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Crl.R.C.(MD) No.663 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.663 of 2023

Malliga Venugopal

... Petitioner/Petitioner

Vs.

The State represented by
The Inspector of Police,
CBCID,
Thanjavur.

... Respondent/Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the learned Judicial Magistrate, Thiruvaiyaru in Crl.M.P.No.4275 of 2022, dated 16.12.2022 and consequently direct the respondent police to conduct further investigation under Section 173(8) Cr.P.c., through some other investigation officer and file final report.



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For Petitioner : Mr.Aayiam K.Selvakumar

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision Petition is directed against the order passed in CrI.M.P.No.4275 of 2022, dated 16.12.2022, on the file of the Judicial Magistrate, Thiruvaiyaru, in dismissing the protest petition.

2. Originally, the petitioner's husband Venugopal has lodged a complaint before the Court of the Judicial Magistrate, Thiruvaiyaru and as per the order of the learned Magistrate, vide Court endorsement in C.M.P.No.2069 of 2017, F.I.R., came to be registered in Cr.No.193 of 2017, on 04.07.2017, on the file of the Pattukkottai Police Station against six persons for the alleged offences under Sections 403, 406, 420 and 120B I.P.C. Since the Pattukkottai police has not taken any action, the present petitioner Malliga Venugopal and one P.K.Sridhar



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have filed two petitions in Crl.O.P.(MD)Nos.3820 and 3821 of 2019, seeking transfer of the investigation with regard to the cases registered in Cr.No.193 of 2017 and Cr.No.201 of 2017. A learned Judge of this Court, vide order dated 13.03.2019 transferred the investigation to the respondent CBCID and accordingly, F.I.R., came to be registered in Cr.Nos.3 and 4 of 2019 and the Special Leave Petitions filed against the said order dated 13.03.2019, before the Hon'ble Supreme Court were ordered to be dismissed. It is further evident that the present petitioner has thereafter filed another Original Petition in Crl.O.P. (MD)No.9776 of 2021 seeking direction to the CBCID to complete the investigation in Cr.NO.193 of 2017 and to file a final report within a time frame to be fixed by this Court and another learned Judge of this Court, vide order dated 22.07.2021, directed to complete the investigation and to file the final report before the concerned Court within six months.

3. The respondent, after completing the investigation, has filed a negative report dated 08.09.2022, as mistake of fact and a Referred Charge Sheet (RCS) notice was ordered to be served on the petitioner and after the receipt of RCS notice, the petitioner has filed a protest petition in Cr.M.P.No.4275 of 2022 and



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after hearing both sides, the learned Judicial Magistrate has passed the impugned order dated 16.12.2022, dismissing the said petition. Aggrieved by the said dismissal order, the petitioner has come forward with the present Criminal Revision Case.

4. The main case of the revision petitioner is that the accused Sanjay Sait in the second week of November received 1850 grams of old gold jewels from the petitioner, promising that he would melt and return the ingot gold for the purpose of making new gold ornaments, that believing the said words, has given the valuable old gold ornaments of 1850 grams with the accused Sanjay Sait and that the said accused and his wife Manisha Sanjay Sait had taken away the old jewels of the petitioner and ran away from the Pattukottai and that they had also cheated the other similarly affected persons.

5. The learned Counsel for the petitioner would submit that the respondent police without conducting proper investigation, has filed the final report as mistake of fact and that therefore, the petitioner is constrained to file a protest petition raising her objections.



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6. When the matter is taken up today for hearing, the learned Additional Public Prosecutor would submit that in the connected case in Cr.No.4 of 2019, the complainant therein one P.K.Shrithat has filed a similar petition in Crl.M.P.No. 3398 of 2022 and the learned Magistrate, after considering the objections of the respondent police, has dismissed the said petition vide order dated 15.10.2022 and that after the dismissal, the said P.K.Shrithar has preferred a Criminal Revision Case before this Court in Crl.R.C.(MD)No.174 of 2023, challenging the order passed in Crl.M.P.No.3398 of 2022 and the learned Judge of this Court, after hearing the learned Counsel for the petitioner, the Additional Public Prosecutor and the learned Counsel appearing for the private respondents, has passed an order dated 31.03.2023, dismissing the Criminal Revision Case and as such, the same is squarely applicable to the case on hand also.

7. The learned Counsel for the petitioner would fairly concede that the connected Criminal Revision Case was ordered to be dismissed on 31.03.2023.

8. At this juncture, it is necessary to refer the following passages in the order made in Crl.R.C.(MD)No.174 of 2023, dated 31.03.2023:



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“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



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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



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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.

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.”

9. Considering the above, the above decision given in Crl.R.C.(MD)No.174 of 2023, which was filed challenging the dismissal of the protest petition in connection with the case in Cr.No.4 of 2019, is squarely applicable to the case on hand, which relates to the case in Cr.No.3 of 2019. In the present case also, the learned Magistrate, by specifically observing that the petitioner has neither



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furnished any particulars nor produced any materials to show as to the owner of 1850 grams of jewels, that the petitioner has not produced any written documents or materials to show that the said jewels were handed over to the accused and that the petitioner has also not cited any witnesses, who witnessed the alleged entrustment, dismissed the petition.

10. Considering the entire facts and circumstances, the impugned order dismissing the protest petition by the learned Judicial Magistrate cannot be found fault with. Hence, this Court has no hesitation to hold that the present Criminal Revision Case is absolutely devoid of merits and the same is liable to be dismissed.

11. In the result, the Criminal Revision Case is dismissed.

30.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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To

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



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K.MURALI SHANKAR, J.

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