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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 09/11/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.RC(MD)No.995 of 2022

H.Sadique : Revision Petitioner/
Petitioner/
De-facto Complainant

Vs.

1.Indumathi
2.Balaji
3.Mathi : R1 to R3/R1 to R3/
A1 to A3
4.State of Tamil Nadu
represented by the
Inspector of Police,
District Crime
Branch (ALGSC)P.S.,
Pudukkottai.
(Crime No.4 of 2021) : R4/R4/Complainant

Prayer:- This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records relating to the order passed by the Judicial Magistrate No.II, Pudukkottai, in Cr.M.P No.1832 of 2022 in C.C No.19 of 2021, dated 16/09/2022 and set aside the same.



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For Petitioner : Mr.P.Vadachalam
For R1 to R3 : No appearance
For 4th Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)

O R D E R

This revision has been preferred against the dismissal order of the trial court, dated 16/09/2022 passed in CrI.M.P No.1832 of 2022 in CC No.19 of 2021 by the Judicial Magistrate No.II, Pudukkottai.

2.The facts in brief:-

The revision petitioner as de-facto complainant lodged a complaint stating that the accused persons misappropriated and cheated Rs.14,88,527/- through computer transaction and Rs.63,121/- by cash handling stating that the above said Indumathi was working in their clinic as Computer Operator. The above said cheating was found out, on 23/01/2021. Based upon the above said complaint, investigation was undertaken and final report was also filed before the Judicial Magistrate No.II, Pudukkottai making allegations against three persons stating that they have cheated and misused the above said amount.



3. Pending the above said trial process, the revision petitioner moved the above said petition under section 302 Cr.P.C stating that permission may be granted to him to conduct the prosecution by engaging a counsel. Finding that no specific complaint has been made against the Additional Public Prosecutor and no case was also made out by the revision petitioner, the above said permission was rejected.

4. Challenging the same, this revision has been preferred.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would submit that the police officials are hand in glove with the accused persons and if they are permitted to conduct the prosecution, the case may fail. Along with this revision, the petitioner has filed the petition that was filed by him before the trial court seeking permission for conducting the prosecution.



7.The entire CD file has been called and perused.

8.From the perusal of the CD file, it is seen that as a counter blast, a case has been given against three persons under sections 294(b), 379 and 506(2)IPC and the Special Act. During the course of investigation, it was found that the above said complaint given by the Indumathi is false one. It is going to be referred as 'Mistake of Fact' also.

9.From the perusal of the records shows that proper investigation has been undertaken by the respondent police. So the contention on the part of the revision petitioner that the respondent police are hand in glove with the accused persons is not correct and has no basis also. So, no Special case has been made out by the revision petitioner for permission.

10.Perusal of the petition shows that permission has been sought on the ground that final report has been filed and only in pursuance of the direction issued by this court in CrI.OP(MD)No.17163 of 2021, dated 08/11/2021; the persons, who are the accused, are not arrested.



11. So the question, which arises for consideration is whether the above said grounds are sufficient enough to permit the revision petitioner to conduct the investigation.

12. In the grounds of revision, the revision petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Dhariwal Industries Limited Vs. Kishore Wadhvani & others [(2016) 10 SCC 378]***. In that judgment, difference between section 301 and 302 Cr.P.C has been elaborately discussed by extensively quoting the earlier judgments, which still rules the field in the case of ***JK International Vs. State, Government of Nct of Delhi and others [(2001) 3 SCC 462]***.

13. From the reading of the above said judgment and subsequent development also shows that it is now more or less well settled the right of the victim to participate in the criminal proceedings. That is why, even in some of the Special Acts, the participation of the victim has been made mandatory. So we need not trouble this upon order, since now, it is well settled.



14. But here, the point is simple, whether the above said ground has been mentioned in the petition or sufficient enough to permit the petitioner to conduct the prosecution.

15. As mentioned earlier, perusal of the CD file shows that there is no bias on the side of the prosecution against the petitioner. Investigation has been undertaken in a proper manner and final report has also been filed, of course, with some delay. But the delay on the side of the prosecution cannot taken that they are siding with the accused.

16. In the facts and circumstances of the case, I am of the considered view that the petitioner is not entitled to conduct the prosecution as per the section 302 Cr.P.C. But during the course of trial, if any necessity arises depending upon the course of the matter, the petitioner can very well revive the application. There is no bar for that.



17. Similarly, the petitioner is also at liberty to invoke section 301 Cr.P.C to assist the prosecution. Such a right is always available to him. That is also available to him. But the right under section 302 Cr.P.C should not be extended to him, since it is a premature stage. So this court of the considered view that the order of the trial court does not suffer from any illegality or irregularity.

18. With the above said liberty and observation, this criminal revision fails and the same is **dismissed**.

09/11/2022

Index:Yes/No
Internet:Yes/No
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To,

1. The Judicial Magistrate No.II,
Pudukkottai.
2. The Inspector of Police,
District Crime Branch (ALGSC) P.S,
Pudukkottai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G . ILANGO VAN , J

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