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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2021
PRONOUNCED ON : 11.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.132 of 2021 and
Crl.M.P.No.2624 of 2021

Appu @ Pradeepan ...Petitioner/Accused

Vs.

The Inspector of Police
E5 Sholavaram Police Station,
Sholavaram, Chennai - 600 067. ...Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order dated 07.01.2021 passed by the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri in Crl.M.P.No.60 of 2017 in S.C.No.122 of 2016 and consequently direct the learned Judge to refer the legal questions raised by the petitioner to this Court to take final decision.

For Petitioner : M/s.A.Kalaiselvam

Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

O R D E R

The criminal revision has been filed against the order of dismissal of petition filed by the petitioner under Section 395 of Cr.P.C. seeking to refer the petition filed in S.C.No.122 of 2016 to this Court to take decision on the question of law raised by the petitioner.

2 The respondent police registered a case against the petitioner and filed a charge sheet for the offence under Section 302 IPC, which was taken on file in S.C.No.122 of 2016 by the learned IV Additional District Judge, Thiruvallur @



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Ponneri. When the matter is pending for trial, the petitioner has filed the petition under Section 395 of Cr.P.C. questioning authority of the respondent police to register case against the petitioner and jurisdiction of the trial Court to try this case and to refer the matter to this Court to decide the same.

3 The trial Court, after hearing both the parties, by order dated 07.01.2021, dismissed the petition observing that the respondent police has got authority to register FIR against the petitioner and the trial Court has got jurisdiction to try this case.

4 Aggrieved against the order of dismissal dated 07.01.2021, the petitioner is now before this Court with the present revision.

5 The learned counsel for the petitioner would submit that the respondent police station is not a Station declared by the State Government as prescribed under Section 2(s) of Cr.P.C. and the Investigating Officer is not a Station House Officer of the the respondent police station. Further, the trial Court has no jurisdiction to try the charged offence under Section 302 IPC.

5.1 The learned counsel appearing for the petitioner would further contend that the petitioner has raised the question of law with regard to the jurisdiction of the trial Court and authority of the respondent police to register FIR and as per Section 395 of Cr.P.C. the trial Court should have allowed the petition and referred the matter to this Court. But, the trial Court, without considering the question of law raised by the petitioner, has erroneously dismissed the petition, which warrants interference of this Court.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the respondent police station has already been declared as Police Station and the Investigating Officer has every authority to register the FIR against the petitioner, since he is the Station House Officer of the respondent Police Station. He would further submit that the petitioner did not question the authority of the respondent Police Station neither at the time of registering the FIR nor at the time of filing of charge sheet and now the case has been taken up for trial and at this stage, the petitioner invoked Section 395 Cr.P.C., which clearly shows that the petitioner only with an intention to protract the trial, has filed the petition. The learned trial Judge has rightly



dismissed the petition and the same does not call for any interference of this Court.

7 Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

8 Admittedly the respondent police registered the case against the petitioners and others. The petitioner was shown as A1 and the case was taken on file in S.C.No.122 of 2016 and the same is pending for trial. At that time, the petitioner has filed the present petition invoking Section 395 of Cr.P.C. mainly on three grounds. Firstly, the respondent Police Station is not a Police Station, secondly, the Investigating Officer has no authority to register the FIR and he is not a Station House Officer, thirdly, the trial Court has no jurisdiction to try the offence charged against the petitioner.

9 On a perusal of the records, it is seen that the case is pending for trial. The petitioner has not questioned the authority of the respondent police and the Investigating Officer on an earlier occasions and only after the case was taken on file and pending for trial, the petitioner has raised the questions regarding the authority of the respondent police and the Investigating Officer and also questioned the jurisdiction of the trial Court to try the offence charged against the petitioner.

10 It is seen that the objections raised by the petitioner are not pure question of law and whether the respondent police is declared as Police Station and the Investigating Officer is a Station House Officer and the trial Court has got jurisdiction to try the case are all mixed question of fact and law. The trial Court has given the answers and detailed reasons for the same, which according to this Court, are satisfied. Further, the petitioner has not challenged the same in earlier occasion regarding the jurisdiction.

11 In view of the above, this Court does not find any perversity and illegality in the order dated 7.01.2021 passed by the learned IV Additional District and Sessions Judge, Thiruvallur @ Ponneri in CrI.M.P.No.60 of 2017 in S.C.No.122 of 2016.



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12 Hence, the criminal revision shall stand dismissed.
Consequently connected miscellaneous petition is also closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The IV Additional District and Sessions Judge,
Thiruvallur @ Ponneri.
2. The Inspector of Police, E5 Sholavaram Police Station,
Sholavaram, Chennai - 600 067.
3. The Public Prosecutor,
High Court of Madras.

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