



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
RESERVED ON : 10.07.2018  
DELIVERED ON : 01.08.2018  
CORAM :

**THE HONOURABLE MRS. JUSTICE R. THARANI**

Crl. R.C. (MD) No.619 of 2015

Asaithambi

... Petitioner/Petitioner/  
Defacto complainant  
vs.

1. The Inspector of Police,  
Kariapatti Police Station,  
Crime No.198 of 2013

2. Manoharan  
3. Jeyakumar  
4. N.S.S.S.Elango  
5. Santhakumar

... Respondents/Respondents/  
Petitioner

**Prayer:-** Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to set aside the order dated 03.11.2015 made in R.S.C.No.10 of 2015 in C.C.No.198 of 2013 on the file of the Judicial Magistrate No.II, Virudhunagar.

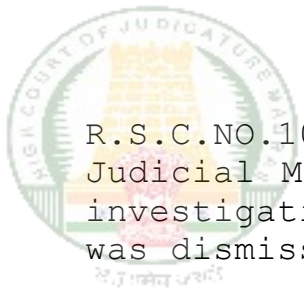
For Petitioner : Mr.A.V.Arun  
For Respondent No.1 : Mr.K.Suyabulinga Bharathi  
Government Advocate (Crl. Side)  
For Respondents 2 to 5 : Mr.N.Dilip Kumar

**ORDER**

Heard Mr.A.V.Arun, learned counsel appearing for the petitioner, Mr.K.Suyabulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the first respondent and Mr.N.Dilip Kumar, learned counsel appearing for the respondents 2 to 5.

2.This petition is filed to set aside the order dated 03.11.2015 made in R.S.C.No.10 of 2015 in C.C.No.198 of 2013 on the file of the Judicial Magistrate No.II, Virudhunagar.

3.The petitioner has lodged a complaint against the respondents 2 to 5 and the same was registered by the first respondent in Crime No.109 of 2013. It is stated that the respondents 2 to 5 conspired together and misappropriated the fund of the Trust against the bylaws of the Society. The first respondent after enquiry found that the necessary documents are not filed and there is possibility of law and order problem in that location. The petitioner filed a protest petition in



R.S.C.NO.10 of 2015 in C.C.No.198 of 2013 before the learned Judicial Magistrate No.II, Virudhunagar with a prayer for further investigation by some other Investigating Agency and the petition was dismissed by the trial Court.

4. On the side of the petitioner, it is stated that the Secretary of the Society executed a lease deed in favour of the Vice Chairman who is the third respondent and thereby, the Secretary and the Chairman of the Society exchanged the land among themselves. 2 ½ acres of land was leased out to the third respondent for a meagre amount of Rs.58,800/- (Rupees Fifty Five Thousand and Eight Hundred only). As per the bylaws of the Society, a land can be rented to a person only on monthly basis. It is further stated that the Secretary has executed another lease deed in favour of one 'Akimsa Youth Group' whereas the Secretary himself is the President of the said group. The Secretary has leased out one acre of land for a sum of Rs.100/- (Rupees Hundred only) for a period of 29 years in favour of himself. It is further stated that the Secretary has leased out 5 acres of lands to 10 persons for a period of 20 years for a sum of Rs.100/- (Rupees Hundred only) each and thereby, caused loss to the Trust. It is further stated that for registering those documents, the Secretary used the money from the fund of the Society and caused a loss of Rs.79,742/- (Rupees Seventy Nine Thousand Seven Hundred and Forty Two only) to the Society. Even the meagre rent was not paid till 23.06.2018. When the other members of the Society visited the area, the respondents 2 to 5 criminally intimidated them and the petitioner lodged a complaint before the first respondent.

5. The learned counsel appearing for the petitioner relied on the order passed by this Court in the case of **Anthony Manuvel Raj v. State** in **Crl.R.C. (MD)No.293 of 2016**, which reads as follows:

*"In such circumstances, the Magistrate has to record the sworn statement of the petitioner in the protest petition and his witnesses, if any, and consider the materials and if he finds a prima facie case, he can take cognizance thereon and issue summons to the accused under Section 204 Cr.P.C., supposing if he does not find any prima facie case, he shall dismiss the complaint under Section 203 Cr.P.C., however, briefly stating the reasons therefor."*

6. The learned counsel appearing for the petitioner relied on the order passed by this Court in the case of **Chokkammal v. State** in **Crl.O.P. (MD)No.21901 of 2015**, which reads as follows:

*"the Magistrate's power is not curtailed for ordering further investigation more particularly in the light of Section 156(3) of Cr.P.C."*



7. The learned counsel appearing for the petitioner relied on the order passed by this Court in the case of **Lakshman Jena v. Sudhakar** reported in **AIR 1969 Ori 149**, which reads as follows:

WEB COPY *"the Magistrate may either accept it and close the proceedings or the Magistrate may take the view, on a consideration of the final report, that the opinion formed by the Police is not based on a full and complete investigation and may give directions to the police under Section 156(3) to make a further investigation."*

8. On the side of the petitioner, it is stated that under Section 2(d) no need for filing list of witnesses and the lower Court has come to the wrong conclusion that the documents are not filed. All the documents stated in the FIR are filed by the Police and the Police in turn had filed those documents before the learned Judicial Magistrate along with the final report.

9. On the side of the prosecution, it is stated that the case was registered and charge sheet was filed. The petitioner filed a protest petition and the same was dismissed by the trial Court as the petitioner prayed for further investigation. The Hon'ble Supreme Court has already held the matter that the learned Judicial Magistrate is not having power to pass order for further investigation under Section 173(8) of Cr.P.C., and the prayer in the protest petition is that the learned Judicial Magistrate has to pass order for re-investigation and for transferring the investigation to some other Investigating Agency. The learned Judicial Magistrate has dismissed the petition and accordingly, the learned Judicial Magistrate has given liberty for the petitioner to file afresh private complaint.

10. On the side of the respondents 2 to 5, it is stated that the petitioner has not filed protest petition before the learned Judicial Magistrate. The prayer in the petition is only for further investigation and for transferring the investigation to the District Crime Branch and the investigation to be done by the Superior Officer. It is further stated that the learned Judicial Magistrate has no power to pass orders for further investigation. The liberty is given to the petitioner to file a private complaint under Section 200 of Cr.P.C. The citation filed by the petitioner is not applicable to the present case as the learned Judicial Magistrate has passed orders only on merits.

11. Records perused. Though the petitioner has filed a protest petition, the prayer in the petition is for further investigation and for transferring the investigation to some other Investigating Agency and to investigate the matter by a Superior Officer. Already the Hon'ble Apex Court has decided that the learned



Judicial Magistrate has no power to order further investigation under Section 173(8) of Cr.P.C., unless the same was requested by the Investigating Agency. Though the petitioner has stated some allegation regarding some transaction, whether the petitioner has submitted all those documents before the Investigating Agency and whether the Investigating Agency submitted all those documents before the learned Judicial Magistrate at the time of filing final report is not proved by the petitioner. The learned Judicial Magistrate has given liberty for the petitioner to file a private complaint. In this circumstances, the remedy of filing a private complaint before the learned Judicial Magistrate is available to the petitioner. At this stage and there is no reason to interfere in the order passed by the trial Court. Hence, this Criminal Revision Case is dismissed by confirming the order passed by the trial Court.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Judicial Magistrate No.II, Virudhunagar.
2. The Inspector of Police,  
Kariapatti Police Station.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.N.Dilip Kumar, Advocate Sr.No.76172

+1cc to Mr.A.V.Arun, Advocate Sr.No.76691

mrn

VB/KAK/SAR4/11.08.2018/4P/6C

Cr1. R.C. (MD) No.619 of 2015  
01.08.2018