



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2015

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE S.VIMALA

Criminal Revision Case (MD)No.319 of 2015

PUSHPA VASANTHI

.. Petitioner

Vs.

1. THE INSPECTOR OF POLICE,
PANAGUDI POLICE STATION, PANAGUDI,
TIRUNELVELI DISTRICT.

2. ANNA PUSHPARAJ

3. SEKAR

4. THAVASIKANI

5. ANTHONY RAJAN

6. DELSI

7. RAJESH

8. JEYAKANI

.. Respondents

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records in Cr.M.P.No.6279 of 2015 on the file of the Judicial Magistrate, Valliyoor, dated 06.07.2015 and set aside the same and direct the first respondents to register the complaint in accordance with law.

For Petitioners : Mr.R.Ramachandran

For R1 : Mr.P.Kandasamy

Government Advocate (crl. side)

For R2 & R4 to R8 : Mr.S.Meenakshi Sundaram

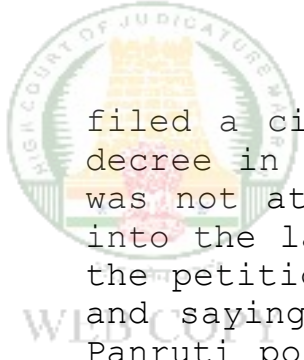
For R3 : No Appearance

ORDER

The petitioner herein has filed a complaint under Section 156 (3) Cr.P.C., before the learned Judicial Magistrate to refer the complaint to the police for investigation.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The sum and substance of the complaint is that the petitioner herein along with her husband Pushparaj and Gnanamuthu



filed a civil suit against Thavasikani and others and obtained a decree in O.S.No.169 of 2005, in favour of them; when the husband was not at home on 15.06.2015, the respondents 2 to 8 trespassed into the land and stopped the unearthing work and also intimidated the petitioner threatening her by showing the deadly weapon aruval and saying that they would murder her; a complaint was made to Panruti police station; as no action was taken, this petition has been filed before the Court.

3.The Court below has taken the sworn statement of the complainant and thereafter, compared the averments made in the sworn statement and in the complaint and has chosen to dismiss the petition, giving a finding that there are no materials to refer the complaint to the police, for investigation. The order passed by the Magistrate is under challenge in this revision petition.

4.Perusal of the copy of the complaint would reveal that on four dates viz., 15.06.2015; 18.06.2015 and 19.06.2015 complaints are stated to have been sent and for which copies have been enclosed. The procedure adopted by the Magistrate is claimed to be incorrect relying upon the decision reported in **2001 (1) CTC 500 (Suresh Chand Jain V. State of Madhya Pradesh and another)**. In the said decision, it has been held that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. **If he does so, he is not to examine the complainant on oath**, because he was not taking cognizance of any offence therein. The relevant observation reads as under:-

"The position is thus clear. Any judicial magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."



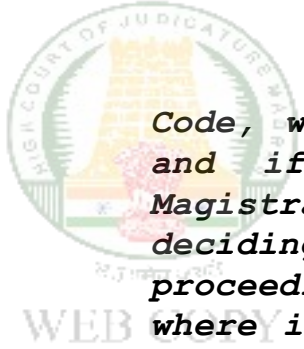
5. Per contra, the learned counsel for the respondents 2 to 8, relying upon the decision reported in 2013 (1) CTC 714 (ANJU CHAUDHARY v. STATE OF U.P AND ANOTHER), has contended that while dealing with an application or passing an order under Section 156 (3) Cr.P.C., the learned Magistrate does not take cognizance of an offence, but the learned Magistrate is expected to apply his mind before referring the matter for investigation and that the learned Magistrate has rightly done that, by dismissing the complaint.

6. Therefore, the issue to be decided is whether the procedure adopted by the learned Magistrate is correct or not?

7. The procedure to be followed by the learned Magistrate is indicated in the same Judgment, cited supra, in paragraph Nos. 37 and 38. The distinction to be kept in mind in dealing with different stages of the case has been pointed out.

"37. Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156 (3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer or by such other personas he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of the Magistrate under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code.

These cases would fall in different classes. This view was also taken by a Bench of this Court in the case of Rameshbhai Pandurao Hedau v. State of Gujarat [(2010) 4 SCC 185]. **The distinction between these two powers had also been finally stated in the judgment of this Court in the case of Srinivas Gundluri & Ors. v. SEPCO Electric Power Construction Corporation & Ors. [(2010) 8 SCC 206] where the Court stated that to proceed under Section 156(3) of the**



Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. But where it takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code"

8. From the decision referred, it is clear that what is expected of the Court below is that the Court is required to barely read the complaint and if it discloses the cognizable offence, the Court may direct the police to investigate the matter. If the Court takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code. Therefore, it is clear that the procedure adopted by the Magistrate is not correct.

9. The learned Magistrate has neither attempted to find out whether any cognizable offence is made out from the complaint nor decided to take cognizance of the offence to find out whether there are sufficient ground to proceed further. Therefore, the order of the learned Magistrate is set aside and remanded back to the learned Magistrate to pass orders in accordance with the procedure indicated above.

10. This Criminal Revision Petition is ordered accordingly.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

Rj2

TO

1. THE JUDICIAL MAGISTRATE, VALLIYOOR

2. THE CHEIF JUDICIAL MAGISTRATE, TIRUNELVELI

3. THE INSPECTOR OF POLICE,
PANAGUDI POLICE STATION, PANAGUDI,
TIRUNELVELI DISTRICT.

+1CC to Mr.S.Meenakshi Sundaram Advocate Sr.No.59319

GJM/GSV/PM/14.10.15-4P-5C