



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/12/2022

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.RC(MD)No.42 of 2020
and
Crl.MP(MD)No.325 of 2020

N.Gunasekaran : Revision Petitioner/
Respondent/Accused

Vs.

M.Munian : Respondent/Appellant/
Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order the order passed in Crl.A No.132 of 2017 on the file of the 5th Additional District and Sessions Judge, Madura, dated 13/09/2019.

For Petitioner : Mr.V.Kathirvelu
Senior counsel
for Mr.K.Prabhu

For Respondent : Mr.D.Sivaraman

O R D E R

This criminal revision has been filed against the order passed in Crl.A No.132 of 2017 on the file of the 5th Additional District and Sessions Judge, Madura, dated 13/09/2019.



2.The facts in brief:-

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The accused is facing the charges under sections 109, 143, 430, 434, 447, 504, 506(ii) IPC before the trial court in CC No.79 of 2021. The complainant has stated that he is owning property in Elandaikulam village, Madurai North Taluk and the accused is doing real estate business. He tried to encroach his northern portion of the property. So he made arrangement to survey. In the meantime, on 04/12/2007, when he was going through the road near his property, he saw that the accused along with 10 persons indulged in damaging the stone pillars and that was immediately objected, but the accused persons did not stop. So he went to the police station and lodged a complaint. Later, that complaint was forwarded to the Othakadi Police station. But that was not properly investigated. So he filed a private complaint.

3.Before the trial court, on the side of the prosecution two witnesses were examined and 18 documents were marked. On the side of the accused, no witness was examined and no document was marked.

4.At the conclusion of the trial, the offences that are alleged against the accused were not proved beyond reasonable doubt and accordingly, the accused was



acquitted. Against which, the complainant preferred appeal before the District Court, which was transferred to the 5th Additional District and Sessions Judge, Madurai in CrI.A No.132 of 2017 and that was remitted back to the trial court, finding some sort of defects on the ground that the charges as well as the finding portions differ. Against the above said order, this revision has been preferred by the accused.

5.The learned Senior Counsel appearing for the petitioner without making reference to the merits of the prosecution case would straightaway rely upon the judgment of this court in the case of **Kumaravel and 3 others Vs. A.Thangapandian (CrI.OP(MD)No.6902 of 2016, dated 05/10/2018)** for the purpose of argument that originally, the complaint was filed by the respondent herein and that was referred as 'Mistake of Fact'. But without knowing the registration of the FIR, the respondent filed CrI.OP(MD)No. 6703 of 2010 before this court to transfer the investigation and when the matter was taken up for hearing, the learned Additional Public Prosecutor has submitted that further action was dropped as civil in nature.



6.It was submitted by the respondent that no notice was served upon him. So liberty was granted to the petitioner to file a protect petition before the concerned court. In the light of the above said order, he also filed a protect petition before the concerned court on 25th April 2011 and thereafter, what happened to the above said protect petition is not clear on record.

7.The entire records have been called for from the trial court. Even in the record that was submitted by the trial court, we find no records relating to the protest petition.

8.By pointing this mistake, the learned Senior counsel appearing for the petitioner would submit that the trial court ought to have considered the protest petition before entertaining the private complaint. According to him, is against the procedure, which has been stated in the above said judgment.

9.PW1 is the respondent herein, during the course of the evidence, has stated that he filed a protest petition against the closure report and now, the above said matter is pending. When that is being so, as rightly pointed by the learned Senior counsel appearing for the petitioner that ought to have been proceeded.



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10. In the judgment of the trial court, it has been stated that protest petition was filed by the respondent and on the basis of the statement recorded in the above said protest petition, it was taken on file as a private complaint. But absolutely, no order is available with regard to the above said point. So in the absence of any such specific order, I am of the considered view that taking cognizance of the private complaint itself is bad in law.

11. So I am of the considered view that the revision can be allowed by setting the order of taking cognizance by granting liberty to the respondent to work out his remedy before the trial court. Accordingly, this criminal revision is **allowed** and taking cognizance of the private complaint by the trial court is set aside and the protest petition filed is ordered to be restored on file. The trial court is permitted to proceed with the protect petition in accordance with law and complete the same within a period of one month from the date of receipt of a copy of this order. Depending upon the out come of the above said process, the parties can work their remedy, if they are so aggrieved.



12. With the above said direction and liberty, this criminal revision stands **allowed as indicated above.**

Consequently, connected Miscellaneous Petition is closed.

23/12/2022

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

1. The 5th Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate,
Melur.



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G.ILANGOVAN, J

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Cr1.RC(MD)No.42 of 2020

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