



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2017

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**THE HON'BLE MR. JUSTICE M.DHANDAPANI**

Crl.O.P.(MD)No.16857 of 2011

V. Mithra

... Petitioner

-Vs-

M.Sudhakar

... Respondent

**Prayer :** This Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the order of return / rejection of the petition filed by the petitioner under Section 156(3) of Cr.P.C passed by the learned Judicial Magistrate No.VI, Madurai, dated 10.11.2011 on Crl.M.P.S.R.No.21870 of 2011 and to direct the learned Judicial Magistrate No.VI, Madurai to comply with the circular in ROC.No.1110B/07/F/MB P.Dis.No.5/2007 dated 30.07.2007 thereof issuing a direction under Section 156(3) of Cr.P.C.

For Petitioner : Mr. J. Chakravarthy

For Respondent : No appearance

**ORDER**

This Criminal Original Petition is filed to set aside the order of return / rejection of the petition filed by the petitioner under Section 156(3) of Cr.P.C passed by the learned Judicial Magistrate No.VI, Madurai, dated 10.11.2011 in Crl.M.P.S.R.No.21870 of 2011 and to direct the learned Judicial Magistrate No.VI, Madurai to comply with the circular in ROC.No.1110B/07/F/MB P.Dis.No.5/2007 dated 30.07.2007 thereof issuing a direction under Section 156(3) of Cr.P.C.

2. The case of the petitioner is that the petitioner and his sister Kokilavani purchased five house properties bearing Door Nos. 2/216, 2/217, 2/218, 2/219 and 2/220. After purchase, the petitioner's sister rented the house properties to different persons in respect of Door No.2/219, one Sudhakar, S/o. Mayathevar entered into a rental agreement with the petitioner's sister and thereafter, he did not pay the amount to the petitioner's sister. In such circumstances, the respondent filed a suit in O.S.No.42 of 2009 for bare injunction without due process, the respondent should not be evicted and the said suit was also dismissed on 24.11.2010 and the petitioner's sister also died on 22.06.2010. Thereafter, the respondent created a forged document as if the petitioner's sister entered into a sale agreement with him. Based on the sale agreement, a notice was sent to the petitioner. Aggrieved over the same, the petitioner filed a petition under Section 156(3) of Cr.P.C before the learned Judicial Magistrate No.VI, Madurai, along with other



documents. The learned Judicial Magistrate while returning the criminal complaint without conducting any enquiry passed the following order on 10.11.2011:

"Complainant present. It is a civil dispute. Already civil case pending. Hence, this complaint is returned".

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3. Against the said rejection / return order, the petitioner has filed the present petition.

4. Heard the learned counsel appearing for the petitioner. Though the notice was served on the respondent and his name was also printed in the cause list on 06.12.2017, he has not chosen to appear before this Court either in person or through his counsel.

5. However, the learned Judicial Magistrate without perusing the entire complaint that the civil suit has already been dismissed by the competent Court, wrongly concluded that the civil suit is pending. The order passed by the learned Judicial Magistrate is contrary to the Judgment passed by this Court reported in 2016(2) L.W (Cr1.461) (K.Mohanraj and another Vs. J.Jayapaul Mohan), the relevant para no.23 reads as follows:

"23. In view of the aforesaid discussion, I am of the considered view that the order passed by the learned Chief Judicial Magistrate, dated 18.04.2015 cannot be sustained and it is liable to be quashed for more than one reason, viz., firstly, though any detailed enquiry is not necessary under Section 156(3) of Cr.P.C., I find that the learned Magistrate has passed the order in exercise of power under Section 156(3) Cr.P.C in a mechanical manner without applying the mind and without even looking prima facie to find out the genuineness in the complaint as to whether the information provided by the petitioner is credible and whether it would prima facie disclose any cognizable offence to proceed against the respondents 1 and 2. Secondly, the petitioner has made the complaint under Section 156(3) Cr.P.C before the learned Magistrate, by suppressing the official designation of the respondents 1 and 2 to wriggle out of the compliance of the condition precedent under Section 197 Cr.P.C., i.e sanction from the competent authority for ordering investigation against the public servants. Thirdly, the allegations made by the petitioner against the respondents 1 and 2 are vague and of no credibility since the second respondent retrieved the documents in his official capacity as Inspector of Police, Vigilance and Anti-corruption during the course of investigation. Fourthly, the complaint made by petitioner before the learned Magistrate is bereft of the ingredients of Section 448 or 379 of IPC and as such, the same would not disclose any commission of offence, warranting direction to register the case for investigation.



Fifthly, as per the dictum laid down in the Judgment reported in 2015(6) SCC 287 referred above, no supporting affidavit was filed by the petitioner to enable the Magistrate to verify the truth and veracity of the allegations made in the complaint. In such view of the matter, the reliance placed upon by the learned counsel for the petitioner cited supra, in my opinion, will not be helpful to the case of the petitioner. Since the order dated 18.04.2015 passed by the learned Chief Metropolitan Magistrate itself is not in accordance with the cardinal principle of law, the question of considering the objection raised by the petitioner that the first respondent has no locus standi to raise his objection as against the order passed by the learned Chief Metropolitan Magistrate before registering the FIR against him, does not merit any consideration"

6. On perusal of the order passed by the learned Judicial Magistrate No.VI, Madurai, I find that the learned Magistrate has passed an order in exercise of the power under Section 156(3) of Cr.P.C, in a mechanical manner, without analyzing any factual aspects and simply passed a one line order, which is not permissible in law. In short, the one line order passed by the learned Magistrate is total non-application of mind and the issue involved in this case is squarely covered by the decision cited supra. Hence, I have no hesitation to set aside the order dated 10.11.2011 passed by the learned Judicial Magistrate VI, Madurai and accordingly, the said order dated 10.11.2011 is hereby set aside. The learned Judicial Magistrate No.VI, Madurai is directed to entertain the petition filed by the petitioner in Cr.M.P.S.R.No.21870 of 2011 and pass orders on merits and in accordance with law, as expeditiously as possible.

7. The Criminal Original Petition is allowed with the above direction.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.VI, Madurai
- 2.The Chief Judicial Magistrate, Madurai.
- 3.The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s. Eddy and Embboss Law Firm, Advocate, in SR No.91408