



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

CRL.O.P.(MD).No.19524 of 2014

and

M.P.(MD).Nos.1 and 2 of 2014

D.Sheela

: Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

2.P.Jones Raj

: Respondents

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to set aside the order passed in Cr.M.P.No.8758 of 2014 dated 01.10.2014 on the file of the Judicial Magistrate No.I, Nagercoil.

For Petitioners : Mr.P.T.Ramesh Raja

For Respondent No.1 : Mr.K.Anbarasan,

Government Advocate (Criminal Side)

For Respondent No.2 : Mr.R.Murugan

O R D E R

The petitioner has come forward with this application challenging the impugned order passed by the learned Judicial Magistrate No.I, Nagercoil dated 01.10.2014 and the said complaint was forwarded to the Inspector of Police, District Crime Branch, Nagercoil to register the case and investigate the same.

2.The learned counsel for the petitioner would submit that the petitioner and the wife of the second respondent are working as lecturers in Women Christian College, Nagercoil as temporary staffs in the department of Tamil. It is the case of the second respondent that the petitioner and her husband had received Rs.5 lakhs in order to make the temporary job into permanent. Thereafter, neither the job was made permanent nor returned the money and hence, the second respondent has preferred a complaint on 04.04.2015 to the first respondent. After enquiry, the complaint was closed on 21.08.2014. On 11.08.2014, the second respondent has preferred another complaint before the District Collector and other officials stating that there was a development to the effect that after the payment of the amount, he met the Correspondence of the College and the Correspondence admitted that he received the amount. As such, the second complaint is a false one, because the Correspondence has taken charge only on 21.09.2012 and the alleged money transaction was in the year 2011. Since the case has not been registered, as per Section 156(3) Cr.P.C the second respondent filed a private complaint before the Judicial Magistrate No.I, Nagercoil and on that direction only, the case has been registered. He further submitted that the second respondent to prevent the petitioner getting a job as permanent, for that reason only, he sent a copy of the complaint to all the Educational Authorities. Hence, only with an intention to harass the petitioner, the complaint has been given.



3. The learned counsel would take me to the Paragraph No.4 of the status report filed by the first respondent in which, it was stated that on the basis of the direction of the Deputy Superintendent of Police, District Crime Branch, Nagercoil as per Ref.DSP/DCB1341/2014, the first respondent conducted an enquiry. In the enquiry, the second respondent was not able to produce any document to show that he had deposited the amount with the H.D.F.C Bank account of the petitioner's husband. The second respondent had produced a xerox copy of the bank challan, which appears forged one.

4. The learned counsel relied upon the decision in *PRIYANKA SRIVASTAVA AND ANOTHER V. STATE OF U.P AND OTHERS* reported in 2015(3) CTC 103, wherein it was held as under

26. At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A Court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigants takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C applications are to be supported by an Affidavit duly sworn by the Applicant, who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the Applicant more responsible. We are compelled to say so as such kind of Applications are being filed in routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people, who are passing Orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in criminal Court as if some body is determined to settle the scores. We have already indicated that there has to be prior Applications under Section 154(1) and 154(3), while filing a Petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the Application under Section 156(3) be supported by an Affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating Criminal Prosecution, as are illustrated in *Lalitha Kumari* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."



5. In view of the above decision, the learned counsel for the petitioner submitted that when the Magistrate receives a complaint, he is not bound to take cognizance, if the facts alleged in the complaint disclose the commission of an offence, the Magistrate has discretion in the matter after. If on reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) Cr.P.C will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. But here, the Magistrate simply forwarded the complaint with a direction to register the case and investigate the same. He further submitted that the petitioner and her husband had approached the de-facto complainant stating that they are very well known to the Ex-minister and giving a promise that he will give a permanent post, he received the amount. He further submitted that during the relevant time, he is not a minister and after 16.05.2011, he assumed charge of minister. Therefore, the averment made in the complaint is false and hence, he prays for setting aside the impugned order.

6. Resisting the same, the learned counsel for the second respondent would submit that it is true that the second respondent has given a complaint against the petitioner alleging that without enquiring the bank officials, it was closed. He would further submitted that he paid Rs.5 lakhs, which has been transferred, only through the bank, to his account, in order to convert the job into permanent and neither he got the permanent job nor repaid that amount and hence, he sent the second complaint to the District Collector, Superintendent of Police and other Officials. Since the respondent police had not taken any steps to register the case, the second respondent by invoking Section 156(3) Cr.P.C., filed a private complaint and on that basis, the trial Court has passed an order. Hence, the impugned order does not suffer from any irregularity and prays for dismissal.

7. I have considered the rival submissions made on either side and also perused the materials available on record.

8. The petitioner and the wife of the second respondent are working as temporary staff in a Women Christian College, Nagercoil. The case of the second respondent is that to get a permanent job, he paid Rs.5 lakhs and that amount has to be transferred by way of bank transaction. So, the payment of the amount is not disputed. The question as to whether, if there is any reality to get permanent job or if there is any other transaction has to be decided only at the time of investigation and not now. The decision in (*PRIYANKA SRIVASTAVA AND ANOTHER V. STATE OF U.P AND OTHERS*, 2015(3) CTC 103), cited supra in which, it was stated that the Magistrate will entertain the application has to verify the truth and also verify the veracity of the allegations before passing that order. The affidavit filed by the applicant should indicate that he had already preferred applications under Section 154(1) and 154(3) Cr.P.C, before filing petition under Section 156(3) Cr.P.C., and as such, the order should be passed judicially. It is an admitted fact that the second respondent herein has given a complaint to the first respondent in a



earlier point of time and after enquiry, it was closed on 21.08.2014. Subsequently, he has given another complaint on 11.08.2015 to the Superintendent of Police and the copy marked to other educational Officer.

9. Furthermore, on perusal of the typed set of papers which would show the document list that on 04.04.2014, a complaint was given to the first respondent and on 11.08.2014 the second complaint was given to the Superintendent of Police and other Higher Officials and also the xerox copy of the bank statement, have been marked as documents Nos.1 to 4 and on that basis only, the Magistrate has considered the same and after hearing the same, forwarded the complaint to the Inspector of Police to register the FIR and investigate the same. I have perused the private complaint which shows the factum of previous happening and also the documents to prove the averments made in the complaint and on that basis only, the learned Magistrate has forwarded the complaint to the respondent police to register the case.

10. In view of the above, the impugned order dated 01.10.2014 made in Cr.M.P.No.8758 of 2014 passed by the learned Judicial Magistrate No.I, Nagercoil, does not suffer from any irregularity. Hence, this petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Nagercoil.

2. The Inspector of Police,
District Crime Branch,
Nagercoil, Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Murugan, Advocate SR.No.50162

+1cc to Mr.P.T.Ramesh Raja, Advocate SR.No.50066

Order made in
CRL.O.P. (MD) .No.19524 of 2014
and
M.P. (MD) .Nos.1 and 2 of 2014
Dated:- 31.08.2015

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NS/AN-MP/16.09.2015 : 4P/6C