

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Cr1.R.C.No.1877 of 2003

Velumani Gandhi

.. Petitioner/Complainant

vs.

1.Kailasam
2.Manoharan
3.Rafig

.. Respondents/Accused

Prayer: This Revisions Petition has been preferred against the order 10.11.2003 made in C.M.P.No.3902 of 2003 on the file of the learned District Human Rights Judge, Coimbatore.

For Petitioner : Mr.P.V.S.Giridhar

ORDER

This revision has been preferred against the order passed by the learned Human Rights Judge (District & Sessions Judge), Coimbatore.

2.According to the revision petitioner, the petition filed by him under C.M.P.No.3902 of 2003 under Section 2(d) of the Protection of Human Rights Act, 1993, was dismissed by the learned Human Rights Judge without considering the facts stated therein and also without examining the witnesses cited under the complaint.

3.A perusal of the order of the learned trial Judge will go to show that even according to the petitioner the occurrence had taken place on 16.7.2003, but the complaint was preferred after a long delay. The petitioner has filed the complaint on 30.10.2003 i.e., about three months after the occurrence. According to the petitioner, he was charged under NDPS Act for having found in possession of ½ kgs of ganja and a case has been registered under Cr.No.111 of 2000 in C.C.NO.85 of 2003 and while he was attending to the hearing of the said case he was threatened by Al-Sub Inspector of Police to admit the offence in C.C.No.85 of 2003 and on the next hearing day i.e., on 16.7.2003 both the accused compelled him to sign in an unwritten paper. When this was questioned by his lawyer Thenmozhi, the accused left the place. But when the lawyer went inside

the Court to prefer a complaint about the attitude of the accused against the petitioner, the accused assaulted him and dragged on him to the police station in a jeep by saying that he is involved in an attempted murder case which was subsequently charged under Section 302 IPC.

4. The learned counsel appearing for the revision petitioner relying on 1957 MLJ 157 (P.S. Ramaswami Nadar Vs. R. Viswanathan and another), would contend that even in the private complaint preferred by the petitioner herein he has furnished the list of witnesses and without examining the other two witnesses cited in his complaint the learned Judicial Magistrate, after recording his sworn statement, has dismissed the application, which is illegal. The facts of the above cited case is that:

"The petitioner in C.C.No.3971 of 1956 on the file of the Seventh Presidency Magistrate, Chennai, had preferred a private complaint under Section 200 of Cr.P.C., against the accused, two in number under Section 420 and under Section 420 r/w 109 IPC.

In the cited case, the learned counsel, who appeared for the petitioner, informed the court that there are some more witnesses to be examined in the complaint and in spite of his representation the learned Magistrate has dismissed the complaint only on the basis of the sworn statement of the complainant. While condemning the attitude of the Magistrate, the learned Judge of this Court has observed as follows:-

"The result is that when the complaint was presented, there were two witnesses present along with the complainant, and under Section 200, the Magistrate shall examine the complainant and the witnesses present (if any) on oath. The section is mandatory, and it is therefore obligatory on the part of the Magistrate to examine not only the complainant, but also the witnesses who are present in Court. The Magistrates in future will do well in asking the complainant as soon as he is examined on oath whether any witnesses are present in Court, and if witnesses were present, it is his duty to examine them on oath; but if no witnesses are present, he will do well to mention in the order itself that no witnesses were present according to the statement of the complainant or the advocate who appeared in Court. There is no such reference in the present case and very probably the Magistrate has overlooked the provisions of Section 200 as amended. According to the Section as it originally stood, it is enough if the Magistrate examined the complainant on oath. Under the new section, it makes it incumbent on the Magistrate to examine the witnesses who were present in Court on oath, and he can apply section 203 only if after examining the complainant and witnesses who are present in Court, he finds a sufficient ground for not proceeding with the case."

While attacking the orders of the trial Court, the learned counsel for the revision petitioner would rely on AIR 1972 SC 1607 (Debendra Nath Bhattacharyya and others Vs. The State of W.B. and another), and would contend that the Magistrate need not determine at the stage of issue of process the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true.

5. The facts of the case cited in 1957 MLJ 157 (P.S. Ramaswami Nadar Vs. R. Viswanathan and another) differs from the facts of the case on hand because even though the complainant has furnished the list of witnesses in his complaint, he has not filed any memo before the trial Court to show that both the witnesses were present on the day of recording his statement i.e., on 03.11.2003. In this case no order of dismissal was passed after recording the sworn statement by the learned Human Rights Judge. On 3.11.2003 the learned Judge has adjourned the case after recording the sworn statement of the complainant to 4.11.2003 and also from 4.11.2003 to 7.11.2003 and subsequently to 10.11.2003, on which date only the learned Human Rights Judge has passed the impugned order, which is under challenge in this revision. It is not the case of the complainant that in spite of his information to the learned Human Rights Judge, about the availability of the other two witnesses on 3.11.2003, 4.11.2003, 7.11.2003 and also on 10.11.2003, the learned Judge ignoring the representations made by the complainant refused to examine the witnesses who were available in the Court, and passed an order of dismissal. It is pertinent to note from the list of the witnesses furnished by the complainant in the complaint that the second witness is an advocate viz. Mrs. Thenmozhi. It is nowhere stated in the complaint that in the presence of those two witnesses cited in the complaint the learned Human Rights Judge has passed an order of dismissal.

6. The complaint under Human Rights Act by the complainant is that he was assaulted by both the accused on 16.7.2003. In the complaint itself, he would admit that he was produced before the Magistrate for remand on 16.7.2003 after the arrest and he was remanded to judicial custody in a murder case and that he was released on bail only after 90 days. This is the explanation given by the complainant for delay in preferring the complaint after three months from the date of occurrence. But even after remand it is open to the complainant to prefer a complaint to the jail Superintendent to the effect that he was assaulted by the accused (police officials) and also would have filed a petition to subject himself for treatment by the Medical Officer in the prison. But no such step was taken by the accused. It is on record that the accused is facing several criminal cases under NDPS Act and also under Indian Penal Code. Under such circumstances, I do not find any reason to interfere with the well considered order of the learned Human Rights Judge.

7.In the result, the revision is dismissed confirming the order made in C.M.P.No.3902 of 2003 on the file of the District Human Rights Court, Coimbatore.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

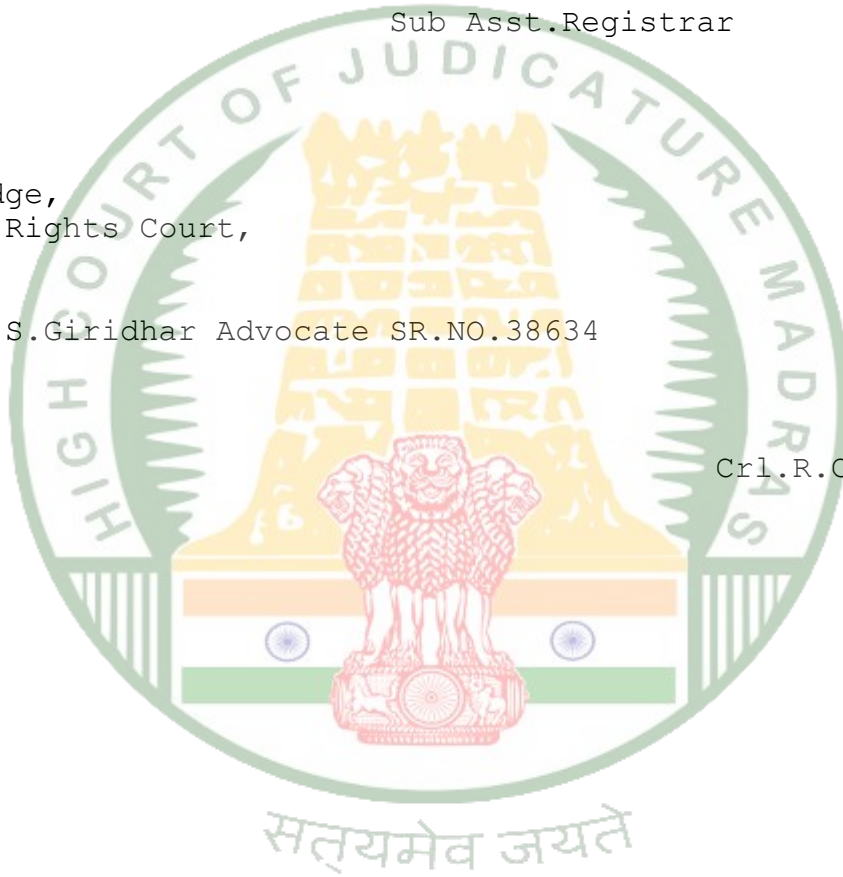
To,

The Special Judge,
District Human Rights Court,
Coimabtoire.

1 cc to Mr.P.V.S.Giridhar Advocate SR.NO.38634

SSV (co)
RD 11.7.07

Cr1.R.C.No.1877 of 2003



WEB COPY