



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

CORAM :

**THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN**

Cr1.R.C.(MD) No.102 of 2016

Velmurugan

... Petitioner

Vs.

1. Jothi

Former Tahsildar,  
Tahsildar Office,  
Kovilpatti,  
Thoothukudi District.

2. Chandrasekaran,

Former Inspector of Police,  
West Police Station,  
Kovilpatti Taluk,  
Thoothukudi District.

3. Mosespal,

Assistant Doctor,  
Government Hospital,  
Kovilpatti,  
Thoothukudi District.

4. Sundara Krishnan,

Revenue Divisional Officer Personal Assistant,  
Revenue Divisional Office,  
Kovilpatti,  
Thoothukudi District.

... Respondents

Petition filed under Sections 397 read with 401 Cr.P.C, to call for the records in Cr.M.P.No.1088 of 2016 dated 12.02.2016 on the file of the learned Judicial Magistrate No.1, Kovilpatti, revise the same.

|                     |                              |
|---------------------|------------------------------|
| For Petitioner      | : Mr.N.Mohideen Basha        |
| For Respondents 2&3 | : No appearance              |
| For Respondents 1&4 | : Mr.P.Ganapathi Subramanian |

Reserved on : 10.07.2017

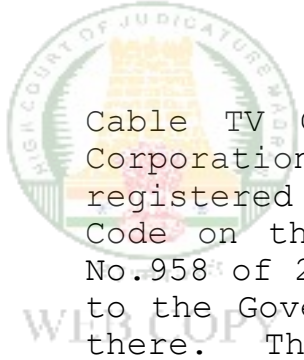
Pronounced on : 20.07.2017

#### **ORDER**

Challenging the dismissal of the application filed under Section 156 (3) of the Code of Criminal Procedure (for short "the Code"), the present Criminal Revision Case has been filed.

2.The case of the petitioner in short is as follows:-

The petitioner is the brother of one Iruthyaraj and they belong to a scheduled caste community. On 10.12.2015 at about 7.30 a.m, while doing agricultural work, Iruthyaraj was electrocuted due to the negligence on the part of officials of the Tamil Nadu Arasu

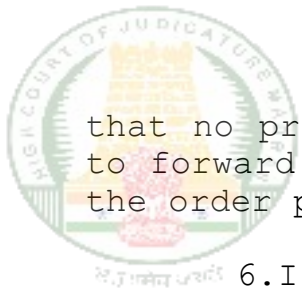


Cable TV Corporation and Tamil Nadu Generation and Distribution Corporation. Based on the death of his brother, a case has been registered for the offence under Section 304-A of the Indian Penal Code on the file of the West Police Station, Kovilpatti in Crime No.958 of 2015 and thereafter, the dead body was sent for postmortem to the Government Hospital, Kovilpatti and postmortem was conducted there. The deceased was a member of "Tamil Nadu Chief Minister's Uzhavar Pathukappu Thittam" and as per the said scheme, the wife of the deceased is entitled to get a compensation of Rs.3 lakhs. Hence, the wife of the deceased filed an application before the first respondent Tahsildar. The first respondent demanded Rs.30,000/- being 10% of the compensation amount as bribe. Thereafter, she approached the second respondent, the Inspector of Police for the purpose of getting a copy of the FIR registered by them for which he demanded a sum of Rs.5000/- from them. Then, she approached the third respondent who is the Doctor working in the Government Hospital, Kovilpatti for the purpose of obtaining a copy of the Postmortem Certificate who has also demanded a sum of Rs.10000/-. Hence, all the accused knowingly fully well that the petitioner is belonging to a scheduled caste community committed atrocities against them and thereby committed offence under Sections 3(1)(ix), 3(2) (vi) and 3 (2) (vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 34 of the Indian Penal Code, 1860. In the above circumstances, when the petitioner went to the police station to file a complaint against the respondents, the police refused to receive the same. Therefore, the petitioner filed a petition under Section 156(3) of the Code seeking a direction from the learned Judicial Magistrate to register a complaint and to conduct investigation. The said petition was dismissed by the Court below. Challenging the same, the present Criminal Revision Case has been filed.

3.I have heard Mr.N.Mohideen Basha, learned counsel for the petitioner and Mr.P.Ganapathi Subramanian, learned counsel for the respondents 1 and 4.

4.Learned counsel appearing for the petitioner would submit that when the complainant has disclosed a cognizable offence, the police refused to receive it. Thereafter, the petitioner approached the learned Judicial Magistrate with an application under Section 156 (3) of the Code but the learned Judicial Magistrate has mechanically dismissed the complaint stating that the petitioner making false allegations without filing any affidavit to that effect and the complaint also did not make out any cognizable offence.

5.Per contra, learned counsel for the respondents 1 and 4 submitted that learned Judicial Magistrate duly applied his mind and considered the averments made in the petition and since the allegation of bribe was made against the Government officials, as directed by the Supreme Court without filing an affidavit, he cannot seek for any direction. Apart from that the Judicial Magistrate has also carefully considered the petition and come to the conclusion



that no prima facie case is not made out and there is no necessity to forward the complaint to the police and there is no infirmity in the order passed by the Court below.

6.I have considered the rival submissions.

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7.From the perusal of the records, it could be seen that the petitioner made various allegations against the Tahsildar, Inspector of Police and a Doctor working in the Government Hospital and also against the Personal Assistant to the Revenue Divisional Officer. The crux of the allegation is that when his brother's wife approaches the above authorities seeking certificates, knowing fully well that the petitioner family belonged to a scheduled caste community, they demanded bribe and thereby intentionally committed the offence as stated supra.

8.The allegations contained in the petition very serious in nature. The petitioner is making allegations of bribe against the Government servants. When the allegations are very serious in nature, the petitioner should necessarily file an affidavit while making such allegations and the Judicial Magistrate is to be more vigilant with regard to the allegations made in the complaint and he cannot expect to issue direction without proper application of mind. Recently, the Hon'ble Supreme Court in **Priyanka Srivastava and another Vs.State of U.P.** reported in **2016 2 SCC 287** has considered that number of false complaints have been filed to settle private scores and has held that the application filed under Section 156(3) should be supported by duly sworn in affidavit while invoking the jurisdiction of Judicial Magistrate. The relevant portion of the said judgment reads as follows:-

*"29.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 litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.*

30.In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure 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 a 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 a criminal court as if somebody is determined to settle the scores.

31. 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 Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

9. In view of the the above, the allegations made in the complaint are serious in nature which was not supported by an affidavit by the petitioner and in the absence of any other material, the Court cannot mechanically accept the same and forward the complaint to the police for investigation. In the above circumstances, I find no infirmity or irregularity in the order passed by the Court below. Accordingly, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.1, Kovilpatti.

+1cc to Mr.P.GANAPATHI SUBRAMANIAN Advocate in SR. No.66750

SMS

JS/MR.KKR/SAR.1/1.8.2017/4P-3C

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

Order made in  
Crl.R.C.(MD) No.102 of 2016  
20.07.2017