

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.03.2022

Pronounced on : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.186 of 2022

N.P.Karunakaran ... Revision Petitioner/Complainant

Vs.

Rajarajan ... Respondent/Accused

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order dated 11.01.2022 made in CMP No.22784 of 2021, on the file of the learned XIV Metropolitan Magistrate, Saidapet, Chennai.

For Revision Petitioner : Mr.V.Raghavachari
for Mr.K.Suthan

O R D E R

This Criminal Revision Case has been directed against the order dated 11.01.2022, passed by the learned XIV Metropolitan Magistrate, Saidapet, Chennai, dismissing the complaint filed by the petitioner in Crl.M.P.No.22784 of 2021, under Section 200 of Cr.P.C.

2. The revision petitioner is the complainant/petitioner in the above referred Miscellaneous Petition. He filed the said complaint under Section 200 of Cr.P.C., wherein he prayed to take cognizance upon the said complaint preferred before the Magistrate, issue summons to the accused, try him for the offence, as the accused has committed offence under Sections 406, 417, 420, 294(b) & 506(ii) of IPC.

3. After receipt of the said complaint, the learned XIV Metropolitan Magistrate, assigned the complaint with the case number as above and later recorded the sworn statement from the petitioner/complainant. Afterwards, in support of the sworn

statement given by the petitioner/complainant, one Ganesan was examined on the side of the complainant as PW2. While at the time of recording the sworn statement from the petitioner/complainant, he produced 15 documents as Document Nos.1 to 15. In the said situation, after perusing the statement given by the petitioner and one Ganesan, the learned XIV Metropolitan Magistrate, came to the conclusion that no prima facie case has been made out by the petitioner/complainant and therefore, vide order dated 11.01.2022, concluded that it would not be necessary to take further action on the complaint presented by the petitioner/complainant. Challenging the same, the petitioner/complainant is before this Court with the instant Criminal Revision Case.

4. It is the case of the petitioner/complainant that he is the member of a political party viz., All India Anna Dravida Munnetra Kazhagam for about 30 years. The accused who is the son-in-law of one Ilavarasi was the friend to the petitioner/complainant for about 10 years. The petitioner/complainant used to meet the accused in front of the Independence Day Park near Valluvarkottam, Nungambakkam, Chennai. Further, the petitioner/complainant had accompanied with the accused to Bangalore for the purpose of attending Court proceedings. On several occasion, the accused represented that he is having high level influence in the said political party and he can decide the ticket for the assembly election as he is one of the Power Centre of AIADMK political party.

5. It is the further case of the petitioner/complainant that during 2016, he applied for a seat at Veerapandi Legislative Assembly, Salem. At that time, the accused person represented the petitioner/complainant that he would get a seat for him in the Legislative Assembly Election for the year 2016, if at all the petitioner/complainant pays a sum of Rs.5 Crore to him.

6. Believing the words of the accused, the petitioner/complainant mobilised the funds and after informing the same, the accused informed the petitioner/complainant to come to the park near Valluvarkottam, Nungambakkam. Accordingly, on 23.01.2016 at about 20.00hours, the accused came along with one Mugunthan in a Grey Colour Scorpio car and collected the said sum of Rs.2 Crores by cash from the petitioner/complainant.

7. The said amount was earned by the petitioner/complainant through his real estate business. Immediately, after the receipt of the said Rs.2 Crores, the accused persons asked the petitioner/complainant about the remaining amount, for which the petitioner/complainant informed him that he will pay the

remaining amount of Rs.3 Crores within three days.

8. Later, the petitioner mobilised another sum of Rs.3 Crores through loan from his known sources and friends. He had mortgaged the property for the value of Rs.1 Crore to one Mr.R.P.S.Kandasamy, Seelanikanpatti and by getting loan from his friends i.e. (i) Rs.50 lakhs from Mr.D.Sivakumar of Salem; (ii) Rs.50 Lakhs from Srinivasan of Seelanickenpatty, Salem; (iii) Rs.50 Lakhs from Mr.G.Kumar of Theevattipatty, Salem; (iv) Rs.10 Lakhs from Mr.Chandrasekaran of Kejalnaickenpatty, Salem; (v) Rs.20 Lakhs from Mr.Anand of Rasipuram; (vi) Rs.25 Lakhs from Mr.S.Ganesan of Chennai and remaining Rs.15 Lakhs from the personal source of the complainant, he paid the said Rs.3 Crores to the accused.

9. Later on 26.01.2016, when the accused person was waiting in the very same place in his Grey Colour Scorpio car, the petitioner/complainant and his friend Ganesan also went to the said place viz., in front of the Independence Day Park near Valluvarkottam, Nungambakkam, Chennai, by car and gave a sum of Rs.3 Crores in a green bag and the accused also received the said amount at about 8.30 hours and also gave an assurance to the petitioner/complainant that he would secure him a seat from the party high command to the Veerapandi Assembly Constituency.

10. Later, after seeing the list of candidates, published by the party, the petitioner/complainant was put under shock that his name was not found. On enquiry, the accused informed him that his name would be included in the second list. But, in the second list also his name did not find place. Only thereafter, the petitioner/complainant came to know that the accused cheated him and thereby, the accused committed an offence.

11. Subsequent to that, while at the time, the petitioner/complainant asked the accused to repay the said amount, the accused informed the petitioner/complainant that he would secure a Chairman posting in any one of the Board constituted by the Government of Tamilnadu. The petitioner/complainant also believed the said words and kept quiet for a considerable period.

12. Ultimately, the accused person handed over the original document pertaining to a property at Trichy Bye-pass measuring 0.75 Acres and informed the petitioner/complainant that he will get back the same after repaying the abovesaid amount of Rs.5 Crores. Thereafter, the accused asked the petitioner/complainant to come to the said park at Valluvarkottam along with the documents as he arranged the said Rs.5 Crores and to get back the same.

13. When at the time the petitioner/complainant was in the park, the accused came along with one Mugunthan, and collected the original document and started to move away from the place without giving any amount received from the petitioner/complainant. Later the accused abused the petitioner/complainant with filthy language and told to others that he did not know him and therefore, in order to cheat the petitioner/complainant by giving false promise, with an intention to grab the money, the accused committed the offence.

14. Afterwards, efforts were taken by the petitioner/complainant for registering the case by filing petitions before the Judicial Magistrate, before this Court and before our Hon'ble Supreme Court and all are disposed of in favour of the petitioner/complainant with a direction to approach the jurisdictional Magistrate. Accordingly, the petitioner/complainant lodged a complaint under Section 156 (3) of Cr.P.C. But, the learned Judicial Magistrate, treating the same as the petition filed under Section 200 Cr.P.C., and after recording the sworn statement from the petitioner/complainant, dismissed the complaint as there is no prima facie case as against the accused. Challenging the same, the petitioner/complainant is before this Court.

15. Learned counsel appearing for the revision petitioner would submit that in respect to the complaint filed under Section 200 Cr.P.C., after recording the sworn statement, it is the duty vested with the Magistrate to find out that whether a prima facie case has been made out or not. In otherwise, the Magistrate is not required to go deep into the probative value of the material on record. At that stage, the Court is required only to find out whether there is sufficient ground to proceed against the accused or not. The Court is not required to determine the adequacy of the evidence of probability of the accused being guilty. The Magistrate under the law at this stage is not permitted to embark upon meticulous examination of the evidence or material. In support of his contention he relied on the following judgments.

1. Tata Motors V. State [2009 SCC Online Del 308]
2. Som Nath V. Kapil Shankar [(2020) 213 AIC 495]
3. B.Chandrika v. Santhosh [(2014) 13 SCC 699]
4. Subash Sahebro Deshmukh v. Satish Atmaram [(2020) 6 SCC 625]
5. Vadilal Pachal v. Dattatraya Dulaji [AIR 1960 SC 1113]
6. Rameshwar Dayal v. Col. Ram Singh [(1989) 2 RCR (Cri) 802]
7. M.Govindraja Pillai v. Thangavelu Pillar [1983 LW (Cri) 23]
8. Raju v. Madan Singh [(1997) 3 RCR (Cri) 500]

16. Heard the learned counsel for the petitioner and perused the materials available on record.

17. Now, on considering the submissions with the case laws submitted by the petitioner, it is true, after recording the evidences from the complainant, if a prima facie case is made out, it would be proper to the Magistrate, in sending process to the accused.

18. Here it is a case, after recording the evidence from the complainant side, the learned Magistrate dismissed the complaint filed by the petitioner/complainant by invoking Section 203 Cr.P.C. In fact Section 203 Cr.P.C., provides that if the Magistrate dealing with the complaint finds no sufficient cause for proceeding with the case even after considering the evidence of the complainant and its witnesses, he may dismiss the complaint.

19. In the said circumstances, now on going through the impugned order, the learned Magistrate has categorically held that the alleged occurrence narrated by the petitioner in his sworn affidavit and the documents relied on by the petitioner, do not disclose the fact that while at the time of alleged occurrence, the accused is directly involved in the alleged occurrence and accordingly, no prima facie case is made out against the accused.

20. Further, on considering the said findings with the relevant records, before the Magistrate while at the time of giving evidence, the petitioner/complainant produced 15 documents. Now, on going through the contents of the said documents, the same would go to show that after the occurrence, from the year of 2017 onwards, the petitioner herein lodged so many complainants before the higher police officers and filed Original Petition before this Court. Apart from that, he has filed a SLP before the Hon'ble Supreme Court.

21. In the meanwhile, the accused filed a suit before this Court in C.S.No.538 of 2019 as against the petitioner/complainant, wherein he claimed a sum of Rs.1,00,00,100/- towards damages and the same is still pending with this Court. Therefore, in all, the documents relied on by the petitioner/complainant, is the complaint and further, the same has not been lodged before the competent authority, immediately after the occurrence. In this regard, in respect to the delay occurred, there was no explanation offered from him.

22. Further, though it was stated in the complaint preferred before the Magistrate as he received loan from various persons, in order to substantiate the same, he has not produced a single document to show that he availed the loan nearly to the tune of Rs.3 Crores. Atleast, in order to prove the same, he might have called for the persons who are all given the loan to

him and examined them as witnesses. But, without doing so, he gave evidence as he received loan from various persons.

23. Therefore, in the absence of prima facie evidence, for entrustment of money, this Court cannot come to the conclusion that the petitioner/complainant has shown a prima facie case. If, the evidence given by the petitioner/complainant is supported with the documents, it is his duty to produce the same before the Magistrate Court, but, the alleged supporting documents are not produced before the trial Court, for the better appreciation of the petitioner's case. Though, PW2-Ganesan gave evidence in support of the case of the petitioner/complainant, his evidence is also not supported with written documents.

24. The words, 'sufficient ground for proceeding', found in Section 203 of Cr.P.C., would mean the satisfaction that a prima facie case is made out against the person accused, by the evidence of witnesses entitled to a reasonable degree of credit. In fact, the sufficient ground contemplated in the Section relates to the facts which the complainant placed before the Court and such facts showing prima facie case against the accused. But, herein it is a case, the documents relied on by the petitioner/complainant, do not show the prima facie case against the accused.

25. The one another aspect yet to be decided in this case is immediately after the occurrence the petitioner/complainant has not lodged any complaint before the competent authority. Though weighing of evidence is impermissible for taking cognizance, without seeing a prima facie case, it would not be necessary for the Magistrate to take cognizance.

26. Therefore, I am of the considered opinion that the evidence given by the petitioner/complainant and PW2, coupled with the fact that the complaint has been presented after a long gap, do not disclose the commission of offence and therefore, the impugned order dated 11.01.2022 passed by the learned XIV Metropolitan Magistrate, Saidapet, Chennai, in CMP No.22784 of 2021, is well within the law and the same is sustained. Accordingly, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The XIV Metropolitan Magistrate,
Saidapet, Chennai.

Copy to:

The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.186 of 2022

RR(CO)
SU(24/03/2022)