City Ward E (Y) block 19 in new survey No.196, Old block No.12, Door No.55. Later the petitioner has agreed to sell the property to the respondents herein to the tune of Rs.15,15,000/-. The petitioner got Rs.1 Lakh from the third respondent, as advance, vide cheque No.158085 drawn by ICICI Bank. Thereafter, with the influence of the second respondent, they coerced to him to sell the said property to the tune of Rs.10 Lakhs. All the respondents have agreed to give Rs.5,15,000/- to the tenants and agreed to pay balance Rs.4 Lakh to him on 26.04.2013 and the petitioner has also executed a sale deed vide No.3121/2013 in favour of the first respondent for which he has received a cheque from the first respondent to the tune of Rs.4 Lakhs. On a particular date the second respondent asked the petitioner not to put the cheque on collection and then he received the old cheque and issued a new cheque to the tune of Rs.2,50,000/- and thereafter, agreed to pay Rs.1,50,000/- on or before 10.08.2013. Thereafter, the revision petitioner went to the respondents' house and asked the balance sale consideration and they said to have threatened the petitioner with dire consequences. Hence, he preferred a complaint before the Woraiyur police station and in turn they have issued C.S.R. Receipt on the same day, but the police officials not take any action, hence, he preferred complaint to the Commissioner of Police through post. He also not take any action against the complaint given by the petitioner and hence, the revision petitioner has filed the complaint under Section 200 of Cr.P.C for issuing direction to the said police to file First Information Report and to take action against the respondents.

6. Heard Mr.K.Sivabalan, learned counsel appearing for the petitioner and Mr.M.Jegadeesh Pandian, learned counsel appearing for the respondent Nos.1 to 3.

7. The scope of Section 202 of Cr.P.C. is defined by the following Judgments.

Scope :- The scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court ; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any other facts that the accused may have. It is not the province of the Magistrate to enter into a



detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. In proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not, Nagawra Vs. V.S.Konjalgi, (1976)3 SCC 736 : 1976 SCC (Cri.) 507; Chandra Deo Singh V. Prokash Chandra Bose, (1964) 1 SCR 639 : AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 and Vadilal Panchal V. Dattatraya Dulaji Ghadigoanker, (1961) 1 SCR 1 : AIR 1960 SC 1113 : 1960 Cri LJ 1499, followed.

8. Whether any *prima facie* case is made out by the petitioner against the respondent Nos.1 to 3/accused, as stated in the private complaint?.

9. After receiving the private complaint under Section 200 of Cr.P.C., the Court below should see whether there is any evidence available in support of the allegation made in the complaint?. The Court below has to hold preliminary enquiry is only to satisfy that a *prima facie* case is made out against the accused on the materials placed before him by the complainant.

10. In this case, the complainant has produced only the police complaint given by him and the receipt.

11. In support of the private complaint filed by the revision petitioner under Section 200 of Cr.P.C., before the Court below, he has not filed neither title documents nor documents for subsequent transaction made with the respondents. The cheque alleged to have been given to the revision petitioner by the second respondent which was returned by the bank also not produced. Notices also not issued to the respondent Nos.1 to 3.

12. The contention of the revision petitioner is unbelievable, because, without getting full amount, he has executed a sale deed in favour of first petitioner.

13. The revision petitioner cited one witness in the private complaint, but, he never stated anywhere in the petition that in what way the witness is connected with this case.

14. After perusing the petition, the learned Magistrate had rightly dismissed the petition by speaking order. Therefore, this Court is not inclined to interfere with the findings of the learned Magistrate No.IV, Trichy.

15. Finally, this Criminal Case stands dismissed. The order,



dated 27.02.2014 in Crl.M.P. No.1393 of 2014 passed by the learned Judicial Magistrate No.IV, Trichy, is hereby confirmed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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.IV, Trichy.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC(MD)No. 284 of 2016
02.09.2021

SJ(CO)

SB(14.09.2021) 4P 5C