



Crl. R.C.(MD)No.157 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 29.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.157 of 2019

and

Crl.M.P.(MD)Nos.2442 and 2443 of 2019

1.Sathyamoorthy

2.Ramachandran

.. Petitioners

Vs.

1.The State Represented by the
Inspector of Police,
District Crime Branch,
Thoothukudi.
(In Crime No.46 of 2016).

2.Thirumani

.. Respondents

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to the impugned order passed by the learned Judicial Magistrate No.III, Thoothukudi, in Crl.M.P.No.2174 of 2018 in C.C.No.223 of 2018 dated 10.09.2018 and subsequent cognizance taken in C.C.No.224 of 2018 by the learned Judicial Magistrate Court No.III, Thoothkudi and set aside the same as illegal.

For Petitioners	: Mr.A.Rahul
For 1 st Respondent	: Mr.M.Sakthi Kumar
	Government Advocate (Crl. Side)
For 2 nd Respondent	: No Appearance



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ORDER

This petition has been filed by the petitioner to set aside the impugned order passed by the learned Judicial Magistrate No.III, Thoothukudi, in Crl.M.P.No. 2174 of 2018 in C.C.No.223 of 2018 dated 10.09.2018.

2.According to the petitioners, the case was initially registered against 11 persons including against the petitioners, one Alaguvel and others in Crime No.46 of 2016 for the alleged offence under Section 406, 420 and 506(i) of IPC. After elaborate investigation, the police have deleted the name of petitioners from the charge sheet holding that money transaction was taken place between the second respondent and one Alaguvel. Thereafter, the second respondent filed protest petition before the Magistrate Court and the said petition was allowed and the learned Magistrate ordered to take cognizance and C.C.No.224 of 2018 was assigned. Once the Police have filed negative final report as against the petitioners, there should be some materials to take cognizance by the learned Magistrate but without any documents and materials, the learned Magistrate has taken cognizance for the offence under Sections 406, 420 and 506(i) of IPC against these petitioners. In fact Sri Hari Refinery Private Limited Company decided to sale the machineries of the company except the land since the said company was under financial crisis. These



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petitioners are Directors of the said company. The second petitioner who is the managing Director of the company entered into unregistered agreement of sale dated 18.09.2014 for a sum of Rs.47,50,000/- with one Alagavel who is the owner of the ACP Enterprises for the purpose of selling the machines. The said Alagavel is engaged in selling of old iron materials business. Based on the aforesaid agreement, on the same day, the second petitioner has received a sum of Rs.50,000/- from Alagavel as advance. Thereafter, on the terms of said agreement, the said Alagavel was allowed by the petitioners to remove the machineries in their factory and to take away.

3.In the meantime, one Thirumani who is also an iron scrap merchant obtained an order from the learned Judicial Magistrate No.I, Thoothkudi seeking a direction to direct the first respondent to register a case against the said Alagavel and the petitioners and FIR was registered on 09.09.2016 in Crime No.46 of 2016 for the offence under Sections 406, 420 and 506(i) of IPC alleging that said A3 by showing the agreement dated 18.09.2014 to remove the scrap iron from the factory premises of the petitioners, invited the Thirumani to become partner in the said transactions and received a sum of Rs.37,50,000/- from him on various dates. Neither Thirumani was allowed to remove the iron scrap nor money taken by Alavel was returned to him. In fact the petitioners only aware of the business transaction between the said



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Alaguvel of ACP enterprises and the petitioners. Thereafter, the police have enquired the case and deleted the name of the petitioners. Against which, the said Thirumani filed a protest petition. In that protest petition, the learned Magistrate has passed an order as against these petitioners and taken cognizance in C.C.No.223 of 2018 without any materials.

4.No counter has been filed on the side of the respondents.

5.The learned counsel appearing for the petitioners would contend that these petitioners have been arrayed as accused in Crime No.46 of 2016 for the offence under Sections 406, 420 and 506(i) of IPC. The second respondent has lodged a complaint alleging that Alaguvel, one of the accused in this case obtained a sum of Rs.37,57,000/- from the defacto complainant by which the agreement entered between the petitioners and one Alaguvel. These petitioners have no nexus with the said Thirumani and the agreement was entered between the petitioners and one Alaguvel to remove the iron scrap available in the petitioners company. Based on the agreement, Alaguvel also removed the machineries and taken away the properties. In the meanwhile, the Thirumani filed this false complaint by including the petitioners' name. Thereafter, the investigation was conducted by the police station and filed final report by deleting the name of the petitioners. Thereafter, the defacto



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complainant filed protest petition and the same was allowed without any materials.

Once the police have filed negative report, the learned Magistrate without any materials cannot take cognizance. But in this case, without any material, the learned Magistrate has taken cognizance and the same is not in accordance with law and therefore the aforesaid cognizance taken by learned Magistrate in C.C.No.224 of 2018 and the order passed by the learned Magistrate in Cr.M.P.No.2174 of 2018 is liable to be set aside.

6.No representation on the side of the second respondent.

7.The learned counsel appearing for the first respondent would contend that based on the complaint given by the second respondent, they registered Crime No.46 of 2016 for the offences under Sections 406, 420 and 506(i) of IPC as against these petitioners and others. Totally 11 accused were arrayed as accused in this case. Thereafter, elaborate investigation was conducted. As per investigation, the petitioners have not involved in the occurrence and the petitioners are no way connected with the occurrence. Thereby, their names were deleted in the charge sheet. Thereafter, the second respondent has filed protest petition and the protest petition was allowed and the learned Magistrate has taken cognizance as against these petitioners. The petitioners have to face trial and thereby, the petition is liable



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to be dismissed.

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8.This Court heard both sides and perused the materials available on records.

9.The contention of the petitioners is that already the police have investigated the case and the name of the petitioners were deleted since no materials available as against them. Thereafter, the aforesaid final report was filed before the learned Judicial Magistrate. Thereafter, the second respondent filed protest petition and the same was allowed by the learned Magistrate. At the time of passing order, the learned Magistrate has not perused any records and no records were produced by the protest petitioner. The protest petition has been filed without any records and based on the petition, only the learned Magistrate has taken cognizance.

10.In this context, the learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of ***S.Mohan v. Antony Gomes and others*** in ***Crl.O.P.Nos.24018, 24019, 24990 and 24991 of 2017***, wherein this Court in para nos.15 and 16 reads as follows:-

“15. From the above judgments, it is clear that whenever Magistrate takes cognizance based on Police Report, despite it is negative report, he is not bound to follow the procedure laid down



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under Sections 200 and 202 Cr.P.C. Similar view is also taken by the Hon'ble Apex Court reported in (2019) 8 SCC 27 as stated supra.

16. Taking note of the above judgments, this court is of the view that while the Magistrate decides to reject the Police Report and apply his mind on the basis of the materials collected by the Investigation Agency, in that case, he is not bound to follow the procedures contemplated under Section 200 and 202 of Cr.P.C, whereas, treating the protest petition as complaint and for taking such cognizance, there must be materials by way of evidence produced by the witnesses, whereas, in this case, merely on the basis of the submissions and protest petitions, the learned Magistrate took cognizance and it is not in accordance with law.”

11.The learned counsel appearing for the petitioners relied upon the judgment of this Court in the case of **Chellam v. State and others** in **Crl.R.C.No.280 of 2017**, wherein this Court in para nos.15 and 16 reads as follows:-

“6. The code of the Criminal Procedure does not speak about protest petition. It is an opportunity granted to the victim or informant or the defacto complainant to raise objections against the negative final report filed by the police. When the victim or defacto complainant is not satisfied with the conclusions arrived at by the police in the final report, such person can approach the jurisdictional court and move the petition against the negative final report. To put it in short, the objections filed by the victim or informant or defacto complainant to the negative final report of the police is called as protest petition and it is only a



representation made by the victim or complainant. In the case of the filing of the protest petition, the Magistrate will have four options that the Magistrate may agree with the decision of the police and accept the final report and drop the proceedings or that he may take cognizance under Sections 190(1)(b) Cr.P.C., if he is satisfied with the materials produced by the police that there is a sufficient ground to proceed, despite the fact that the police has only filed the negative report or that the Magistrate may order further investigation in case if he is satisfied that the investigation already conducted is not proper or that the Magistrate may proceed to act under Section 200 Cr.P.C., by treating the protest petition as a complaint. In the case on hand, as already pointed out, the learned Magistrate has adopted the 4th option or course by treating the protest petition filed by the defacto complainant under Section 200 Cr.P.C., and directed for enquiry under Section 202 Cr.P.C., But according to the revision petitioner, the learned Magistrate ought to have set aside the negative final report and then ought to have taken the case on file. It is pertinent to mention that the revision petitioner has not at all filed the protest petition in the form of complaint under Section 200 Cr.P.C., Admittedly, the revision petitioner has not listed out the documents and the witnesses to be examined. It is not the specific the case of the revision petitioner that she had filed the protest petition, which also satisfies the conditions of a complaint. As rightly contended by learned counsel for the respondents 1 and 2, except the negative report filed by the police and the protest petition filed by the revision petitioner, there was no other material available before the Magistrate and as such the question of taking the case on file does not arise at all.”



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WEB COPY 12. On careful reading of the aforesaid judgments, it is clear that when the learned Magistrate treating the protest petition as complaint and for taking such cognizance there must be materials by way of evidence and witness and merely on the basis of the submissions in the protest petition, the learned Magistrate cannot take cognizance. In the case on hand also, the learned Magistrate has take cognizance without any material and the second respondent also failed to produce any documents and thereby, the order passed by the learned Magistrate is not in accordance with law and hence, it is liable to be set aside.

13. In the result, the Criminal Revision Petition is allowed and the impugned order passed by the learned Judicial Magistrate No.III, Thoothukudi, in Crl.M.P.No.2174 of 2018 and pending C.C.No.223 of 2018 dated 10.09.2018 are quashed. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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P.DHANABAL, J.

Mrn

To

- 1.The Judicial Magistrate No.III,
Thoothukudi District.
- 2.The Inspector of Police,
District Crime Branch,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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