



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.03.2021
PRONOUNCED ON : 28.04.2021
CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

WEB COPY

CRL.R.C. (MD) .No.11 of 2017

Thangam

Petitioner /Petitioner

Vs.

1.Vaikundapandian

2.Thangapandian

3.Paulraj

Respondents / Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, to call for the records relating to order passed by the learned Judicial Magistrate No.I, Kovilpatti in Cr.M.P.No.8387 of 2015, dated 21.12.2016 and set aside the same.

For Petitioner : Mr. A.Jayaramachandran
For R1 & R2 : Mr. M.Saravanan
For R3 : No appearance

O R D E R

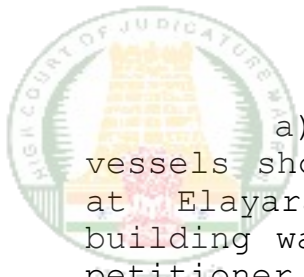
This Criminal Revision is directed against the order passed in Cr.M.P No.8387 of 2015, dated 21.12.2016, on the file of the Court of Judicial Magistrate No.I, Kovilpatti, in dismissing the private complaint under Section 203 Cr.P.C.

2.The Revision Petitioner has filed a private complaint under Section 200 of Cr.P.C against the respondents, alleging that the respondents 1 & 2 had committed the offences under Sections 294 (b), 448 and 506(ii) IPC and under Section 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act and the third respondent had committed the offences under Sections 109, 294(b) and 506(ii) IPC, before the Judicial Magistrate Court No.I, Kovilpatti. The learned Judicial Magistrate has taken the petition on file in CRMP No.8387 of 2015 and conducted an enquiry under Section 202 Cr.P.C. In the enquiry, the learned Magistrate has recorded the statements of the revision petitioner and his son Sivaramakrishnan. The learned Magistrate, upon considering the materials produced and upon hearing the arguments of the petitioner side, has passed the impugned order dated 21.12.2016, dismissing the complaint under Section 203 of Cr.P.C. Aggrieved by the said dismissal order, the complainant has come forward with the present Criminal Revision Petition.

3.Whether the impugned order passed in CRMP No.8387 of 2015, dated 21.12.2016, on the file of the Judicial Magistrate Court No.I, Kovilpatti is liable to be set aside? is the point for consideration.

4.The case of the Revision Petitioner as evidenced from his complaint under Section 200 of Cr.P.C is as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



a) The revision petitioner is running a ever silver vessels shop in a commercial complex bearing Door Nos. 209, 209 C, at Elayarasanenthal Road, Kovilpatti. The commercial complex building was originally owned by Venkatasamy and Seenivasan and the petitioner was paying rent to them. The said owners were running a Chit Funds Firm and due to the default committed by them in repayment of the deposit amount, the complex building was taken over by the Government and as per the orders by the Revenue Divisional Officer, Kovilpatti, dated 25.03.2003, the petitioner has been regularly paying rent to the Revenue Department. The Commercial Complex is under the control of the Revenue Department.

b)The respondents 1 & 2 by alleging that they had purchased the said property and started threatening the petitioner to vacate the shops. On 28.08.2015, at about 10.30 pm, the respondents 1 & 2 locked the petitioner's shops and lodged a false complaint against the petitioner at Kovilpatti East Police Station. The petitioner, on the next day morning after finding that his shops were locked, went to the Police station to lodge a complaint. The third respondent, who is the Inspector of Police of Kovilpatti Police Station, forced the petitioner to hand over the keys of the shops to him within two days. Though the petitioner had explained that he had filed a civil suit in O.S.No.199 of 2015 against the respondents 1 & 2, claiming injunction and the same is pending on the file of the District Munsif Court, Kovilpatti, the third respondent did not heed the words of the petitioner and threatened him to remove the articles and hand over the keys. The petitioner had lodged a complaint before the Assistant Superintendent of Police, who in turn forwarded the same to the third respondent.

c).On 01.09.2015, at about 11.00am, the second respondent came to the petitioner's shops and threatened the petitioner's son that unless the shop is vacated and keys were handed over, he would murder him. The petitioner has preferred a complaint before the Superintendent of Police, Tuticorin and Assistant Superintendent of Police, Kovilpatti, District Revenue Officer and Revenue Divisional Officer, Kovilpatti. After coming to know about the lodging of the complaint, the respondents 1 & 2 at the instance of the third respondent came to the petitioner's shops on 02.09.2015 at about 7.30 am threatened with deadly weapons and abused the petitioner's son in filthy language and tried to break open the shop. The Inspector of Police, Nallatinputhur, who was passing through the petitioner's shops, took the respondents 1 & 2 and others in his jeep. The petitioner along with his son went to the Police Station immediately and to his shock and surprise, the respondents 1 & 2 were present. When the petitioner lodged the complaint, the third respondent showed his pistol, threatened the petitioner and his son and forcibly obtained their signature in five blank white papers. Thereafter, the petitioner has sent a complaint on 03.09.2015 to the Superintendent of Police, Tuticorin, but of no avail. Hence, the



petitioner was constrained to file a private complaint under Section 200 of Cr.P.C.

5.The petitioner's main contention is that he was a tenant in respect of shops in Door.Nos. 209 and 209 C in a commercial complex, at Elayarasanenthal Road, Kovilpatti, owned by Vengatasamy and Seenivasan, that the commercial complex was taken over by the Government, as the owners had committed default in repayment of deposit amount relating to the Chit Fund Firm run by them and that thereafter as per the orders passed by the Revenue Divisional Officer, Kovilpatti, he has been paying rent to the Revenue Department. It is the further case of the revision petitioner that the respondents 1 & 2 claiming that they are the purchasers of the commercial complex, threatened him to vacate the shops. Though the petitioner has filed a copy of the notice dated, 25.03.2003, issued by the Revenue Divisional Officer, Kovilpatti to the petitioner's father Mariappan Chettiar, he has not produced any receipts or documents to show that he has been paying rent continuously to the Revenue Department. Even though the petitioner has alleged that the respondents 1 & 2 have been threatening him to vacate the said property, he has not chosen to file any documents to show that the said commercial complex was still under the control of the Revenue Department at that point of time or even subsequent to the filing of the complaint.

7.Though the petitioner in his complaint has narrated more than three incidents alleged to have been occurred in their shops, he has not chosen to examine any other person who had witnessed the said occurrences. Even in the complaint, he has only cited himself as well as his son Sivaramakrishnan as the witnesses. As rightly observed by the learned Magistrate, though the petitioner has alleged that he has filed a suit in O.S.No.199 of 2015, he has not furnished any other particulars of suit, stage and the result, if any. Moreover, he has not even chosen to file the copy of the plaint filed in O.S.No.199 of 2015.

8.The learned Magistrate after perusing the statements of the complainant as well as his son, has rightly pointed out that the complainant has referred that the first incident was alleged to have occurred on 28.08.2015, but his son has referred that the first incident was occurred on 29.09.2015. The petitioner's son in his statement would say that the second occurrence was held on 01.10.2015 at 11.00.am, while he was in their shop, but the petitioner has stated that incident was occurred on 01.09.2015 involving the second accused and again on 02.09.2015 involving both the accused. Considering the above, the learned Magistrate has rightly pointed out that the contradictions between the statements of the complainant and his son, with respect to material particulars. The scope of enquiry under Section 202 Cr.P.C, is only to find out the truth or otherwise of the allegations made in the



complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C or whether the complaint should be dismissed under Section 203 Cr.P.C on the ground that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses. The Magistrate, conducting enquiry under Section 202 Cr.P.C has to satisfy himself on the evidence adduced by the prosecution, whether *prima facie* case has been made out, so as to put the proposed accused on a regular trial. Generally, Sections 200 to 203 Cr.P.C, must be read together and the Magistrate can very well dismiss the complaint under Section 203 Cr.P.C, if he finds that no offence has been committed or if he distrust the statement made by the complainant, or if he distrust the complainant's statements, but his distrust is not sufficiently strong to warrant him to act upon it. He can direct a further enquiry and he can either conduct the enquiry by himself or deputing another officer to conduct it. The sufficient ground under Section 203 Cr.P.C would mean the satisfaction that a *prima facie* case is made out against the person accused, by the evidence by witnesses entitled to a reasonable degree of credit and it relates to the facts which the complainant places before the Court.

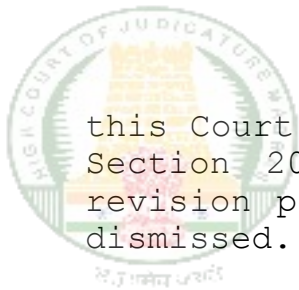
9.In the case on hand, the learned Magistrate upon considering the statements and other materials produced, has come to the decision that there are no *prima facie* materials and there is no sufficient ground for proceeding further.

10.Generally, in the enquiry under Section 202 Cr.P.C, accused has got absolutely no *locus standi* and he is not entitled to be heard on the question whether the process should be issued against him or not. It is settled law that the accused has no right to participate at pre- summoning stage, either in police case or in complaint case. But in a revision filed against the order of dismissal, if the accused appears after the receipt of Court notice, they are entitled to be heard. In the present case, after the receipt of the notice, the respondents 1 & 2 have entered into appearance and also produced a typed set containing the copies of the documents involving the complainant. The learned counsel appearing for the respondents 1 & 2 would mainly contend that the revision petitioner has suppressed the very many material facts including the civil proceedings and that he has filed the private complaint with ulterior motive and with the intention to intimidate the respondents. As already pointed out, the materials produced by the accused cannot be gone into in the enquiry under Section 202 Cr.P.C. Even now, in revision, though they are having right to be heard, they are certainly not entitled to produce any material to substantiate their contentions, as their right is restricted or limited to the extent of sustaining the order of the Magistrate dismissing the complaint with the materials already produced by the complainant. Even while exercising power under Section 482 Cr.P.C, generally, this Court cannot look into the materials put forth by the



defence. But at the same time, the Honourable Supreme Court, in a catena of decisions, has held that the Court can look into the defence materials, if the same are of such sterling and impeachable quality and capable of completely negating the allegations of the complainant. In case, if the Court refuses to look into the materials placed by the accused and if the dismissal of the complaint under Section 203 Cr.P.C is set aside and the Magistrate is directed to take cognizance, directing the accused to enter into appearance before the Magistrate and then to approach this Court under Section 482 Cr.P.C with the materials available with him, would not only be improper, but against the interest of justice. As rightly contended by the learned counsel for the respondents, there is no bar or prohibition for this Court, though not under the revisional jurisdiction, but under the power of the Court under Section 482 of Cr.P.C from perusing the materials produced by the accused.

11.The respondents have produced the copy of the order passed in O.A.No.21 and 22 of 2008, dated 24.08.2012, on the file of the Special Court under Tamil Nadu Protection of Interest of Depositors (in Finance Establishments) Act at Madurai and whereunder the Court has dismissed the application in O.A.No.22 of 2008 and thereby, setting aside the order made in G.O.Ms.No.1050 Home (Courts II A) Department, dated 08.11.2002 and consequently raised ad-interim order of attachment. It is evident from G.O.Ms.No.1050, dated 08.11.2002, that the same was passed in respect of the shopping complex in Kovilpatti town, situated in S.No.490/1, owned by P.Venkatesan and P.Seenivasan. It is further evident that the petitioner has previously filed a suit in O.S.No.52 of 2013 against one Rajagopal and the Revenue Divisional Officer, Kovilpatti, claiming permanent injunction, restraining the first defendant and their men from evicting him forcibly except under due process of law, that the first defendant had remained exparte after filing of the written statement and that the learned District Munsif, upon considering the evidence produced by the petitioner herein, by holding that the petitioner has failed to prove his possession in the said shops as its tenant, dismissed the suit on 21.07.2015. It is further evident that the petitioner has filed the second suit in O.S.No.199 of 2015 against the respondents 1 & 2 and the Revenue Divisional Officer, Kovilpatti, claiming the very same relief of permanent injunction from evicting him forcibly except under due process of law. Though the earlier suit was dismissed on 21.07.2015, he filed the second suit in August 2015 and filed the private complaint, now under consideration on 16.09.2016. As rightly pointed out by the learned counsel appearing for the respondents 1 & 2, the petitioner has suppressed all the above proceedings and he has not come to the Court in good faith. On considering the entire facts and circumstances, findings of the learned Judicial Magistrate that there is no sufficient ground to proceed further and hence he is not inclined to take cognizance of the case cannot be found fault and



this Court is in agreement with the dismissal of the complaint under Section 203 Cr.P.C. Consequently, this Court concludes that the revision petition is devoid of merits and the same is liable to be dismissed.

12. In the result, the Criminal Revision Case is dismissed and the order passed in Cr.MP No.8387 of 2015, dated 21.12.2016, on the file of the Judicial Magistrate No.I, Kovilpatti, is confirmed.

Sd/-

Assistant Registrar (T&P)

// 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 No.I, Kovilpatti.

2.The Chief Judicial Magistrate,
Thoothukudi.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-17986[F] dated 29/04/2021)

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