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Crl.R.C.No.1205 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1205 of 2017

N.Palanisamy

S/o.Natarajan

... Petitioner/Complainant

Versus

S.Devarajan

S/o.Sengoda Mudaliar

... Respondent/Accused

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the order dated 24.08.2017 made in C.M.P.No.1392 of 2016 on the file of the Judicial Magistrate No.II, Erode.

For Petitioner : Dr.C.Ravichandran

For Respondent : Mr.M.Vignesh
for M/s.C.S.Saravanan

ORDER

This Criminal Revision Case has been filed to set aside the order dated 24.08.2017 made in C.M.P.No.1392 of 2016 on the file of the Judicial Magistrate No.II, Erode.



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2. The petitioner filed a complaint under Section 156(3) r/w. 200 of Cr.P.C. before the learned Judicial Magistrate No.II, Erode against the respondent seeking to forward the complaint under Section 156(3) Cr.P.C. to the Inspector of Police, Erode Town Police Station and to register an F.I.R. against the respondent. The said complaint was taken on file in C.M.P.No.1392 of 2016. The trial Court, forwarded the complaint to the Inspector of Police, Erode Town Police Station and directed to enquire the matter under Section 202 of Cr.P.C. After getting report from the Inspector of Police, Erode Town Police Station, the trial Court, by order dated 24.08.2017, dismissed the complaint filed by the petitioner, against which, the present revision has been filed.

3. The contention of the petitioner is that the petitioner is running a chit business, in which the respondent is a subscriber and he was due to the tune of Rs.29,400/-. Hence, the petitioner filed a case before the Registrar of Chits, Erode in Case No.14 of 1987 and attachment order was passed in the



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said proceedings. Thereafter, the petitioner filed Execution Petition before the Sub Court, Erode in E.P.No.23 of 1989 and obtained an order. The petitioner on 19.06.1989 served the original copy of the order to the Executive Engineer, Housing Board and on 04.08.1989, he issued notice to the Executive Engineer, Housing Board, since the property of the respondent belongs to Housing Board and no sale deed executed and the property was purchased on a hire-cum-sale basis. He also forwarded a petition to the Chief Minister of Tamil Nadu on 06.09.2012. In the interregnum, the Housing Board of Erode executed a sale deed in favour of the respondent/accused in Doc.No.73 of 2015 dated 27.11.2015. Suppressing the prohibitory order, the respondent sold the property to one Manimegalai on 06.01.2016. Hence, the petitioner lodged a complaint to the Superintendent of Police on 20.06.2016, which was forwarded to the Inspector of Police, Erode Town Police Station. At that time, the respondent appeared before the town police and produced a document in 20 rupees stamp paper bearing No.26832 dated 06.10.1993 and projected that the respondent had paid the entire dues. According to the



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petitioner, the signature found in the said document is forged one. Earlier, the respondent used to come to the petitioner's office as well as to his advocate office for negotiation, where he saw the blank signed paper of the petitioner and prepared the documents as though the petitioner had signed and acknowledged the receipt of his dues. Thereafter, the petitioner lodged a complaint on 02.08.2016 and 07.09.2016, but no action was taken. Hence, the petitioner filed a private complaint, which was referred to the Erode Town Police and later dismissed as stated above.

4. The primary contention of the petitioner is that the Inspector of Police, Erode Town Police Station, without conducting proper investigation given a report as though the petitioner admitted his signature found in the disputed documents. The petitioner denies the execution of any receipt. The Inspector of Police ought to have taken the specimen signature of the petitioner, detained the original receipt produced by the respondent and sent the same for forensic. Thereafter, he could have come to the conclusion. On



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the contrary, he conducted enquiry in a perfunctory manner and submitted a report. The trial Court ought to have given an opportunity of hearing to the petitioner and to produce documents and thereafter to pass an order. On the contrary, without giving any opportunity to the petitioner, the trial Court passed the impugned order on 24.08.2017, which is in gross violation of the dictum of the Hon'ble Apex Court in the case of ***Bhagwant Singh vs. Commissioner of Police and another*** reported in ***(1985) 2 SCC 537***, which has been consistently followed even today. Further, submitted that the respondent had created forged documents.

5. The learned counsel appearing for the respondent submitted that the petitioner disputed his signature found in the receipt dated 06.10.1993 issued by him and lodged a complaint as though his signature has been forged. During the enquiry, he admitted his signature but gave an explanation that the blank signed paper was available in the Advocate office, which the respondent got access to it and prepared the forged document. The Inspector



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of Police, on thorough enquiry found that the petitioner's contention to be false and gave a report. The learned Judicial Magistrate considering the detailed report submitted by the Inspector of Police under Section 202 Cr.P.C., dismissed the complaint. Hence, no reason to interfere with the well reasoned order passed by the trial Court.

6. Considering the submissions and on a perusal of the material, this Court, without adverting to the merits and rival contentions of the parties herein and also merits of Section 202 Cr.P.C. enquiry conducted by the Inspector, finds that the fundamental principle is that in the case of closure of the complaint, it is imperative that the complainant should be given an opportunity. In this case, admittedly, the petitioner/complainant was not informed about the closure of the complaint and no opportunity was given and the dictum laid down by the Hon'ble Apex Court not followed in this case.



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7. In view of the same, this Court set aside the order passed in C.M.P.No.1392 of 2016 dated 24.08.2017 by the learned Judicial Magistrate No.II, Erode. The trial Court is directed to issue notice to the petitioner/complainant herein and pass appropriate orders after hearing and considering the petition or document if any, produced by the petitioner.

8. Accordingly, this Criminal Revision Case is Allowed.

21.12.2022

Index: Yes/No

Internet: Yes/No

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To

1.The Judicial Magistrate No.II,
Erode.

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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