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Crl.R.C.No.291 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2023

PRONOUNCED ON : 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.291 of 2023

and

Crl.M.P.No.2385 of 2023

C.Chinnadurai

... Petitioner

Vs

1. R. Perumal

2. State rep. by
Deputy Superintendent of Police,
Namakkal

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the order passed by the Special Court for Trial of cases under SC/ST (POA) Act, Namakkal, dated 12.12.2022 in C.M.P.No.357 of 2022 in Spl.S.C.No.10 of 2021.



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For petitioner : Mr. G.Muthurasu
For Respondent : Mr. V.Sakkarapani
for R1
: Mr. R.Vinothraja,
Gov. Advocate (crl.side)
for R2

ORDER

Challenging the order passed by the Sessions Judge, Special Court for Trial of cases under SC/ST (POA) Act, Namakkal in C.M.P.No.357 of 2022 in Spl.S.C.No.10 of 2021, the present Criminal Revision has been filed.

2. The fact of the case is that upon the complaint given by the revision petitioner/defacto complainant against the first respondent/accused, a case in Crime No.725 of 2015 for the offences under Section 352 of IPC and 3(1)(x) of SC/ST (POA) Act 1989 has been registered by the Namakkal Police. After investigation, the 2nd respondent filed charge sheet against the first respondent and his son/A2, who is absconding, for the offences



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under Section 352 of IPC and 3(1)(x) of SC/ST (POA) Act 1989 and the same has been taken on file as PRC No.1 of 2016 by the Judicial Magistrate No.1, Namakkal. Since A2 was absconding, the case against A1 was split and received by the Trial Committal Court on 19.08.2021 as per the Official Memorandum of the Principal Sessions Judge, Namakkal in D.No.1691/2021, dated 16.03.2021. Thereafter, a new number has been given in Spl.S.C.No.10 of 2021 and summons had been issued to the first respondent/accused. After his appearance, copies were furnished to the first respondent/accused under Section 207 Cr.P.C. Thereafter, charges had been framed against him and the case was posted for trial on 17.12.2021. On that day, the revision petitioner/defacto complainant had filed a petition to defer the examination of the witness, as he had filed a petition before the District Collector to appoint a Special Public Prosecutor to conduct the case and hence, the case was adjourned. Thereafter, the District Collector appointed Mr. N.Karthikeyan as Special Public Prosecutor to conduct the case. Meanwhile, this Court in Crl.O.P.No.1408 of 2021 directed the Trial Court to complete the trial within a period of 6 months. At this juncture, the



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revision petitioner/defacto complainant had filed a petition under Section 173(8) of Cr.P.C. through the Special Public Prosecutor seeking for further investigation of this case on the ground that the offence under Sections 406, 420 and 422 of IPC are not included though witnesses stated about the commission of the offence. The Trial Court, after hearing the counsel for the parties dismissed the said petition by passing the impugned order relying upon the judgment of the Hon'ble Supreme Court in **2019 AIR (SC) 5233(Vinubhai Haribhai Malaviya and others /vs/ the State of Gujarat and anr)** on the ground that the power of the police for further investigation of the offence continues till the stage of trial commenced and in this case, charges are framed and adjourned for Trial and summons had been issued to the witnesses. Aggrieved over the same, the present Criminal Revision Case has been filed by the defacto complainant.

3. The learned counsel for the revision petitioner submitted that the revision petitioner was working as a driver in Tamilnadu State Transport Corporation and he retired from service in the year 2010. Thereafter, he



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used to visit frequently his friend's office namely, "Maruti Driving school" owned by one Krishnasamy during his free time. Through his friends, namely, Krishnasamy and Mr.Madhavan he came to know the first respondent/accused, who is an ex-service man and they planned to do real estate business jointly on the suggestion given by the first accused. Believing the words of the first respondent/ accused, the petitioner/defacto complainant borrowed a sum of Rs.6 lakhs from Sivanganga Finance on 29.12.2010 by pledging his property as collateral security for the loan and handed over the same to the first respondent/accused on the same day as his share amount and similarly other partners have also borrowed loan and handed over the amount to the first respondent/accused. By using their share amount, they purchased land bearing survey Nos.414, 415 near TNPL at Velayuthampalayam Village in Karur District having a total extent of 1.80 acres. in the name of the first respondent/accused because it was purchased for business purpose. After that, the first respondent/accused time to time settled the share amount to other shareholders when any of the plot were sold out. However, refused to settle the share amount given by



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the petitioner. Though the petitioner approached the first respondent/accused on several times to return the amount of Rs.6 lakhs or to register the property for the value of his share, he purposely neglected the petitioner's request and cheated him. The petitioner belongs scheduled caste(Hindu Arunthathiyar Community). On 24.12.2014, when the petitioner asked the first respondent/accused at Geetanjali finance, the first respondent/accused and his son Senthil humiliated the petitioner using his caste name and in filthy words and refused to give back his amount. Eventhough, the petitioner lodged a complaint before the Namakkal Police Station against first respondent and his son Senthil on the same day, i.e., 24.12.2014, the police registered the FIR belatedly, on 07.10.2015. Moreover, the case has been registered only under Section 352 of IPC and 3(1)(x) of the SC & ST (POA) Act 1989, and deliberately registered the case excluding the sections 406, 420 & 422 of ICP, which the petitioner's complaint will attract the ingredients of above said sections and filed the final report.



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4. He further submitted that the petition filed by the petitioner for further investigation has been dismissed by the Trial Judge relying upon the case of *Vinubhai Haribhai Malaviya and others reported in 2019 AIR (SC) 5233*. The said case has been overruled by the Hon'ble Supreme Court in the case of *Anant Thanur Karmuse /vs/ State of Maharashtra and others (2023 SCC Online SC 180)*. He further submitted that the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of chargesheet and framing of the charges cannot be an impediment in ordering further investigation if the facts so warrant and thus, pleaded to set aside the impugned order and to allow the appeal. To support his argument, he placed reliance in *2023 SCC Online SC 180 (Anant Thanur Karmuse /vs/ State of Maharashtra and others)*.

5. The learned counsel appearing for the first respondent/accused opposed the present criminal revision and submitted that there is no material available on record to make out any offence under Sections 406, 420, 422 of IPC. Therefore, the respondent police rightly filed the final report and the



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Trial Court also dismissed the petition since this case warrant no further investigation and no ground to interfere with the impugned order and thus, pleaded to dismiss the criminal revision.

6. The learned Government Advocate (crl.side) appearing for the 2nd respondent submitted that the further investigation petition has been filed by the defacto complainant before the Trial Court through the Special Public Prosecutor and also supported the case of the revision petitioner.

7. I have considered the matter in the light of the submissions made by the counsel for the parties and perused the materials available on record.

8. On perusal of records, it is seen that the revision petitioner/defacto complainant seeking further investigation in the case in Crime No725 of 2015, which is now pending in Spl.S.C.No.10 of 2021 on the file of the Special Court for Trial of Cases under SC/ST (POA) Act, Namakkal for the offence under Section 352 of PC and Section 3(1)(x) of SC/ST Act. The



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revision petitioner/defacto complainant is a retired driver from the Tamilnadu State Transport Corporation. The allegation of the revision petitioner/defacto complainant in the complaint is that he entered into a real estate business along with the first respondent/accused and another persons and borrowed a sum of Rs.6 lakhs from the Sivaganga Finance by mortgaging his property as a collateral security land on 29.11.2010 and handed over the said amount to the first respondent/accused as his share in pursuance of the business. Thereafter, they had purchased the land bearing survey nos.414 and 415 near TNPL at Velayuthampalayam Village in Karur District to the total extent of 1.80 acres. They sold some portion of the properties. It is alleged that the revision petitioner/defacto complainant's share amount has not been settled by the first respondent/accused. The alleged occurrence took place on 24.12.2014. On that date, it is alleged that the first respondent and his son abused the revision petitioner/defacto complainant by calling his caste name and filthy language and refused to return his money and also attempted to assault him. Based upon the complaint, the case has been registered and after investigation the final



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report has been filed. Further, it is noticed that in this case, since A2, who is son of A1 is absconding, the case against the first respondent/A1 has been split up by the proceedings of the Principal Sessions Judge N.amakkal in D.No.160 of 1991, dated 16.03.2021 and new number has been assigned as Spl.S.C.No.10 of 2021. Further it is also noticed that after the appearance of the first respondent/accused, on furnishing of copies of the documents under Section 207 of Cr.P.C., charge has been framed and the case was adjourned for trial on 17.12.2021. It is also noticed that this Court in Crl.O.P.No.1408 of 2021 directed the Trial Court to complete the Trial within six months. At this juncture, the revision petitioner/defacto complainant had filed this petition for further investigation under Section 173(8) of Cr.P.C. through the Special Public Prosecutor.

9. With regard to further investigation of the case, the Hon'ble Supreme Court in **2023 SCC Online SC 180 (Anant Thanur Karmuse /vs/ State of Maharashtra and others)** held that the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the



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chargesheet and framing of the charges cannot be an impediment in ordering further investigation/re-investigation/de novo investigation, if the facts so warrant. In the instant case, the alleged criminal occurrence took place on 24.12.2014. On that date, the allegations levelled against the accused is degrading the caste of the petitioner by using filthy language and used to criminal force against the revision petitioner/defacto complainant. With regard to the settlement of amount in their real estate business, the petitioner has to work out his remedy in accordance with law. With regard to the occurrence took place on 24.12.2014, no further investigation is warranted. Therefore, I find no illegality in the impugned order passed by the learned Judge and no reason to interfere and no merit in this revision and hence, it is liable to be dismissed.

10. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

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1. The Sessions Judge,
Special Court for Trial of cases under SC/ST (POA) Act,
Namakkal,
2. The Deputy Superintendent of Police,
Namakkal



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V.SIVAGNANAM, J.,

mrp

Pre-delivery order in
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