

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2021

Pronounced on : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C.(MD).85 of 2017

Ranjith Soundarajan : Petitioner

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Dindigul.
(Crime No.48 of 2010)

2.Sujatha Somasekar : Respondents

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the order dated 13.07.2016 made in Cr.M.P.No.6852 of 2013 in R.C.S.No.156 of 2013 on the file of the Judicial Magistrate Court No.II, Dindigul and set aside the same.

For Petitioner : Mr.R.Gandhi

For Respondents : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side), for R1

: Mr.Prithiviraj, for R2.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.6852 of 2013 in R.C.S.No.156 of 2013, dated 13.07.2016 on the file of the Court of Judicial Magistrate No.II, Dindigul.

2.The revision petitioner, who is the defacto complainant, lodged a complaint against the second respondent herein with the first respondent police and on the basis of the said complaint, FIR came to be registered in Crime No. 48 of 2010 on the file of the first respondent police under Section 406 and 420 IPC.

3.It is not in dispute that the first respondent, after completion of investigation, has filed the referred charge sheet as 'mistake of fact' before the Court of Judicial Magistrate No.II, Dindigul, that on receipt of the notice, the revision petitioner has raised objections to the negative report filed by the police, by filing a protest petition and the said petition was taken on file in Cr.M.P.No.6852 of 2013 and that the learned Magistrate has passed the impugned order on 13.07.2016, closing the protest petition and consequently, closing the FIR in Crime No.48 of 2010 as 'mistake of fact'. Aggrieved by the said order, the defacto complainant has come forward with the present revision.

4.Whether the impugned order passed in Cr.M.P.No.6852 of 2013 in RCS.No.156 of 2013, dated 13.07.2016 on the file of the Court of Judicial Magistrate No.II, Dindigul, is liable to be set aside ? is the point for consideration.

5.Admittedly, the second respondent is the own sister of the revision petitioner. The revision petitioner has lodged a complaint alleging that as the Managing Director of Soundara Mills Private Limited, he entered into a slumsale agreement with the second respondent, who was the then Vice President of M/s.Soundaraja Sasha Industries Private Limited, for the purchase of the said industry for a sum of Rs.14 Crores, that the sale consideration was paid to the second respondent through bank transactions, that the petitioner was already having 53% of shares in the said industry, that to the petitioner's shock and surprise, the second respondent had clandestinely taken away a sum of Rs.10,59,08,041.02/- and misappropriated the same by misusing the relationship and that thereby, she committed breach of trust.

6.It is the specific case of the revision petitioner that the second respondent has filed a petition in CrI.O.P.No.12947 of 2010, for quashing the FIR in Crime No.48 of 2010 before this Court and the same was ordered to be

dismissed on 04.03.2011, that the petitioner has appeared before the respondent police many times and submitted various documents, that the first respondent has not conducted the investigation properly and conducted one side investigation, that the first respondent has thereafter, filed the referred charge sheet as 'mistake of fact' and that therefore, the petitioner, on receipt of notice for filing the negative report, was forced to file the protest petition, now under challenge.

7.The learned Judicial Magistrate, by recording the absence of the defacto complainant and non representation and by observing that there was no progress on the side of the defacto complainant, closed the protest petition and thereby recorded the closure of the FIR as 'mistake of fact'. The learned Magistrate has further observed that the defacto complainant is permitted to file a separate private complaint, if it is necessary.

8.The learned counsel for the revision petitioner would contend that the learned Magistrate has committed an error in dismissing the protest petition for non prosecution and for the non appearance of counsel for one hearing, that it is the duty of the trial Court to issue summons to the petitioner in the event of his counsel failed to appear before the Court, that the learned Magistrate ought to have treated the protest petition as a private complaint, as contemplated

under Section 190 r/w 200 Cr.P.C and ought to have proceeded in accordance with law, that the trial Court ought to have ordered further investigation in order to render substantial justice and to secure the ends of justice and that the reasons assigned by the learned Magistrate are unjust, unreasonable and unsustainable in law.

9. There is no provision in the Criminal Procedure Code, which speaks about the protest petition. Generally, the objections filed to the negative report filed by the police are called as the protest petitions and the same is permitted to be filed by the informant or the defacto complainant in two category of cases.

10. In the first category, the informant or the defacto complainant files a complaint before the police directly and the police, after investigation files a final report with negative finding in the form of referred charge sheet and in such case, on receiving the notice, the informant or complainant can file the protest petition, objecting to the decision taken by the police.

11. In the second category, the defacto complainant files a complaint before the Court of Judicial Magistrate and the learned Magistrate without taking cognizance directly, forwards the same to the police under Section

156(3) Cr.P.C and the police, after registering the case and completing the investigation files a negative report, then also the defacto complainant on getting the notice, is entitled to file a protest petition.

12.In the first category of cases, the Magistrate will have three 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 Section 190(1) (b) of Cr.P.C, if he is satisfied with the materials produced by the police, that there is sufficient ground to proceed, despite the fact that the police has only filed the negative report or that the Magistrate may order for further investigation, in case if he is satisfied that the investigation already conducted is not proper.

13.In the 2nd category of cases, the Magistrate can adopt the above three courses and in addition to that, an another course is available to the Magistrate that he may proceed to act under Section 200 and 202 Cr.P.C, upon considering the original complaint or by treating the protest petition as the complaint.

14.In the present case, as already pointed out, the revision petitioner has directly filed the complaint before the first respondent police and after filing of

the negative report, he filed the protest petition. It is evident from the impugned order, that the protest petition was filed by the revision petitioner on 29.08.2013 and the same was taken on file on 26.09.2013, that the defacto complainant was absent on 13.07.2016 till 05.30. pm and there was no representation for him on that day and that the learned Magistrate by observing that there was no progress on the side of the defacto complainant and after perusing the entire records and also the final report filed by the police, has closed the protest petition and also the FIR in Crime No. 48 of 2010 as 'mistake of fact'.

15.The main contention of the revision petitioner is that his protest petition ought to have been taken as a private complaint under Section 190 r/w 200 Cr.P.C and ought to have been proceeded in accordance with law. At this juncture, it is necessary to refer the decision of the Honourable Supreme Court in **Vishnu Kumar Tiwari Vs. State of Uttar Pradesh** reported in (2019) 8 SCC 27.

“41. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under [Section 161](#) of the Code that no prima facie case is made out, certainly the Magistrate could not be

compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under [Section 200](#) and [202](#) of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under [Section 190\(1\)\(b\)](#) of the Code for which there is no necessity to examine the witnesses under [Section 200](#) of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under [Section 200](#) of the Code or [Section 200](#) read with [Section 202](#) of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

42. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In [Mahabir](#)

[Prasad Agarwala v. State](#)¹⁰, a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of [Chapter XVI of the Criminal Procedure Code](#). We, however, also noticed that in [Qasim and others v. The State](#) and others¹¹, 10 AIR 1958 Ori. 11 11 1984 CrLJ 1677 a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows:

“4. ... In the case of [Abhinandan Jha](#) MANU/SC/0054/1967 (supra) also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under [Section 200](#) Cr.P.C. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case.”

In the present case, no doubt, the revision petitioner in his protest petition has listed out the documents and the witnesses to be examined. As rightly contended by the learned Government Advocate (Criminal Side), the Magistrate is vested with the discretion either to treat the protest petition as a complaint under Section 200 Cr.P.C and proceed in accordance with law, or the Magistrate can close the protest petition by giving liberty to the informant or defacto complainant to file a private complaint.

16.The Hon'ble Supreme Court in the above decision, has specifically held that the Magistrate could not be compelled to take cognizance by treating the protest petition as complaint. Hence the main contention of the revision petitioner that the learned Magistrate ought to have treated the protest petition as complaint under Section 190 r/w 200 Cr.P.C is devoid of merits and the same is liable for rejection.

17.As rightly contended by the first respondent side, the protest petition was filed on 29.08.2013 and same is pending from 26.09.2013 for the past three years and as rightly observed by the learned Magistrate, without any progress. Since the defacto complainant has not turned up and as there was no representation for the defacto complainant, the trial Court with no other option has closed the protest petition and consequently, closed the FIR.

18.It is pertinent to note that as already pointed out, the learned Magistrate has given permission to the defacto complainant to file a separate private complaint if it is necessary. As already pointed out, the impugned order was passed on 13.07.2016 and on that day itself, the learned Magistrate has granted permission to file a separate complaint and as rightly contended by the respondent side, this Court is also at loss to understand as to why the petitioner has come forward with the present revision and to wait for the past more than four years. Since the learned Judicial Magistrate has granted permission to file a separate private complaint, the action of the learned Magistrate in closing the protest petition and thereby closing the FIR as mistake of fact, cannot be found fault with. The revision petitioner has not canvassed any other reason or ground to impugn the order. Hence this Court decides that the revision is devoid of merits and the same is liable to be dismissed.

19.In the result, this Criminal Revision case is dismissed.

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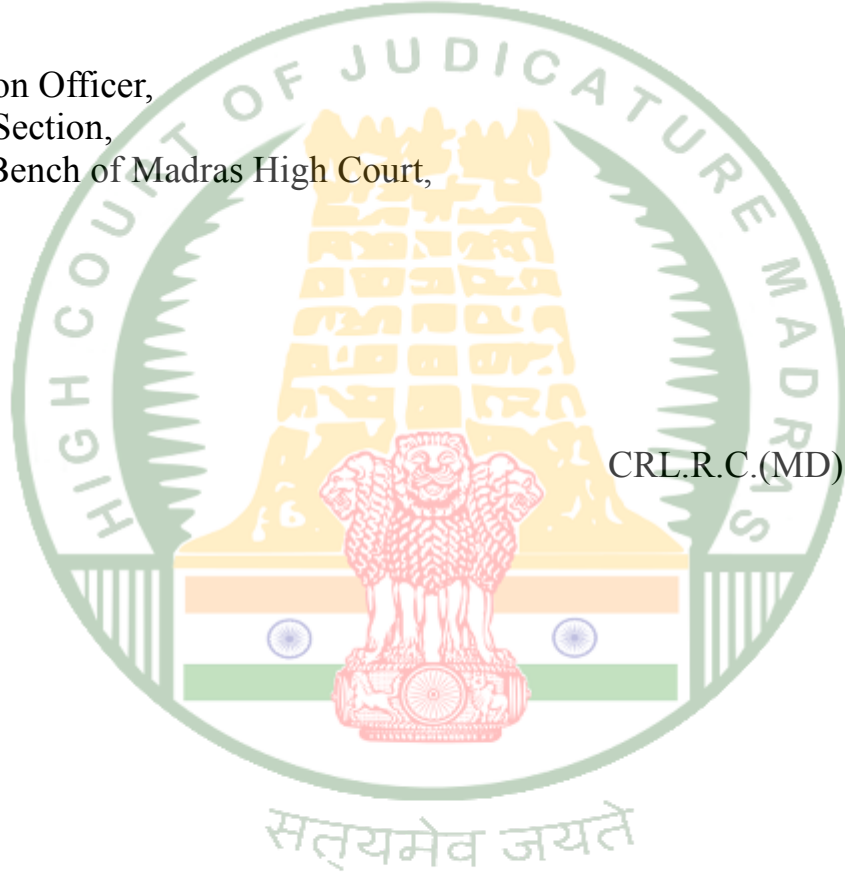
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K.MURALI SHANKAR, J.

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To

- 1.The Judicial Magistrate Court No.II,
Dindigul.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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