



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARANCrl.R.C.(MD)No.759 of 2017

WEB COPY

V.Jayaraj

... Petitioner

Vs.

1. The Sub-Inspector of Police,
Sayalgudi Police Station,
in CSR No.204 of 2017
2. The Beepai J.John
S/o Joseph Jahariya,
D.No.10, Harvey Nagar 1st Street,
Madurai.
3. S.Jeyapalan
4. J.Parvathi

... Respondents

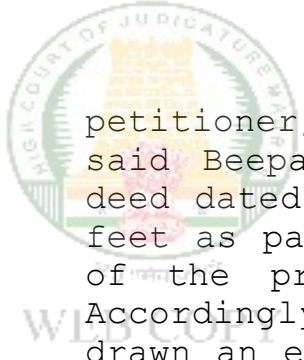
Prayer: Petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the petition in Crl.M.P.No.3954 of 2017 and set aside the order passed by the learned Judicial Magistrate, Muthukulathur dated 31.08.2017 in Crl.M.P.No.3954 of 2017 as illegal and to direct the first respondent to register the same.

For petitioner :Mr.C.M.Arumugam
For respondents :Mr.K.Anbarasan
Govt. Advocate (crl.side)
for R1

O R D E R

This criminal original petition has been filed to set aside the order passed by the learned Judicial Magistrate, Muthukulathur dated 31.08.2017 in Cr.M.P No. 3954 of 2017 and to direct the 1st respondent to register the First Information Report based on the complaint.

2.The contention of the counsel for the petitioner is that on 09.07.2012, the petitioner purchased a property to an extent of 55 ½ cents out of 96 cents bearing Survey No.282/1B from one Veerasankili. Further, on the very same day, the said Veerasankili sold the remaining property to an extent of 41 ½ cents bearing Survey No.282/1B to one Beepai J.John, S/o. Joseph Jaharia. Further, since there was no access to the property of the



petitioner, the petitioner entrusted a sum of Rs. 15,000/- to the said Beepai J. John, S/o. Joseph Jaharia and obtained a consent deed dated 09.06.2012 from him to the property to an extent of 10 feet as pathway of the petitioner's property in the southern side of the property of said Beepai J. John, S/o. Joseph Jaharia. Accordingly, the petitioner started to use the said pathway and drawn an electric line to his house by erecting electric poles in the said pathway. In the meanwhile, the said Beepai J. John, S/o. Joseph Jaharia has executed a sale deed in favour of one Parvathi, W/o. Jayabalan in respect of the property including pathway with an intention to deceive the petitioner. Apart from that on 13.07.2017, the said Parvathi along with her husband trespassed into the property of the petitioner and damaged the fencing worth about a sum of Rs. 40,000/-.

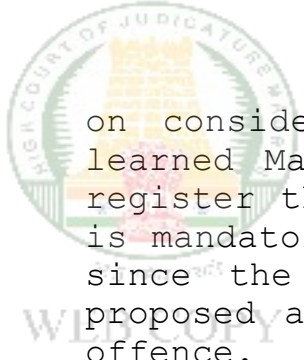
3. The further contention of the petitioner is that in pursuant to the act of the said proposed accused, the petitioner lodged a complaint before the 1st respondent and obtained CSR No. 204/2017 dated 18.08.2017, but the first respondent has not taken any legal action against the proposed accused. Hence, the petitioner sent a complaint to the Superintendent and Deputy Superintendent of Police, Ramanathapuram on 25.07.2017 and thereafter, he filed a petition before the learned Judicial Magistrate, Mudhukulathur in CrI.M.P No. 3954 of 2017 for registration of First Information Report.

4. The learned counsel for the petitioner further contended that the proposed accused persons have no *locus-standi* to raise their voice at this stage, viz., prior to the registration of the First Information Report. It is a well settled by a number of decisions of the Hon'ble Apex Court that the proposed accused persons have no right of audience in the pre-cognizance stage.

5. The learned counsel appearing for the petitioner contended that the legal position is that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register a FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. There are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex-facie discloses the commission of a cognizable offence.

<https://hccourts.in/cases>

6. It is further contended by the counsel for the petitioner that



on consideration of the complaint made by the petitioner, the learned Magistrate has failed to direct the concerned police to register the case, observing that there is a prima facie case, it is mandatory on the part of the 1st respondent to register the FIR since the information given by the petitioner as against the proposed accused clearly mentions the commission of a cognizable offence.

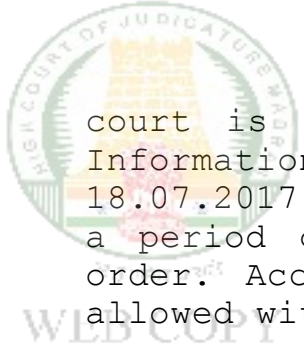
7. Per contra, the learned Government Advocate (Crl.Side) would contend that the learned Judicial Magistrate on his discretion by applying his mind to the facts and circumstances of the case has passed the well considered order and the said order is not liable for any kind of interference in any manner and hence the revision case filed by the petitioner is to be dismissed.

8. I heard Mr.C.M.Arumugam, learned counsel appearing for the petitioner and Mr.K.Anbarasan, learned Government Advocate (crl.side) appearing for the respondent State.

9. It is a settled law that section 156(3) Cr.P.C., has to be exercised only when there is sufficient ground to proceed and before exercising such jurisdiction under section 156(3) Cr.P.C., the Magistrate is required to apply his mind in a proper perspective manner. Further, the same should be reflected in his order and merely holding that documents submitted by the petitioner is an unregistered, will not be sufficient. Further, if the consideration of the learned judge if makes out commission of a cognizable offence, what weighed with the Magistrate to order for Registration of First Information Report as well as investigation under section 156(3) Cr.P.C., would be as per law. On a perusal of the order passed by the Magistrate, **it appears that nowhere it has been reflected that the Magistrate has actually applied his mind and come to the conclusion that in the given case, there is no sufficient averment or ground to decline not to order for an investigation to be done by the respondent police. Therefore, without considering all these aspects and without considering the prima facie of the complaint, the learned Magistrate has mechanically passed the order without application of mind.** Further, the learned Judicial Magistrate dealt with the complaint of the petitioner as if he is invoking the civil procedure code.

10. Therefore, I am of the considered view that the learned Magistrate is not justified in dismissing the petition for registration of the complaint by Police in such a mechanical manner without proper application of mind.

11. In the result, on the careful consideration of the materials available on record, this court has no other go except to accept that the case of the petitioner as he has made out prima facie case to constitute the offence. Therefore, the order passed by the learned Judicial Magistrate, Muthukulathur in Cr.M.P No. 3954 of 2017 dated 31.08.2017 is hereby set-aside. At the same time, this



court is further directed the 1st respondent to register First Information Report based on the complaint of the petitioner dated 18.07.2017 and to proceed the case in accordance with law with in a period of 2 weeks from the date of receipt of copy of this order. Accordingly, this instant criminal revision petitions is allowed without costs.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Muthukulathur.

2. The Sub-Inspector of Police,
Sayalgudi Police Station,
in CSR No.204 of 2017

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

+ 1 CC TO MR.C.M.Arumugam, ADVOCATE IN SR No.81243
skn

MK/KK/SAR-1/09.10.2017/4P/5C

Cr1.R.C. (MD) No.759 of 2017
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