



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2023

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CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.R.C(MD).No.400 of 2019

and

Crl.M.P.(MD)No.5895 of 2019

D.Thigarajan

...Petitioner

Vs

1.A.Muthusamy

2.State rep. by its,
The Inspector of Police,
District Crime Branch,
Virudhunagar,
Virudhunagar District.
(Crime No.38 of 2007)

...Respondents

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, praying this Court to call for the records relating to the order of the Judicial Magistrate No.II, Virudhunagar dated 02.04.2019 in Cr.M.P.No.1019 of 2019 in Cr.No.38 of 2007 refused to entertain the petition for further investigation filed by the petitioner and set aside the same.

For Petitioner	: Mr.S.Ramasamy
For 2 nd Respondent	: Mr.M.Sakthi Kumar Government Advocate (Crl. Side)
For 1 st Respondent	: Unserved

ORDER

This revision is filed to quash the charge sheet in Cr.M.P.No.1019 of 2019



in Cr.No.38 of 2007 dated 02.04.2019, on the file of the learned Judicial Magistrate No.II, Virudhunagar.

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2.When the matter was taken up for hearing, this Court perused the records, it is observed that already notice for the second respondent was unserved. However, this Court disposed of this Criminal Revision Case by dispensing notice to the second respondent.

3.According to the petitioner, he gave the complaint before the second respondent against the first respondent by stating that the first respondent had fabricated two documents namely sale agreement dated 25.12.2006 and the unregistered sale deed dated 29.12.2006 as if the petitioner has executed and signed the above said two documents. In view of the above two documents, the first respondent has filed a civil suit in O.S.No.4 of 2007 on the file of the Principal District Judge, Virudhunagar District at Srivilliputhur as against the defendant. Thereafter, the suit was dismissed for non prosecution. As against the dismissal, the first respondent preferred a petition in I.A.No.1 of 2019 along with condone delay is pending for adjudication. The second respondent did not act upon the complaint given by the petitioner and thereafter, the petitioner approached the learned Judicial Magistrate No.II, Sattur and filed petition in C.C.No.3251 of 2017. Based on direction given by the learned Judicial Magistrate No.II, Sattur as per Section 156(3) of Cr.P.C., the second



respondent registered a case in Crime No.38 of 2007 for the offence under Sections 468 and 471 of IPC on 13.11.2007. After investigation, the second respondent filed negative report as 'mistake of law'. Thereafter, the petitioner filed a petition for further investigation under Section 173(8) of Cr.P.C., and the same was not accepted. Hence, he filed this petition.

4.No counter was filed on the side of the respondents.

5.The learned counsel appearing for the petitioner would contend that the petitioner had given complaint as against the first respondent before the second respondent stating that the first respondent herein has fabricated sale agreement dated 25.12.2006 and unregistered sale deed dated 29.12.2006 as if the petitioner had executed and signed the above said documents and based on the said documents filed O.S.No.4 of 2007 on the file of the Court, Virudhunagar. Thereafter, the petitioner approached the learned Judicial Magistrate No.II, Sattur and the same was forwarded under Section 156(3) of Cr.P.C., to the second respondent and then registered FIR in Crime No.38 of 2007 under Sections 420, 467, 468, 471 of IPC. Thereafter, the second respondent have filed negative final report without conducting any proper investigation. Therefore, he filed a petition for further investigation under Section 173(8) of Cr.P.C., but the learned Magistrate has passed order by treating it as a private complaint and directed the petitioner to produce



witnesses. Hence, he filed this petition.

6.The learned Government Advocate would contend that already the petitioner has given a complaint before the learned Judicial Magistrate and the same was forwarded to the second respondent and registered FIR in Crime No. 38 of 2007 and after elaborate investigation and the same was closed as 'mistake of law'. Thereafter, the petitioner filed petition under Section 173(8) of Cr.P.C., in Cr.M.P.No.1019 of 2019 and the same was considered by the learned Magistrate. The learned Magistrate converted the petition under Section 200 Cr.P.C., and directed the petitioner to produce the list of witness without producing witnesses, the petitioner filed this petition. Therefore, the petition is liable to be dismissed.

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

8.On perusal of records, it is observed that already the petitioner gave a complaint before the learned Magistrate and the same was forwarded to the second respondent. The second respondent also registered a case in Crime No. 38 of 2007 for the offences under Sections 420, 467, 468 and 471 of IPC and thereafter, conducted investigation and closed the case as 'mistake of law'. As against which, the petitioner filed a petition in Cr.M.P.No.1019 of 2019 under



Section 173(8) of Cr.P.C., wherein the learned Judicial Magistrate also observed that the Investigating Agency cannot investigate the case further without the original documents. The documents were filed in the civil case by the first respondent. In the said circumstances, the trial Court considers that further investigation cannot be ordered. The learned Judicial Magistrate considered that petition and treated as a private complaint and directed the petitioner to produce the list of witnesses. It is well settled law that the investigating Officer can file an application for further investigation and the petitioner cannot file petition for further investigation under Section 173(8) of Cr.P.C. If the police have filed closure report then the petitioner being defacto complainant has to file protest petition in the form of complaint. However, the petitioner filed petition before the trial Court under Section 173(8) of Cr.P.C., and the same was considered by the learned Magistrate and treated the petition under Section 200 of Cr.P.C. The learned Magistrate directed the petitioner to produce the list of witnesses. There is no infirmity found in the order of the learned Magistrate. Therefore, the present petition is liable to be dismissed. It is for the petitioner to decide whether he has to produce witness before the trial Court or not.



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P. DHANABAL,J.

Mrn

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9.With the above observation, this Criminal Revision Case is dismissed.

Consequently, connected miscellaneous petition is closed.

21.07.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.II, Virudhunagar.

2.The Inspector of Police,
District Crime Branch,
Virudhunagar,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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