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Crl.R.C.No.331 of 2017
and
Crl.M.P.No.3135 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.11.2022

Pronounced on :17.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.331 of 2017

and

Crl.M.P.No.3135 of 2017

1.Banu @ G.Banumathi
2.J.Rustom
3.A.Domnic Xavier
4.B.Mohan Kumar

.. Petitioners

/versus/

1.Mrs.Parvathy @ Monica

2.State represented by
Inspector of Police (Crime),
E-2, Royapettah Police Station,
Royapettah, Chennai 600 014.

.. Respondents



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Prayer: Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to call for the records in C.C.No.3017 of 2014 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and set aside the order dated 23.01.2017 and dismiss the protest petition in C.C.No.3017 of 2014, pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners :Mr.V.Raghavachari

For Respondents :Mr.N.Bhaskaran for R1

Mr.N.S.Suganthan
Govt.Advocate(Crl.Side) for R2

ORDER

The protest petition taken cognizance by the Magistrate is the subject under challenge in the petition filed for quash.



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2. The complainant/ first respondent herein was working as a Servant maid in the house of the first petitioner. Alleging the complainant committed theft, a case was registered against her in Cr.No.745/2009 and tried in C.C.No.16966/2009 (on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai). While so, the complaint impugned in this petition came to be register alleging that under the guise of searching her residence for the stolen properties, on 30/09/2009 at about 8.15 p.m, Mr.Sankar, Inspector of Police at E-2, Royapettah Police Station and two Police Constables along with Rustom (the second petitioner- Manager under the first petitioner's husband) came and forcible taken away her utensils, gold jewels, cash of Rs.65,000/- and her Bank Pass Book and Cheque Book. She was forced to sign the blank cheques without name and amount. She was also arrested for the offence of theft in Crime No.745 of 2009. When she came out on bail, on 13/10/2020 she verified her bank statements and found Rs.4,50,000/- withdrawn from her account using the forged cheques.



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Since the police were privy to the crime, they refused to register complaint against the accused persons. The complainant approached the High Court for registration of her complaint regarding the incident happened on 30/09/2009. Pursuant to the direction of the High Court in Crl.O.P.No.14228 of 2010, dated 12.07.2010, a case in Crime No.1330 of 2010 got registered but, it was closed as 'mistake of fact'. Being aggrieved by the Closure Report, the complainant filed protest petition Crl.M.P.3824 of 2011. The Learned XVIII Metropolitan Magistrate after recording the sworn statements of 3 witnesses, took cognizance of the complaint in C.C.No.3017 of 2014 and issued process to the accused/petitioners herein vide, order dated 12.05.2014.

3. The petitioners earlier filed a petition in Crl.R.C.No.685 of 2014 challenging the order of the learned XVIII Metropolitan Magistrate, Saidapet issuing process taking cognizance of the private complaint, without assigning any reason and without applying mind. This petition in



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Cr.R.C.No.685 of 2014 was allowed by the Hon'ble High Court and the order of the learned XVIII Metropolitan Magistrate dated 12.05.2014 was set aside. The Learned XVIII Metropolitan Magistrate was directed to take up C.C.No.3017 of 2014 for fresh disposal and pass a reasoned order in support of the decision arrived at.

4. In reverence to the direction of the High Court order, the Metropolitan Magistrate vide order dated 23.01.2017 passed order afresh for taking cognizance. This order is impugned in this revision petition.

5. The Learned Counsel appearing for the petitioners submitted that after remand for fresh consideration the learned Magistrate did not make any fresh enquiry and not recorded any additional oral or documentary evidence. After remand for fresh disposal, the Learned Magistrate kept the protest petition pending for three years since 2014 and passed the impugned order without any application of mind. The protest petitioner kept her



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petition pending without any adjudication for more than 3 years and used the pendency of her protest petition as a tool to delay the trial in C.C.No.16966 of 2009 pending against her for the charge under Section 381 of IPC.

6. The Learned Counsel appearing for the complainant/1st respondent submitted that, the first petitioner making false allegation of theft, with the help of the police instigated her Manager, the second petitioner and took away the following valuables from her house;-

- 1.7 Sovereigns of gold aram
- 2.3 Sovereigns of gold necklace
- 3.3 Sovereigns of gold bracelet which was put to my brother for his engagement.
- 4.2 Sovereigns of gold chain belonging to my husband
- 5.2 Sovereigns dollar chain
- 6.1/2 Sovereigns of child's hand chain -2 Nos.
- 7.2 Silver hip chain of 150 grams and 100 grams
- 8.Child ring-4 Nos.
- 9.Silver lamp
- 10.Silver Hanglet-2 Nos.
- 11.My sister's bracelet-2 Nos of 12 grams



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- 12.1 pair hear ring 12 grams
- 13.Hear ring 2 pair ½ Sovereigns and ½ Sovereigns.
- 14.Gold disco hearing 5 pair
- 15.Nose stud-2 nos.
- 16.Rs.65,000/- cash
- 17.Bank Pass Book and Cheque Book.

7. Though enough material placed before the Investigating Officer to prove that sum of Rs.4,50,000/- balance in the bank account of the complainant was fraudulently withdrawn by the third and fourth petitioners by misusing the blank signed cheques obtained from the complainant before she was taken into custody. Conducting perfunctory investigation, the complaint was closed as “Mistake of Fact”. Hence, the protest petition was filed.

8. The Learned Magistrate considering *prima facie* case to take cognizance of the offence, caused process to the petitioners. This was challenged on a hyper technical ground that the order issuing process is not



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a speaking order. Hence, this Court directed the Magistrate to pass reasoned order in support of the decision. Accordingly, the order impugned was passed with reason in support of the decision.

9. The order impugned reads that, at the time when money from the account of the complainant withdrawn, the complainant was in prison. The Manager of the Bank has deposed that money from the defacto complainant was withdrawn through 4 cheques during that period. Thus, a *prima facie* case for summoning the accused has been made out. This order does not even whisper, what offence is *prima facie* made out by withdrawing money from the account of the complainant, while she was in prison or the statement of the Bank Manager Mr.Vijayagoban sufficient to arrive at a *prima facie* conclusion that those 4 cheques were obtained by force and threat.



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10. How a post-dated cheques given by the complainant before her arrest could be a crime, if realised by the drawer, while she was in prison? Without assigning reason for her conclusion, the learned Magistrate has again erred in issuing process. The impugned order been passed without mentioning the offence made out and the *prima facie* material in support of the conclusion. The two reasons mentioned in the order has no nexus to the conclusion. Hence, the order impugned suffers non-application of mind and bereft of reasoning. In the result, the petition is liable to be allowed.

11. From the records, this Court finds that, *prima facie* the Magistrate on perusing the sworn statements and documents got satisfied that the money from the complainant account has been withdrawn, while she was in jail. In the impugned order, the learned Magistrate has not said anything about what offence be made out for encashing the cheques of a detenu. Encashing cheque while the account holder in prison is not *ipso facto* cognizable offence. To make out any cognizable offence, some thing



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done with culpable mental state ought to have been placed before the Magistrate for her consideration and determination to pass a reasoned order. The said reason need not be in detail, but it should be based on application of mind and found to be reasonable for any man of prudence. The evidence placed show that the complainant was taken into judicial custody on 30/09/2010 and released on bail on 13/10/2010. The four cheques used to withdraw money from her account by the petitioners are dated 01.10.2009 for Rs.90,000/-; dated 03/10/2009 for Rs.90,000/-; dated 05/10/2010 for Rs.90,000/-;and dated 07/10/2009 for Rs.1,75,000/-. These cheques were encashed by the petitioners 3 and 4, while she was in prison. This *per se* is not an offence, unless there is *prima facie* material to show that these cheques were forged or taken by force. The impugned order is silent about those material fact required for taking cognizance of the offence.

12. The private complaint taken on file by passing a cryptic order without even concluding what cognizable offence made out from the *prima*



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facie material placed by the complainant, deserves to be quashed.

Accordingly, this Criminal Revision Case is allowed. Consequently,
connected Miscellaneous Petition is closed.

17.11.2022

Index:yes/no
speaking order/non speaking order
ari

To :

1.XVIII Metropolitan Magistrate, Saidapet, Chennai.

2.The Inspector of Police (Crime), E-2, Royapettach Police Station,
Royapettah, Chennai.

3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery Order made in
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