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CrI.O.P No.18860 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.18860 of 2019

and

CrI.M.P No.9617 of 2019

1.Jagdish Bhojani
2.Renuka Bhojani
3.Himali Bhojani

... Petitioners

Vs.

1.State by Inspector of Police
City Crime Branch
Coimbatore.
2.Vatasala Jaganathan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to order dated 27.11.2018 passed in CMP No.8719 of 2016 on the file of the Judicial Magistrate No.VII, Coimbatore pertaining to FIR in Crime No.42 of 2014 on the file of the first respondent herein and set aside the same.

For Petitioners : Mr.M.Sanathanaraman

For Respondents : Mr.A.Damodaran for R1
Additional Public Prosecutor
Mr.N.Manoharan for R2



ORDER

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This Criminal Original Petition has been filed challenging the order of the learned Judicial Magistrate No.VII, Coimbatore made in C.M.P No.8719 of 2016 through which the learned Magistrate had taken cognizance of the protest petition filed by the de-facto complainant and consequent to that, a case has been taken on file in C.C No.219 of 2018.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent and also the learned counsel for the 2nd respondent.

3. The protest petition has been filed by the respondent by not accepting the final report filed by the 1st respondent police in Crime No.42 of 2014 under Sections 467 and 468 of IPC; the respondent is the de-facto complainant in the said crime number and he has given a complaint against the petitioners by alleging that they had forged and created a sale agreement purported to have been executed by the de-facto complainant; after investigation, the case has been referred as the matter is civil in nature;



aggrieved over that, the protest petition has been filed.

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4. The 2nd respondent has stated in the protest petition that the impugned sale agreement has been sent for forensic science department in which, it is confirmed that the signature of the 2nd respondent in the sale agreement tallies with the admitted signature of the executant; only on the basis of the said report, the police had filed the final report by referring the charge sheet as civil in nature. But the forensic report does not vouch the matter as stated in the final report of the 1st respondent.

5. The learned counsel for the petitioner submitted that the Magistrate had taken cognizance of the case on the protest petition without assigning any reason as to why the final report of the 1st respondent is not acceptable.

The order of the learned Magistrate dated 27.11.2018 is as under:

"Protest petition, Statement of the Defacto complainant and case records perused. After perusal this Court find prima facie case made out u/s.467 and 468 IPC against A1 to A3 and there is sufficient ground for proceedings in further. The mistake of fact report filed by the Inspector of CCB, Coimbatore not accepted, complaint



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taken on file and the complainant directed to issue summons to A1 to A3 on PPF call on 21.1.19"

6. The learned counsel for the petitioner further submitted that it is obligatory on the part of the learned Magistrate to assign reasons as to why he has refused to accept the final report and proceeded to accept the protest petition and taken cognizance of the case. He relied on the judgment of the Hon'ble Supreme Court held in **Vasanti Dubey v. State of Madhya Pradesh** reported in **(2012) 2 SCC 731**. In the said judgment, it is held as under:

It may be worthwhile to highlight at this stage that the enquiry under Section 200 CrPC cannot be given a go-by if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from a frivolous complaint and a vexatious prosecution in complaint cases. The relevance, legal efficacy and vitality of the enquiry enumerated under Section 200 Cr.P.C, therefore, cannot be undermined, ignored or underplayed as non-compliance with enquiry under Section 200 Cr.P.C is of vital importance and necessity as it is at this stage of the enquiry that the conflict



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between the finding arrived at by the investigating agency and enquiry by the Magistrate can prima facie justify the filing of the complaint and also offer a plank and a stage where the justification of the order of cognizance will come to the fore. The process of enquiry under Section 200 Cr.P.C is surely not a decorative piece of legislation but is of great relevance and value to the complainant as well as the accused".

7. The learned counsel for the 2nd respondent submitted that in the forensic report, there are certain findings and in which it has been stated as under:

"It is not possible to offer any reliable opinion on other points".

8. He further submitted that basing on the alleged agreement, the petitioner has not chosen to file a suit for specific performance, but he had simply filed a suit for permanent injunction by wrongly alleging that he was put in possession of the property. One of the witnesses to the sale agreement has stated that he did not fix his signature as a witness, even though his address has been shown in the sale agreement.



9. It is seen from the order of cognizance that the Magistrate did not assign any reason as to why he has given a go-by for the final report of the police and what convinced him to take cognizance of a case on the protest petition filed by the 2nd respondent. Had the learned Judicial Magistrate given the reason, it would have been helpful to appreciate the merits better. Since he has not given any reasons, I feel it is appropriate to remand the matter to the Judicial Magistrate No.VII, Coimbatore to reappraise and offer reasons for taking cognizance by rejecting the final report and accepting the protest petition or otherwise.

10. In the result, this Criminal Original Petition is allowed and the order of the learned Judicial Magistrate No.VII, Coimbatore made in C.M.P No.8719 of 2016 dated 27.11.2018 is set aside and the matter is remanded back to the learned Magistrate. Consequently, connected Miscellaneous Petition is closed.

08.12.2022

Index : Yes/No
Speaking Order : Yes / No
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Crl.O.P No.18860 of 20--

To

1. The Judicial Magistrate No.VII, Coimbatore
2. The Inspector of Police
City Crime Branch
Coimbatore.
- 3.The Public Prosecutor
High Court of Madras.



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