



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.519 OF 2018

V.Elango

... Petitioner/Complainant

Versus

1. Sahil Kumar,
The Manager,
S.M.C.Global Securities Ltd.,
11/63, Shanti Chamber,
Pusa Road,
New Delhi - 110 005.

2. Subash Chand Agarwal,
The Chairman and Managing Director,
S.M.C.Global Securities Ltd.,
11/63, Shanti Chamber,
Pusa Road,
New Delhi - 110 005.

... Respondents/Accused
Nos.1 & 2

PRAYER:-

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the order dated 28.06.2017 in CMP.No.869 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennai - 1 in CMP.No.869 of 2017 dismissing the complaint and direct him to take cognizance of the offence under Section 192 IPC and proceed in the matter according to law.

For Petitioner : Mr.B.Arvind Srevatsa

For Respondents : Mr.M.Pradeep Shankar

O R D E R

This Criminal Revision has been filed to set aside the order dated 28.06.2017 in C.M.P.No.869 of 2017, on the file of the VII Metropolitan Magistrate, George Town, Chennai - 1.



2. The petitioner lodged a private complaint before the VII Metropolitan Magistrate to take cognizance of offence under Section 192 IPC against the respondents in C.M.P.No.869 of 2017. The VII Metropolitan Magistrate by order dated 28.06.2017 dismissed the complaint, as not maintainable, against which the present revision is filed.

3. The gist of the complaint is that the respondents are the Stock Brokers and the petitioner is a investor. The petitioner had invested in the stocks with the respondents. Thereby, he had made huge investment and finally due to the mis-management of the respondents, he lost huge money and he was made to face arbitration proceedings, wherein the liability was fixed on him. Against which he is defending.

4. The respondents filed execution petition to execute the arbitration award passed in Arbitration Matter (A.M.).No.CM/C-0086/2007 dated 13.03.2008 by filing the execution petition before the IX Assistant City Civil Court, Chennai. The respondents filed the execution petition knowing well that the petitioner already filed O.P.No.366 of 2008 challenging the arbitration award passed against him before this Court. The respondents already entered appearance in the original petition, despite the same, while filing the execution petition, they made a declaration in column No.5 of the execution application as though no appeal preferred by the petitioner thereby attracting Section 191 and 192 of the Indian Penal Code. Hence, the petitioner filed the petition before the concerned Magistrate Court for giving false evidence as well as fabricating false evidence. The Magistrate failed to consider the same in its right perspective and dismissed the same.

5. In support of his contention, the petition produced the copy of the complaint, the execution petition filed by the respondents wherein the respondents have given a declaration and signed the same. The High Court adjudication in O.P.No.366 of 2008 also produced. The learned counsel for the petitioner fairly submitted that the adjudication now dismissed by this Court on 18.08.2021.

6. The learned counsel for the respondents submitted that the respondents filed the execution petition before the City Civil Court pursuant to the award passed in the arbitration proceedings in favour of the respondents. The tabulation filed along with the execution petition is a procedural requirement needed to be filed before the concerned Civil Court, for that reason, in column No.5 such endorsement has been made.

7. He further submitted that while filing the petition, it was recorded "No appeal has been preferred. However, the



Respondent has filed O.P.No.366 of 2008 in the Hon'ble High Court, Madras." The Registry of the lower Court failed to pass the execution petition, returned the same, insisted that the respondents to make amendments. This return was made on 05.03.2016. After the return, as per the Registry's requirement, whitener was applied and amendment carried out. Thereafter, the execution petition numbered.

8. He further submitted that those objections by the Registry was not required, since amendment to Section 36 of the Arbitration and Conciliation Act was made on 23.10.2015. Prior to it as per Section 36 of the Arbitration and Conciliation Act, if there is any appeal filed, the execution of the arbitration award under Section 34 would automatically become un-enforceable. After 23.10.2015, as per the amended Act 3 of 2016, it was made clear that only in case of admission of appeal and on obtaining specific stay order, only arbitration award becomes un-enforceable otherwise the arbitration award is executable immediately.

9. In this case, admittedly the petition was filed during March 2016, after the amendment, hence whether the fact of pendency of appeal is disclosed or not, the execution Court, can proceed further unless there is specific stay order. Hence, there is no need for making false declaration or giving false evidence. It was only the procedural requirement by the Registry to pass the execution petition, nothing more.

10. He further submitted that the petitioner herein earlier filed a complaint in CC.No.9095 of 2007 against the respondents for offence under Section 192, 196, 209, 465, 471 and 477-A read with Section 34 and 120-B of IPC. This Court in Crl.OP.No.4908 of 2008 dated 30.10.2014 finding that the petitioner's act amount to clear abuse of process of law, had quashed the proceedings and the petitioner is in the habit of filing such petitions.

11. Considering the submissions of the petitioner and the respondents it is found that the respondents herein filed execution petition pursuant to the arbitration award. Admittedly, the execution petition filed in March 2016, after the amendment Act 3 of 2016 came into force. After the amendment, this requirement of pendency of any appeal disclosure, is of no consequence. Only as per the requirement of the Registry, such an entry was made. In fact, the petitioner in a bonafide manner had given the particulars of pendency of the original petition, thereafter, it has been erased using whitener on the return of the execution petition by the Registry, as could be seen from the adjudication dated 05.03.2016.



12. In view of the same, this Court find that the respondents never inclined or attempted to give any false evidence or false documents. Hence, rejection of the complaint of the petitioner by the trial Court is appropriate needs no interference. Hence, the Revision petition is liable to be dismissed.

13. Accordingly, this civil revision case is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dsa

To

The VII Metropolitan Magistrate,
George Town, Chennai - 1.

CRL.R.C.NO.519 OF 2018

SKM(CO)
PBS/28/04/2022