



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	18.06.2021
DELIVERED ON	21 .06.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
Cr1.RC(MD)No. 689 of 2016

Muthupandi

...Petitioner/Petitioner

Vs.

1. Sheik Babu
2. Kothar

...Respondents/Respondents

PRAYER: Criminal Revision filed under Section 397 (1) r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order, dated 27.07.2016 passed in Cr1.MP No. 1850 of 2016 on the file of the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District.

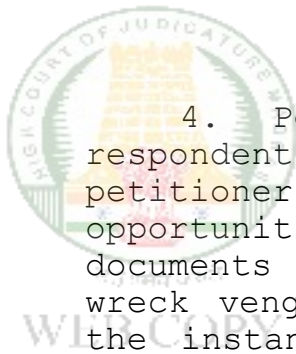
For Petitioner : Mr.A. Thiruvadikumar
For Respondents : Mr.S.M.A. Jinnah

O R D E R

The complainant in private complaint is before this Court, by way of a criminal revision case, as against the order passed by the learned Judicial Magistrate, Ambasamuthiram, in Cr1.M.P.No.1850 of 2016, dated 27.07.2016.

2. The petitioner/complainant has filed a petition U/s 200 of Criminal Procedure Code before the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District, as against the respondents herein. The learned Judicial Magistrate has dismissed the Cr1.M.P.No.1850 of 2016 vide the order impugned, dated 27.07.2016. Therefore, she has preferred the instant criminal revision case.

3. The learned Counsel for the petitioner submitted that the reasons assigned by the Court below in dismissing the private complaint by the petitioner is against law, weight of evidence and probabilities of the case. He further submitted that the facts as adduced in the private complaint have made out the offences, but the Court below failed to allow the same and consequently dismissed the private complaint. He further submitted that the offences committed by the respondents 1 & 2 would squarely come under the ambit of various offences. He further submitted that the other reasons given by the Court below in dismissing the said private complaint is unsound and unsustainable in law. Therefore, he prays for allowing this petition.



4. Per contra, the learned counsel appearing for the respondents submitted that the private complaint filed by the petitioner is false one. He further submitted that though so many opportunities given to the petitioner he has not produced any documents to prove his case. He further submitted that in order to wreck vengeance upon the respondents the petitioner has initiated the instant false prosecution. Hence, he prays to dismissed the Criminal Revision Case.

5. Heard both sides and perused the material documents available on record.

6. The petitioner/complainant has filed this Revision case as against the order passed by the learned Judicial Magistrate, Ambasamuthiram, in Crl.M.P.No.1850 of 2016, dated 27.07.2016.

7. The petitioner/complainant filed a private complaint under Section 200 of Criminal Procedure Code against the respondents herein before the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District.

8. The averments made in the private complaint and in sworn affidavit are that he has purchased a TATA Indica Car bearing Registration No.TN-10-Q-3999 for a sum of Rs.1,42,000/-. After he believed the words of the 1st respondent that the car is in good condition, he paid a sum of Rs.42,000/-in advance and gave a unfilled cheque of City Union Bank. After that, he wanted to return the car since it is not in good condition. The 1st respondent herein refused and filled the cheque for Rs.2 Lakhs through the 2nd respondent and the same was presented for collection. The cheque was returned by the Bank. The 2nd respondent filed a criminal case against this petitioner under Section 138 of Negotiable Instruments Act. When the 1st respondent refused to return the advance amount the petitioner had preferred a complaint to the Inspector of Police, Ambasamuthiram Police Station, through a registered post on 16.12.20215. The Inspector of Police did not proceed the case further. Therefore, the petitioner gave a another complaint to the Superintendent of Police, Tiruneveli District on 26.12.2015. He also did not take any further action.

9. Thereafter, the petitioner has filed a private complaint under section 200 of Criminal Procedure Code before the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District. In the aforesaid private complaint, the petitioner was examined as P.W.1. Eventhough, he gave witness list and documents list along with private complaint, none of the documents were marked at the time of sworn statement. Further, eventhough, sufficient opportunities given, he did not produce any witnesses.

10. The learned Judicial Magistrate has dismissed the petition on the merits of the case. It is only the duty of the



buyer to check the condition of the vehicle before he purchase the car. Admittedly, the vehicle is with the petitioner till now sale agreement for the car also filed. But, there is no averments in the sale agreement regarding the cheque as stated in the petition. The petitioner neither send any notice nor take any action to get back the cheque, before the 2nd respondent had initiated action against this petitioner.

11. Only after getting notice in the proceedings under Section 138 of Negotiable Instruments Act, he gave the complaint to police. He can very well contest the case which is pending under Section 138 of Negotiable Instruments Act, with all the above averments in the petition. He cannot prefer a private complaint against the respondents in the reasons stated in the petition.

12. In the case of ***D.N.Bhattarcharji Vs. State of West Bengal reported in (1972) 3 SCC 414 : 1972 SCC (Crl.) 564***, held that, dismissal of complaint when can be made:- An order of dismissal of a complaint under Section 203 has to be made on judicially sound grounds. It can only be made whether the reasons given disclose that the proceedings cannot be terminate successfully in a conviction. If a bare perusal of a complaint or the evidence led in support of it shows that the essential ingredients of the offence alleged are absent or that the dispute is only of civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 303 of Cr.P.C. In the case on hand, there is no essential ingredients of the offence alleged in the petition under Sections 406, 417, 420 r/w 109 of IPC are absent.

13. Therefore, this Court has not find any reasons to interfere with the findings of the impugned order passed by the learned Judicial Magistrate, Aabasamuthiram, Tirunelveli District.

14. In the result, this Criminal Revision Case stands dismissed. The order, dated, 27.07.2016 in Crl.MP No. 1850 of 2016 passed by the learned Judicial Magistrate, Ambasamuthiram, Tirunelveli District, is hereby confirmed.

Sd/-

Assistant Registrar (Cs-III)

// True Copy //

/ /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, Ambasamuthiram,
Tirunelveli District.
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. 2 Copies

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-19980[F] dated 23/06/2021)

**Order made in
Cr1.RC(MD)No. 689 of 2016**

21.06.2021

CN (29.06.2021) 4P 6C