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Crl.R.C.No.1511 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl. R.C.No.1511 of 2023

and

Crl.M.P.No.13598 of 2023

O.A.Isasc Raj

... Petitioner

Vs

Zulfidar

... Respondent

PRAYER:Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records and to set aside the order dated 25.07.2023 made in Crl.M.P.No.312 of 2019 in C.C.No.915 of 2012 by the learned II Metropolitan Magistrate at Chennai.

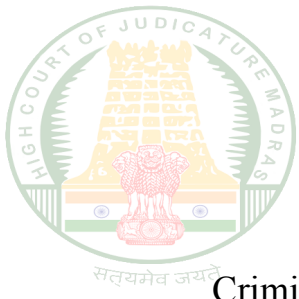
For Petitioner : Mr.Pradeep

For Respondent : Mr.R.Venkatavarathan

ORDER

This Criminal Revision Petition has been filed to call for the records and to set aside the order dated 25.07.2023 passed in Crl.M.P.No.312 of 2019 in C.C.No.915 of 2012 by the learned Second Metropolitan Magistrate, Egmore, Chennai.

2. The respondent herein filed a complaint under Section 200



Crl.R.C.No.1511 of 2023

WEB COPY

Criminal Procedure Code,(Cr.P.C.,) as against the petitioner and another before the learned 13th Metropolitan Magistrate, Egmore, Chennai-8 and the same was taken on file in C.C.No.915 of 2012, in which, the petitioner herein was arrayed as A1. Pending the said Calender Case, the petitioner herein/A1 filed a petition in Crl.M.P.No.312 of 2019 by invoking Section 245(2) of the Cr.P.C, to discharge him from the said Calendar case. However, the learned Metropolitan Magistrate, vide impugned order dated 25.07.2023, dismissed the petitioner's discharge petition. Aggrieved by the same, the petitioner/A1 has filed this criminal revision petition.

3. The learned counsel for the petitioner/A1 submitted that the petitioner is working as an auditor. The respondent is a customer. The transaction between the petitioner and the respondent is civil in nature. There is no *prima facie* criminal allegation made out as against the petitioner. Further, no transaction has been made by the petitioner with the respondent.

4 (i) Per contra, the learned counsel for the



Crl.R.C.No.1511 of 2023

WEB COPY

respondent/complainant submitted that the petitioner is an auditor. The petitioner/A1 asked the respondent/complainant to pay a sum of Rs.1,30,000/- as his commission for arranging the loan for the respondent. Even after receipt of the commission amount, the petitioner has not made any arrangement for getting the loan. Thereafter, the respondent asked the petitioner for the refund of the said commission amount. Since the petitioner has neither taken steps to avail loan nor repaid the commission amount, the respondent made the complaint before the Commissioner of Police, Egmore, Chennai, in which, an enquiry was conducted on 19.04.2011 and a closure report was filed on 09.12.2022 before the II Metropolitan Magistrate, Egmore, Chennai-8 by the Inspector of Police, D2 Anna Salai Police Station, Law and Order, Chennai -2.

(ii) Pursuant to that, the respondent filed criminal original petition in Crl.O.P.No.14164 of 2011 seeking direction to the police concerned to register his case dated 08.03.2011 as against the accused, in which, upon the submission made by the learned Additional Public Prosecutor that both the parties agreed to settle the dispute between



Crl.R.C.No.1511 of 2023

WEB COPY

themselves, by order dated 22.06.2011, this Court directed the police to furnish a copy of the closure report to the respondent with liberty to move before the concerned Magistrate. Hence the respondent has filed a complaint before the learned Magistrate. Thereby, the learned Magistrate has also taken the respondent's complaint on file in C.C.No.915 of 2012. Pending the Calendar Case, the petitioner has filed the petition for discharge and it was dismissed by impugned order.

(iii) He further submitted that the case was registered in the year 2012, whereas the petitioner filed the discharge petition after seven years in order to prolong the case. The respondent made a specific allegation against the petitioner in the complaint. Since *prima facie* materials are available as against the petitioner, the learned Magistrate has taken the cognizance of the complaint on file. The petitioner, instead of cooperating for the trial, in order to protract the case, has filed the petition for discharge. Hence the learned Magistrate rightly dismissed the petitioner's discharge petition. There is no merit in the revision and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner and



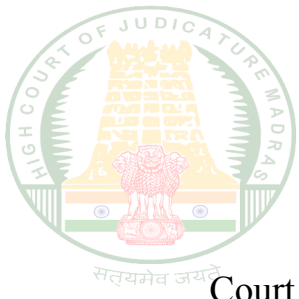
CrI.R.C.No.1511 of 2023

WEB COPY

the learned counsel appearing for the respondent and perused the materials available on record.

6. Admittedly, the respondent/complainant made a complaint as against the petitioner and another. The petitioner is an auditor. The respondent approached the petitioner for arrangement of a loan. The petitioner promised to arrange the loan, for which, he demanded commission amount. The respondent also paid sum Rs.1,30,000/- as commission to the petitioner for arranging the loan. After receipt of same, the petitioner neither arranged loan nor repaid the said sum of Rs.1,30,000/- to the respondent.

7. Originally the respondent filed a complaint as against the petitioner before the jurisdictional police station. The police, after conducting an enquiry/investigation, filed closure report. Since the police has filed closure report, the respondent filed CrI.O.P.No.14164 of 2011 before this Court to register the case based on the respondent's complaint dated 08.03.2011. However, the police informed before this



Crl.R.C.No.1511 of 2023

WEB COPY

Court that the complaint given by the respondent was closed. Hence, this Court *vide* order dated 22.06.2011 in Crl.O.P.No.14164 of 2011, directed the respondent to file a private complaint.

8. The defence of the petitioner is that since he is an auditor, the respondent has to prefer a complaint before the competent authority namely, the Institute of Chartered Accounts of India. Preferring complaint before the statutory authority is meant only for departmental action not for criminal action as against the accused. Whereas, the petitioner has committed breach of trust against his client. The respondent/complainant sets the law in motion. This Court while disposing O.P, has given liberty to the respondent to approach the learned Magistrate. Hence, the respondent filed a private complaint.

9. Since the complaint preferred by the respondent discloses *prima facie* case, this Court does not find any reason to interfere with the impugned order passed by the learned Metropolitan Magistrate and there is no merit in the revision. Further, grounds taken by the petitioner is



Crl.R.C.No.1511 of 2023

WEB COPY

nothing but defence, which can be taken before the trial court, during trial.

10. Hence the Criminal Revision Petition is dismissed. However, since the calendar case in C.C.No.915 of 2012 is pending from 2012, the learned Metropolitan Magistrate is directed to complete the trial and dispose of the case in C.C.No.915 of 2012 within a period of six months from the date of receipt of a copy of this order.

11. With the abovesaid direction, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

13.03.2025

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

Page 7 of 9



Crl.R.C.No.1511 of 2023

WEB COPY

1. The II Metropolitan Magistrate, Egmore, Chennai-08.
2. The XIII Metropolitan Magistrate, Egmore, Chennai.



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Crl.R.C.No.1511 of 2023

P.VELMURUGAN, J.

mfa

Crl. R.C.No.1511 of 2023
and
Crl.M.P.No.13598 of 2023

13.03.2025