



CrI.O.P.(MD).No.17505 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.08.2026

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CrI.O.P(MD)No.17505 of 2026

Abraham David

... Petitioner/Petitioner/
Complainant

Vs

1. Varatharajan

2. V.Jegath

3. V.Anitha

4. V.Ramkumar

... Respondents 1 to 4/
Respondents 1 to 4

5. State of Tamil Nadu

Represented by

The Inspector of Police,

SIPCOT Police Station,

Thoothukudi.

... 5th Respondent/Respondent/
Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records in Cr.M.P.No.1318 of 2026 dated 06.07.2026 on the file of the Judicial Magistrate No.III, Thoothukudi, Thoothukudi District and set aside the same and pass such further or other orders as this Court may deem fit.

For Petitioner

: Mr.KA.Raamakrishnan

For R5

: Mr.B.Arun

Government Advocate (CrI.Side)



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ORDER

The present petition has been filed by the complainant in Cr.M.P.No. 1318 of 2026 on the file of the Judicial Magistrate No.III, Thoothukudi, Thoothukudi District, seeking to set aside the order dated 06.07.2026, wherein instead of directing the jurisdictional police to register an FIR, the learned trial Judge has proceeded to follow the private complaint procedure.

2. A perusal of the complaint of the petitioner reveals that it is a case of job rocketing and the money has been transferred by the petitioner through bank transactions, however the accused persons are absconding. According to the petitioner, he would not be in a position to collect the evidence which are in the custody of the accused persons. Unless an FIR is registered and the proceedings under Section 102 of Cr.P.C are taken into account, it would not be possible for him to prove the offence. In such an event, the order of the trial Court treating the petition as a private complaint would cause a great prejudice to him and it only help the accused persons escaped.



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3. The learned counsel appearing for the petitioner had relied upon the decision of Hon'ble Supreme Court reported in **(2023) 9 SCC 705** in **(XYZ vs. State of Madhya Pradesh and others)** especially paragraph Nos 23 to 25 and submitted that in cases where documentary or other evidences is in the physical possession of the accused or other individuals, it would only be proper on the part of the jurisdictional magistrate to order for a police enquiry.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. It could be seen from the records that the petitioner alleges the case of job rocketing where the documents are available in the custody of the accused persons. The judgement of the Hon'ble Supreme Court reported in **(2023) 9 SCC 705** in **(XYZ vs. State of Madhya Pradesh and others)**.

Paragraph Nos 23 to 25 are extracted as follows:

“23. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to



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the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the Cr.P.C, the matter ought to be sent to the police for investigation.

24. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatised, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of grate probative value) on record, which would be unjust.



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25. In this backdrop, we are clearly of the view that the JMFC ought to have exercised jurisdiction under Section 156(3) Cr.P.C to direct the police to investigate.”

6. In view of the judgement of the Hon'ble Supreme Court, it is clear that in cases where the documentary evidences are available with the accused persons and the complainant would not be in a position to prove the case without the help of the police, there cannot be a direction to treat the application under Section 152 (3) of Cr.P.C as a private complaint which would only cause prejudice to the complainant.

7. In such view of the matter the order dated 06.07.2026 is set aside and the matter is remitted back to the file of the concerned Court to consider the application on merits and pass orders in accordance with law in the light of the judgment of the Hon'ble Supreme Court.



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8. With the above said observations, this Criminal Original Petition is allowed.

14.08.2026

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

1. The Judicial Magistrate No.III,
Thoothukudi,
Thoothukudi District.
2. The Inspector of Police,
SIPCOT Police Station,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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