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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 01/03/2023

Date of Pronouncement : 31/03/2023

CORAM

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

Cr1.RC(MD)No.174 of 2023

Mr.P.K.Shrithar : Petitioner/Petitioner

Vs.

1.The State represented by
The Inspector of Police,
CBCID,
Thanjavur.
(Crime No.4 of 2019)

2.M.Sanjay

3.Manisha

4.Praveen Magadev Patil

5.Varsha Praveen Patil

6.Anil Sinda : Respondents

(R2 to R6 *suo motu* impleaded
as per the order of this court,
dated 10/02/2023)

PRAYER:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to set aside the order passed by the Judicial Magistrate, Thiruviyaru in Cr1.MP No.3398 of 2022, dated 15/10/2022 and consequently direct the respondent police to conduct further investigation under section 173(8) Cr.P.C through some other Investigation Officer and file a final report.



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For Petitioner : Mr.Aayiram K.Selvakumar
For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor
for R2 to R6 : Mr.Anil Relwani

O R D E R

This Criminal Revision has been filed seeking in order to set aside the order passed by the Judicial Magistrate, Thiruviyaru in CrI.MP No.3398 of 2022, dated 15/10/2022 and consequently direct the first respondent police to conduct further investigation under section 172(8) Cr.P.C through some other Investigating Officer and file a final report.

2.The facts in brief:-

The petitioner filed a petition before the trial court with the following allegations:- He along with one Mohan running a vessel renting shop. During the course of their business, one Sanjay, and his wife namely Manisha became their family friends. Sanjay was doing jewellery business. He requested Sanjay to exchange his old jewels with new. Totally 430 grams of gold jewels was given to Sanjay for melting and selling. Evidencing the same, he acknowledged the receipt. At that time,



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3. That was taken on file in Cr.M.P No.2070 of 2017 and a direction was issued to the Police to register a case and investigate the matter. In pursuance of the same, a case in Crime No.201 of 2017 was registered, on 10/07/2017 under sections 403, 406, 420 and 120(B) IPC against five persons.

4. Pending investigation, this petitioner and one Mallika Venugopal filed CrI.OP(MD)Nos.3820 and 3821 of 2019 before this court seeking transfer of investigation to CBCID, Thanjavur. It was allowed by this court handing over the investigation to CBCID.

5. During the above said hearing, it was submitted by this petitioner and others that several like complaints have been given against the above said Sanjay and others and no proper investigation was undertaken.

6. Per contra, the learned Additional Public Prosecutor would submit that the petitioner could not provide any material over the entrustment of the jewels. But however, the above said order was passed. So against that order, Sanjay filed SLP before the Hon'ble Supreme



Court and that was also dismissed by the Hon'ble Supreme Court. Later, this petitioner moved CrI.OP(MD)No.9776 of 2021 seeking for direction to the Inspector of Police, CBCID, Pattukottai to complete the investigation and file a final report within a period of six months. That was also allowed by this court.

7.At the conclusion of the investigating process, the case was closed as 'Mistake of Fact' and final report was filed before the trial court and RCS notice was also served upon the petitioner. He filed protest petition, which was taken on file in Cr.M.P No.3398 of 2022. That was heard by the trial court. Finding that there is no bias on the side of the Investigating Officer and no proper documents or evidences were produced by the petitioner showing the entrustment of the gold jewels, the protest petition was dismissed, finding that no further investigation is required.

8.Against which, this criminal revision has been preferred by the petitioner.

9.Heard both sides.



10.A simple case of entrustment of the property and thereafter, failure to pay the costs of the articles.

11.According to the petitioner, 430 grams of old gold jewels were entrusted to the above said Sanjay for the purpose of melting and selling; the above said Sanjay received the above said jewels for melting; Whether it was sold or not, there is no evidence; But the above said Sanjay compromised him to give the costs or price, as the case may be. Since demonetization was enforced by the Central Government, thereafter failed, absconded, now hiding.

12.Perusal of the entire case records shows that several attempts have been made by the petitioner on this issue. First complaint given by him was enquired in CSR No.767 of 2016. But what happened during the above said enquiry is not clear on record. Later, he filed the above said petition under section 156(3) of the Criminal Procedure Code before the trial court and the investigation has been undertaken.



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13.A detailed counter statement has been filed by the Inspector of Police, CBCID namely the first respondent herein. The counter statement tells a different story. Actually, the petitioner alleged to have worked under the above said Sanjay and was helping in taking the daily affairs. But this fact was denied by the petitioner during the course of investigation. On summon, the above said Sanjay appeared before the Investigating Officer and gave details about the issue. During the course of investigation, Sanjay alleged to have stated that this petitioner was working under him about eight years as part-time Accountant. During his employment, this petitioner and another one Swaminathan engaged in creating false documents as if there was an agreement to sell the property in favour of one Muruganantham and Karthikeyan. It was also found that one R.V.Venkatesan, brother-in-law of this petitioner filed a suit in O.S No.64 of 2017 before the Madras High Court and obtained an order of attachment of the property in Pattukottai. The above said Sanjay also filed a complaint against all the persons, which was also registered in Crime No.374 of 2022. Now the investigation was also transferred to CBCID for further investigation and it is



now registered in Crime No.1 of 2023. We need not go into the Crime No.1 of 2023.

14. But so far as this complaint is concerned, finding that no sufficient documentary evidence was produced to show the entrustment of the jewels, it was closed as 'Mistake of Fact'.

15. The learned counsel appearing for the petitioner would submit that there was no requirement for the petitioner to produce the documents; naturally for old gold jewels, no document can be expected to be available. The witnesses, who are capable of giving information with regard to the transaction, there was no examination properly; Apart from this petitioner, several victims are also giving complaints against the accused.

16. The learned Additional Public Prosecutor would submit that 67 witnesses have been examined by the first respondent police and none of them stated about the involvement of the private respondents and the entrustment also.



17.The learned counsel appearing for the private respondents namely respondents 2 to 6 would submit that by creating documents, the petitioner and his brother-in-law and others tried to swindle the huge properties. According to him, proper investigation was undertaken and finding that no material is available for further investigation, the final report was accepted by the trial court, which requires no interference at all.

18.A detailed counter filed by the private respondents gives the other side of the story. A detailed typed set of papers were also filed, narrating the entire issue. In the counter, they are speaking about the alleged mortgage proposal turned out to be a sale agreement for raising money. So according to the private respondents, this petitioner colluded with the above said Sanjay and created the document of sale agreement and later, this petitioner along with others, broke open the house and removed the articles. He was criminally intimidated by this petitioner. Similarly, a suit in O.S No.200 of 2016 was filed by one Karunanidhi. But by impersonation, the matter alleged to have been settled in the Lok Adhalat. Several particulars are mentioned with



regard to the above said alleged sale agreement of the property, etc., which we are not very much concerned. It is for the concerned trial court to take those facts into account at the time of trial. It has been stated in the counter that the complaint, dated 19/11/2016 was registered at about 04.00 pm and this complaint was filed after that, as a counter-blast to the complaint given by the private respondents. So this aspect requires a detailed consideration with regard to the dates and events, so that, a clarity may come. The alleged handing over of the old jewels taken place on various dates namely 08/11/2016, 10/11/2016 and 12/11/2016. From 23/11/2016, the above said Sanjay and others went hiding or absconding. So the complaint was given, on 12/12/2016. The dates and events are mentioned by the private respondents. The deed of sale agreement instead of mortgage deed was executed and registered, on 04/07/2016. The above said deed alleged to have prepared by this petitioner namely P.K.Shrithar.

19. Now the allegation is that this petitioner and others created a false document instead of mortgage deed. In the meantime, Sanjay went to his native place to



attend the festival. On 06/12/2016, this petitioner along with others alleged to have broke open the house of Sanjay and took away all the articles, over which a complaint was given, on 12/12/2016. On that date only at about 04.00 pm, this petitioner alleged to have given a complaint, which was also registered as if the complaint was given, on 29/11/2016. Like the petitioner, his brother namely Venugopal also filed a complaint under section 156(3) Cr.P.C seeking for direction, over which, a case in Crime No.193 of 2018 was registered and before that, one Karunanithi filed a suit in O.S No.20 of 2016 on 10/12/2016 before the District Munsif Court, Pattukottai. The date of settlement by impersonation took place on 14/07/2017. So the further event has been detailed in the counter, which we need not go in detail. So the events that took place upto 12/12/2016 is relevant, which shows that it is not a mere case of entrustment and later misappropriation. But larger issues are involved in this matter regarding the properties of Sanjay. So these dates and events shows that only as a counter-blast to the complaint given by Sanjay, the present complaint has been given as if it was entrustment and cheating etc.



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20.A party may lie, but not the circumstances. Here the circumstances clearly falsified the allegation made by the petitioner. This is a classical case of abuse of process of court and law, which deserves no consideration at all.

21.In normal circumstance, this criminal revision would have been dismissed with heavy costs. But considering the fact that it is a revision against the protest petition, this court desists from imposing costs, leaving the matters to be decided by the competent courts, before which, several litigations are pending between the parties. So I find no merit in this criminal revision.

22.In the result, this criminal revision is **dismissed.**

31/03/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate,
Thiruviyaru,
Thanjavur District.
- 2.The Inspector of Police,
CBCID,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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