



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 05.03.2021
PRONOUNCED ON : 31.03.2021

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THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD).No.880 of 2017

S.Saravanan : Petitioner /Petitioner / Complainant
Vs.
Rajesh : Respondent / Respondent / Accused

PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, to call for the records and set aside the order in Crl.M.P.No.6248 of 2017, dated 04.10.2017 on the file of the Judicial Magistrate No.II, Kovilpatti.

For Petitioner : Mr. I.Robert Chandra Kumar
For Respondent : Mr. P.Venkatesan

ORDER

The Criminal Revision Case is directed against the order passed in Crl.M.P.No.6248 of 2017, dated 04.10.2017, on the file of the Court of Judicial Magistrate No.II, Kovilpatti, dismissing the private complaint under Section 203 of Cr.P.C.

2.The revision petitioner, who is the practicing Advocate of this Court lodged a complaint before the West Police Station, Kovilpatti, against one Ramesh and two others and on that basis of the complaint, FIR came to be registered in Crime No.148 of 2017 of Kovilpatti West Police Station for the offences punishable under Sections 294(b), 307 and 506(ii) IPC against three persons.

3.It is not in dispute that the Police after completing the investigation, has filed a negative final report. Aggrieved by the alleged behaviour, conduct and investigation of the case in Crime No.148 of 2017 by the Inspector of Police Rajesh, the revision petitioner has filed a private complaint under Section 200 Cr.P.C before the Court of Judicial Magistrate No.II, Kovilpatti. The learned Magistrate, after taking the complaint on file in Cr.M.P.No.6248 of 2017, conducted enquiry under Section 202 Cr.P.C and dismissed the complaint under Section 203 Cr.P.C. Aggrieved by the said dismissal order, the complainant has come forward with the present revision.

4.Whether the impugned order passed in Crl.M.P.No.6248 of 2017,
<https://hcservices.ecourts.gov.in/hcservices/>



dated 04.10.2017 on the file of the learned Judicial Magistrate No.II, Kovilpatti, is liable to be set aside ? is the point for consideration.

5. The learned counsel for the revision petitioner would contend that the learned Magistrate ought to have seen that the respondent has fabricated the closure memo by predating the same as 30.03.2017 and pasted the same in the house of the petitioner only on 13.06.2017, that on 22.04.2017 the respondent compelled the petitioner to sign in the closure memo and on his failure to do so, he has fabricated the closure memo, that the learned Magistrate misdirected himself as to the application of the dictum laid down in **Arnesh Kumar Vs. State of Bihar and another**, reported in **2014 (8) SCC 273**, and with the misconstrued notion, that the petitioner was aggrieved by the non arrest of the accused persons that the learned Magistrate erred in holding that the allegations in the complaint are only mere apprehension and that therefore, the impugned order of the learned Magistrate dismissing the complaint under Section 200 Cr.P.C., is liable to be set aside.

6. In the complaint filed under Section 200 Cr.P.C., the revision petitioner has stated that the respondent appears to have committed the offence under Sections 166, 166 (A), 167, 191, 213, 217, 218 and 221 of IPC. The sum and substance of the case put forth by the revision petitioner are as follows:

(i) When the revision petitioner has sought for information under Right to Information Act, regarding the complaint alleged to have been given by one Ramesh accused in Crime No.148 of 2017, the respondent has given inconsistent and false information.

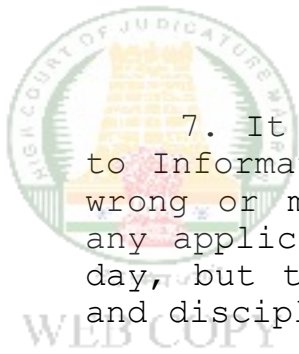
(ii) One Perumalsamy, Special Sub-Inspector of Police, Kovilpatti West Police Station, appeared before this Court and informed on behalf of the respondent and concealed the information that FIR in Crime No.148 of 2017 was closed as 'mistake of fact' on 30.03.2017 itself.

(iii) When the revision petitioner had sought for information under Right to Information Act about the action taken with respect to his petition for blocking the passport of the said Ramesh, the respondent has furnished contra and false information.

(iv) When the revision petitioner appeared before the respondent in response to the summons issued, he compelled the petitioner to sign in the closure memo for filing the final report as 'mistake of fact'.

(v) When the revision petitioner had caught the absconding accused, despite the information, the respondent refused to arrest him, but on the other hand, he tried to arrest the petitioner.

(vi) Two unknown persons, on the direction of the respondent came to the petitioner's house on 13.06.2017 and pasted the closure memo by predating the same as 30.03.2017.



7. It is pertinent to note that as per Section 20 of the Right to Information Act, any Information Officer, who knowingly provides wrong or misleading information under Right to Information Act to any application can be imposed with a penalty of Rs.250/- for each day, but the same shall not exceed Rs.25,000/- by the Commissioner and disciplinary action can also be recommended against him.

8. In the case on hand, assuming for the arguments sake, that the respondent has furnished the false information, it is for the revision petitioner to make a complaint or appeal before the said State Information Commissioner or the Central Information Commissioner. It is not the case of the revision petitioner that he had preferred any such complaint or appeal against the respondent. More over, Section 23 of the Right to Information Act bars jurisdiction of the Courts from entertaining any suit, application or other proceedings in respect of any order made under the said Act and that no such order shall be called in question otherwise than by way of an appeal under the said Act.

9. According to the revision petitioner, he sent petitions to the respondent, Deputy Superintendent of Police, Kovilpatti and the District Superintendent of Police, Thoothukudi and Regional Passport Officer, Madurai for blocking the passport of said Ramesh, accused in Crime No.148 of 2017. It is pertinent to note that neither the police nor the Courts have the power or authority to impound the passports of any accused involved in criminal case. No doubt, the police may have the power to seize the passport under Section 102(1) Cr.P.C, but the police does not have the power to impound the same. As per the provisions of the Passport Act, impounding of passport can only be done by the Passport Authority. More over, the Investigating Officer can approach the Passport Authority to impound a passport of a particular accused, if he is satisfied that the accused would flee from the country. Hence, the very requisition of the revision petitioner to the police to block or impound the passport is legally unsustainable.

10. It is the specific case of the revision petitioner that on 19.04.2017 after realizing that one Srinivasan, another accused in Crime No.148 of 2017 was following him, he immediately informed the respondent and the respondent in turn, informed him that he was in Chennai at that time, that the revision petitioner has then requested him to send any constable from West Police Station to arrest the accused Srinivasan, but the respondent refused to arrest and disconnected his call.

11. It is further case of the revision petitioner that he informed the West Police Station about the availability of the said accused and also to the Deputy Superintendent of Police and that thereafter, the Inspector of Police Paulraj attached to the East Police Station came to the site at 12.30 pm, and after talking with



the respondent, informed the petitioner that the place where the accused Srinivasan was standing, was not falling within his jurisdiction and hence, he could not arrest. The respondent and the said Paulraj Inspector of Police, East Police Station both together made the accused to escape.

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12. The learned Magistrate in his impugned order has observed that as per the dictum laid down by the Hon'ble Supreme Court in **Arnesh Kumar's** case, that arrest is not mandatory in every case. More over, even this Court has no power to direct the police to arrest the accused in a particular case and it is for the Investigating Officer to decide as to whether the arrest of the accused in a particular case is necessary or not. The Hon'ble Supreme Court in **Johindar Kumar Vs. State of Uttar Pradesh**, reported in [(1994) 4 SCC 260], has specifically held that no arrest can be made because it is lawful for the police officer to do so, that the existence of the power to arrest is one thing and the justification for the exercise of it is quite another, that the police officer must be able to justify the arrest apart from his power to do so, that no arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person and that it would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest.

13. Since because the writ petitioner was able to find out a person against whom a case was registered at his instance, it cannot be said that the police is duty bound to arrest that person. It is pertinent to mention that the Courts including this Court are not having no power or jurisdiction to direct the police to conduct the investigation in such way or direction and it is absolutely within the domain of the investigating officer to proceed with the investigation.

14. The informant or the defacto complainant has absolutely no right to interfere with the investigation. The revision petitioner being an advocate of this Court, cannot claim any special right or privilege to enter into the domain of the investigating officer and he is absolutely not entitled to interfere with the investigation under the guise of assisting or helping the investigation. In case of filing of any negative report, he is at liberty to approach the jurisdictional Magistrate by filing a protest petition or by preferring a private complaint under Section 200 Cr.P.C. More over, as rightly pointed out by the learned Magistrate, the petitioner, in the enquiry under Section 202 Cr.P.C., has only examined himself and adduced no other evidence. The petitioner has not produced any material in support of his case. Except the averments raised in the



complaint and the evidence of the petitioner reiterating the complaint averments, there are no other materials or evidence available and that is why, the learned Magistrate has rightly held that the materials are not sufficient enough to take cognizance of the case.

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15. Considering the entire facts and circumstances of the case, the finding of the learned 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 with and this Court is in entire agreement with the dismissal of the complaint under Section 203 Cr.P.C. Consequently, this Court decides that the revision petition is devoid of merits and the same is liable to be dismissed.

16. In the result, this Criminal Revision Case is dismissed and the order made in Crl.M.P.No.6248 of 2017, dated 04.10.2017 on the file of the Judicial Magistrate No.II, Kovilpatti, is confirmed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.II, Kovilpatti.
- 2.The Chief Judicial Magistrate, Tuticorin Dist.
- 3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. 2 copy

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-15080[F] dated 01/04/2021)

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