

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.R.C.No.1357 of 2016

S.Logeswari

.. Petitioner

Vs

1.State rep. by
The Superintendent of Police,
CBCID, South Chennai,
A-21, Labour Colony Road,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 600 032.

2.Leelavathy

3.N.Govindarajan .. Respondents
(Respondents 2 and 3 are impleaded as per
the order of this Court dated 23.02.2017 in
Crl.M.P.No.2422 of 2017 in Crl.RC.1357/2016)

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 27.07.2016 passed in Crl.M.P.No.7048 of 2016 on the file of the Chief Metropolitan Magistrate Court, (Egmore) Allikulam, Chennai and upon setting aside the same.

For Petitioner : Mr.N.Rajavadivelu

For Respondents : Mr.R.Suriyaprakash (for R1)
Government Advocate (Crl.Side)

Mr.M.Sivavarathanan (for R2 & R3)

JUDGMENT

This criminal revision is filed by the petitioner/complainant against the order passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai in CrI.M.P.No.7048 of 2016 dated 27.07.2016 dismissing the petition filed by him under section 156(iii) of Cr.P.C.

Brief case of the Petitioner:

2.The property bearing No.22/27 Krishna Street, T.Nagar, Chennai was settled by its owner Subramania Mudaliar by Settlement Deed Document No.212/51 dated 15.03.1951 in favour of his 2nd wife, Kaveri Ammal with life interest, then life interest to her son Srinivasan and after him in favour of his children. The Petitioner being the only daughter became absolute owner on 27.02.2011 when her father Srinivasan died.During Petitioner's father's life time, N.S.Naidu became tenant of a room in 2nd Floor in 1973 to run Office. His son Krishnamoorthy, joined him in 2003 and both resided in 2nd Floor from 2003 with family. Now Krishnamoorthy's son N.Govindarajan is living in 2nd floor with family. The said Krishnamoorthy was a close friend of the Petitioner's father was Devotee of Lord Shiva. He mostly had been staying at Sri Kalahasti and Kailash to worship Lord Shiva. The Petitioner and her parents were occupying Outhouse portion, letting out Ground, First and 2nd Floors. The 2nd Floor was let out to N.S.Naidu. During his life time, said Krishnamoorthy had been managing the property in Petitioner's father's absence, and he collected rents and handed over to Petitioner's father. After his lifetime, his son N .Govindarajan continued to manage and collect the rents and hand over to Petitioner's family. As he started giving pinpricks and as Petitioner's father had always been at Sri Kalahasthi, the Petitioner filed O.S.No.4354 of 2005 for Injunction. To Petitioner's shock and surprise, for first time, N.Govindarajan made a version in Written Statement (filed on 19.02.2005) that the said property was purchased by his grand-father N.S.Naidu and his father Krishnamoorthy under a Sale Deed Document No.1493 of 1975 dated 05.12.1975. He filed Xerox copy of the alleged document. In spite of repeated requests through letter, Lawyer's Notice and by the Police Inspector to produce the Original of the said Document, Govindarajan was not able to produce the same. When searched in Sub-Registrar's Office at T.Nagar, it was found that the entire pages were torn off and no records were available. It was also found that fraudulent corrections were made in other places in the Sub-Registrar's records. It was then confirmed that the Document has been fraudulently prepared and there is no such Document, as alleged by N.Govindarajan , in respect of the said property. The events are as follows;

DATE	EVENTS
08.04.2015	Police Complaint by Petitioner to the Commissioner of Police
04.06.2015	CrI.O.P.No.13492 of 2015 filed by the Petitioner to register above Complaint W.P.No.6062/2015 filed by N.Govindarajan against Commissioner of Police and others for Direction that R1 Inspector of Police should not demand to produce the said Original Document. CrI.O.P.No.14585/2015 filed by Govindarajan his mother, wife and sister for Direction to the Commissioner of Police not to harass based on the complaint of Petitioner made on 8.4.2015 CrI.O.P.No.11195/2015 filed by Govindarajan to transfer investigation in Crime No.1515/2015 of R.1 Mambalam Police Station to the CBCID
11.08.2015	Common Order was passed by His Lordship Mr.Justice P.N.Prakash closed all the above Petitions giving liberty to Petitioners to work out their remedies in the manner known to Law
30.07.2015	Letter from Inspector of Police , C.C.B. XVI-A Team to the Petitioner that the Complaint had been dropped
02.11.2015	Petitioner's letter to the Director General of Police for Investigation by CBCID
30.11.2015	CrI.O.P.No.28252/2015 filed by Petitioner for CBCID enquiry. His Petition was dismissed by His Lordship Mr.Justice Subbiah giving liberty to the Petitioner to work out her remedy under Section 156(3) Cr.P.C. if she is so aggrieved
09.06.2016	CrI.M.P.No.7048 of 2016 filed under section 156(3) Cr.P.C. by the Petitioner, was dismissed by the Learned Chief Metropolitan Magistrate, Chennai holding the matter as Civil in nature.

Hence, the present Criminal Revision is filed against the order passed in CrI.M.P.No.7048 of 2016.

3.The Learned Counsel for the revision petitioner submits that the trial Court has not considered the complaint dated 02.11.2005 and the materials filed along with the petition for direction in a proper perspective.

4.The Learned Counsel for the revision petitioner submits that the learned magistrate failed to see that the complaint dated 02.11.2015 discloses the commission of offences cognizable in nature.

5.The Learned Counsel for the revision petitioner submits that the learned Magistrate wholly misconceiving the contents of the complaint dated 02.11.2015 have thus arrived to a misconstrued finding as to the nature of the offence committed on the petitioner.

6.The allegation in the complaint when attracting squarely the commission of offences relating to documents and to property marks being the ones cognizable in nature as stated embedded in chapter XVIII of the code, the Learned Magistrate resorted to chapter XXII and have passed an order with a finding that the averments in the complaint has not attracted the commission of an offence.

7.The Learned Counsel for the revision petitioner submits that the trial Court has miserably failed to see that materials placed by the complainant which has come out making it a prima facie case requiring to decide at that stage purely from the point of view of the complainant and not to advert to the defense that the accused may have if not followed will be perse an abuse of the process of Court and law.

8.The Learned Counsel for the revision petitioner submits that the learned Magistrate ought to have simply satisfied on the evidence and materials filed from the complainant's side which has brought forth a prima facie case at that stage to put the proposed accused on a regular trial where detailed enquiry is not at all called for during the said stage. The averments in the complaint dated 02.11.2015 when clearly states that there has come an act of deceit intentionally played on the petitioner from the side of the accused persons by their willfully purporting the alleged sale deed dated 05.12.1975 vide Document No. 1493 of 1975, the learned Magistrate stating that it is the case of the petitioner/complainant herself that the alleged occurrence was said to have been taken place only in consequent to the civil dispute arose on the basis of the alleged sale deed is not only contradictory but highly mischievous.

9.During the pendency of the criminal revision petition, this Court allowed the impleading petition filed by Smt.Leelavathi and Govindarajan to implead themselves as proposed respondents 2 and 3 in CrI.M.P.No.2422 of 2017 and this

Court was pleased to allow the impleading application through its order dated 23.02.2017. The 2nd and 3rd respondents filed their objections by way of affidavit with the impleading petition. In the affidavit, the 2nd and 3rd respondent alleged the facts behind the direction petition filed by the revision petitioners. The objections are as follows:

a) The 2nd respondent Smt.Leelavathi is the mother of the 3rd respondent Mr.Govindarajan and they are residing in a house building measuring an extent of 2 grounds and 1900 sq.ft. situated at Door No.22/27, Krishna Street, T.Nagar, Chennai comprised in T.S.Nos.6530,Block No.140 (R.S.Nos.117/8, 118/5, 120/3) Mambalam, Guindy Taluk and they are in possession and enjoyment from the year 1975 to till date without any interference to the 3rd party.

b) Originally the said property belonged to one Subramania Mudaliar and he by a settlement deed dated 15.03.1951 settled the property in favour of his second wife namely Kaveriammal registered as document No.212 of 1951 on the file of the Sub Registrar, T.Nagar, Chennai. In the said settlement deed Kaveriammal was given life interest and her male heirs were given absolute interest with power of alienation. The said Subramania Mudaliyar and Kaveriammal had one son namely V.S.Seenivasan (father of the 1st Respondent/ Complainant)

c) The said Subramania Mudaliar died on 25.05.1970 and his wife namely Kaveriammal died on 08.10.1970. While so, my grandfather and father namely N.S.Naidu and Krishnamurthy purchased the afore said property for a valuable consideration from V.S.Seenivasan and other sons namely, Chandrasekar, Jayavelu and Somasundaram @ Somu, by a sale deed 05.12.1975 registered as document No. 1493 of 1975 on the file of the Sub Registrar , T.Nagar, Chennai. Thus the grandfather and father namely N.S.Naidu and Krishnamurthy became the absolute owners of the property. Thereafter the patta and building plan approval were obtained in the name of the grandfather and father namely N.S.Naidu and Krishnamurthy.

d) N.S.Naidu died on 12.05.1982 and his father died on 28.02.1997. N.S.Naidu by a will dated 01.02.1981 bequeathed his half share over the property in 2nd respondent favour and the said Will was probated.

e) After death of 2nd respondent father, dispute aroused between 2nd respondent and the 1st petitioner and the four daughters of my father regarding the remaining half share in the property. It is submitted the said disputes resulted in filing of various proceedings such as probate proceedings, suits for injunction and partition, etc., before this Court and City Civil Court.

f) The 2nd respondent had executed a settlement deed dated 22.09.2004 in favour of 2nd respondent wife namely Srividhya, registered as document No.2503 of 2004. Based on the settlement deed dated 22.09.2004, my wife filed a Civil Suit No.719 of 2014 before this Court against me and 2nd respondent family members and the third parties such as the first respondent, her power agent. The said suit was not initiated on proper legal advice therefore the Counsel was changed and the civil suit in C.S.No.719 of 2014 was withdrawn by my wife on 18.02.2015. Now, all the disputes are settled amicably among our family members i.e., 2nd respondent and 2nd respondent's mother and sisters and a compromise is recorded before this Court in A.S.No.493 of 2013 and a final decree dated 01.07.2014 is passed.

g) The 1st respondent/complainant is the daughter of V.S.Seenivasan and she is attempting to grab the property by creating forged documents and initiating vexatious litigation over the property. The 1st respondent herein has no right over the property and she with the help of politically influenced persons has created a power of Attorney and a Sale Agreement in favour of one T.G.Neelam, a politically influenced person and these persons are resorting to various criminal activities against the petitioner herein and also making frivolous complaints against me. This Criminal Revision Petition is also arising out of a false and a vexatious complaint dated 02.11.2015. The complaint and this Revision petition is filed by suppressing the real facts and the orders of this Court.

10.I have heard Mr.N.Rajavadevelu, learned counsel for the petitioner, Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.M.Sivavarthanan, learned counsel for the respondents 2 and 3 and also perused the materials available on record including the order passed by the learned Magistrate.

11.The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined under Section 2(c) of the code) if given orally (in which case it is to be reduced into writing)or in writing to "an officer in charge of a police station " (within the meaning of Section 2(o) of the code) and signed by the informant should be entered in book to be kept by such officer in such form as the state government may prescribe which form is commonly called as "First Information report" and which act of entering the information in the said form is known as registration of a crime or a case.

12.At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the code, the concerned police officer cannot embark upon an enquiry as to whether the information laid by the informant is reliable and

genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the code to investigate, subject to the proviso to Section 157. In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the superintendent of police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

13. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

14. It has been held by the Hon'ble Apex Court in the case of Madhu Bala v. Suresh Kumar and Ors. reported in (1997) 8 Supreme Court cases 476 that the police is duty bound to register a case of cognizable offence and investigate the same. It has been held in the aforesaid judgment as follows:

Indeed, even if a Magistrate does not pass a direction to register a case, still in view of the provisions of Section 156(1) of the Code which empowers the police to investigate into a cognizable, "case" and the Rules framed under the Indian Police Act, 1861 it (the police) is duty bound to formally register a case and then investigate into the same.

15. It has further been held by the Hon'ble Apex Court in the case of Superintendent of Police, C.B.I. and Ors. v. Tapan Kumar Singh 2003(2) JIC 126(para 20) that whether the report is true or not or whether the evidence is sufficient or not all are matters alien to the consideration of question whether the report discloses commission of cognizable offence. It has been held by the Hon'ble Apex Court as follows:

The true test is whether the information furnished provides reasons to suspect the commission of an offence which the concerned police officer is empowered under Section 156 of the code to investigate. If it does he has

no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses commission of a cognizable offence.

16. The scope of Section 156(3) Cr.P.C. and the power of the Magistrate under the aforesaid section have been dealt with exhaustively in the case of Masuman v. State of U.P. and Anr. 2007 ALJ (1) 221 by this Court, after going through the various decisions of the Hon'ble Apex Court and after examining the law laid down by the Hon'ble Apex Court as well by this Court, it was held in the decision that once a cognizable offence is disclosed the Magistrate is bound to direct the FIR to be registered and after be investigated. The said judgment was even got circulated as it come to light that in for offences of murder, rape decoity, gang rape, loot, arson attempt to murder the Magistrates were refusing the prayer to get the FIR registered and in some cases where such order of registration of FIR were passed the same was stayed by the revision Courts. If the purpose of Section 156(3) is not to get the FIR these types of offences registered and investigated then what will be scope of this sub section 156(3) Cr.P.C. cannot be comprehended. If the offences against human body, offences of dacoity, grabbing of property are not fit to be ordered for registration of FIR and investigated then what offences the Magistrates will order for registered as FIR and investigated is unthinkable. Such types of orders as the present one shows a culprit prone judicial order and are the most flagrant examples of miscarriage of justice. It has been held in the aforesaid judgment Masaman (Supra) as follows:

It is the responsibility of the Magistrate of direct the police to follow the mandate of law and it will be travesty of justice that the Magistrate instead of directing the police to follow the statutory mandate of law gives it a long rope to act arbitrarily at it's whims. Thus whenever the Magistrate is approached by an aggrieved person with the prayer that the police has refused to register his complaint of cognizable offence, the Magistrate is required to look into his such prayer only to determine as to whether any cognizable offence is disclosed thereby or not and if it does, then he has no option but to direct the police to register the FIR and investigate the offence.

17.From the above discussion, it is conspicuously clear that the power of Magistrate under Section 156(3) Cr.P.C. does not travel beyond the scope of directing investigation to the police if cognizable offence is disclosed. This mandate of law as has been spelt by the Hon'ble Supreme Court has been considered earlier by this Court in two Crl.O.P.s and enquiry was conducted by the Police.

18.Coming to the facts of the present case, the revision petitioner wanted her FIR to be registered. The Respondents filed their objections and contended that the revision has to be dismissed in limine.

19.The simple contention of petitioner before me who has suffered dismissal of complaint under section 156(3) Cr.P.C. is that the document informing sale executed by Petitioner's father in favour of respondent's father is a rank forgery.

20.As per the complaint filed by the revision petitioner, the entire incident was said to have taken place only in consequent of Civil dispute arose on the basis of the sale deed dated 05.12.1975 vide Document Number 1493 of 1975.

21.It is also to be pointed out that the very same revision petitioner/ complainant has filed a petition before this Court in Crl.O.P.No.13492 of 2015 directing the respondent ie., Commissioner of Police and the Inspector of Police , Central Crime Branch to register the case on the petitioner's complaint dated 08.04.2015, to investigate the same and to file a final report. A direction was also given by this Court to conduct an enquiry on the petitioner's complaint dated 08.04.2015 and take action in accordance with law as per the order of this Court dated 04.06.2015. The Deputy Commissioner of Police, T.Nagar, Chennai has conducted an enquiry and filed a closure final report in which it has been stated as follows.

"though Mr.Neelan, Tmt. Logeshwari and Tr.Govindarajan were disputing in the Civil Court in connection towards the claim of ownership over the property in dispute, but any how physical possession and enjoyment of the same with Mr.Govindrajan."

The above para was also mentioned in the order of this Court as Para No.18.

22.The very same complainant has also filed a petition in Crl.O.P.No.11195 of 2015 praying this Court to direct to transfer the investigation in Cr.No.1517 of 2015 on the file of the Inspector of Police, Central Crime Branch to CBCID or any other fair agency and the same was also closed by this Court in view of the closure report filed by the Deputy Commissioner of Police. All those petitions filed by the revision petitioner / complainant were closed by this Court on 04.06.2015 after accepting the report submitted by the Deputy Commissioner of

Police, Chennai.

23.This Court carefully considered the aforesaid earlier orders passed by this Hon'ble Court and also the annexures filed in this case. A bare reading of the complaint shows the civil dispute between the parties and do not disclose any cognizable offence to direct the CBCID to investigate the revision petitioner complaint dated 02.11.2015.

24.Even after the order passed by this Court, the revision petitioner have not taken any lawful step to recover the property through the manner known to law. The revision petitioner/complainant reveals only the civil dispute and the specific criminal act if any committed by the said family members of Mr.Govindaraj has not been specifically mentioned in the complaint. The overall reading of the complaint does not disclose any offence which warranted this Court to direct the CBCID police to investigate into the offence. Without agitating the dispute through the civil Courts for recovery of the property, the complainant has chosen to convert the civil dispute into the criminal act and the same cannot be entertained by the Court without having any substance in the complaint.

25.For the reasons mentioned above, I am of the opinion that the Learned Magistrate is not always bound to pass an order for register of the case and investigation after receipt of the application under Section 156(3) Cr.P.C. disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case, it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr.P.C. I am also of the opinion that it is not always mandatory in each and every case for the Magistrate to pass an order to register and investigate on receipt of the application under Section 156(3) Cr.P.C. In the present case, the Magistrate is perfectly within the judicial power in dismissing the Petition. There is no illegality or impropriety in the order. The Criminal Revision is devoid of merit and is liable to be dismissed. Accordingly dismissed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Metropolitan Magistrate Court,
(Egmore) Allikulam, Chennai.

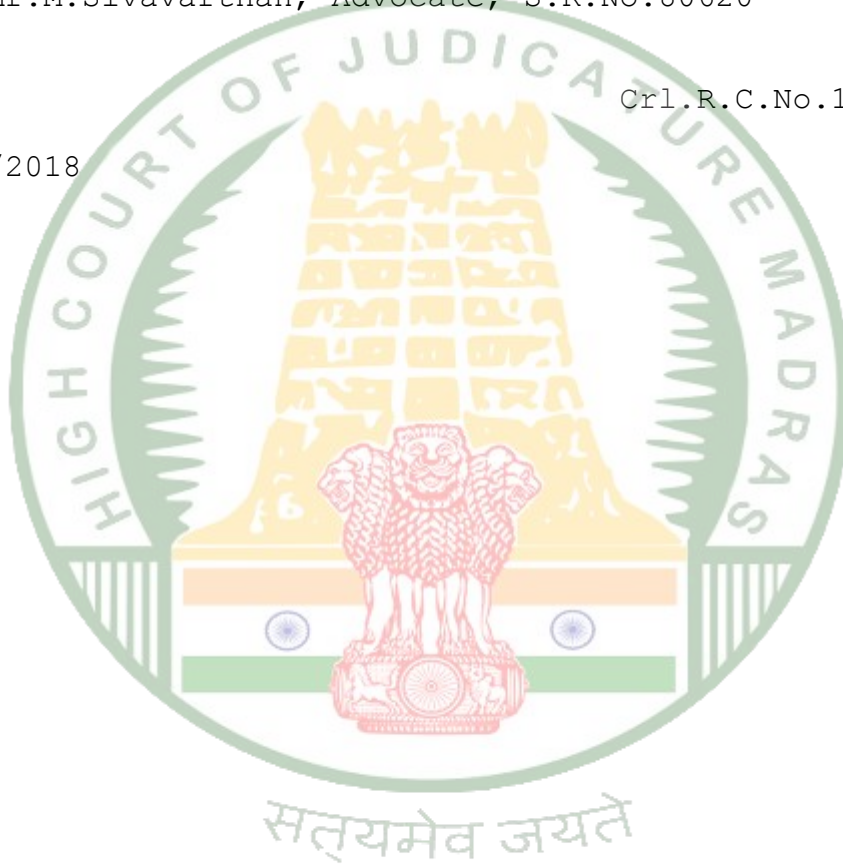
2.The Superintendent of Police,
CBCID South Chennai,
A.21 Labour Colony Road,
Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai-32.

+1cc to Mr.N.Raja Vadivelu, Advocate, S.R.No.80807

+2ccs to Mr.M.Sivavarthan, Advocate, S.R.No.80620

Crl.R.C.No.1357 of 2016

rrs 30/11/2018



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