



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.04.2018  
DELIVERED ON : 29.06.2018

WEB COPY

CORAM :

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

Cr1.R.C.(MD) No.115 of 2013

Ganesa Moorthy

... Petitioner

**vs.**

1.Kombaiah  
2.Esakithai  
3.Paulpandian  
4.Saravanan  
5.Muthudurai

... Respondents

**Prayer:** Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, to call for the records from the Lower Court and to set aside the order passed in Cr.M.P.No.46 of 2013 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli dated 31.01.2013.

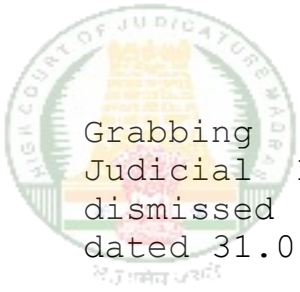
For Petitioner : Mr.P.Subbaraj  
For R1,R3 & R5 : Mr.R.J.Karthick  
For R2 : No Appearance

**ORDER**

Heard Mr.P.Subbaraj, learned counsel appearing for the petitioner.

2.This petition has been filed to set aside the order passed in Cr.M.P.No.46 of 2013 on the file of the Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli dated 31.01.2013.

3.The facts of the case is that the respondent entered into conspiracy created a bogus document and take over the land of the complainant and the respondents have committed the offence under Sections 467, 468, 471, 420 and 120(b) of I.P.C., The petitioner made a complaint before the District Superintendent of Police and before the Deputy Superintendent of Police but they have not taken any action so far. Hence, the petitioner preferred a complaint before the Special Judicial Magistrate, Special Court for Land



Grabbing cases, Tirunelveli on 21.01.2013, but the Special Judicial Magistrate, Special Court for Land Grabbing Cases, dismissed the complaint of the petitioner in Cr.M.P.No.46 of 2013 dated 31.01.2013.

4. On the side of the petitioner, it is stated that the learned Judicial Magistrate has acted beyond the scope of the Section 156 (3) of Cr.P.C., by dismissing the petition. The learned Judicial Magistrate has taken the role of police and disposed of the petition. It is not correct before the eye of law and he prayed to set aside the order passed by the lower Court. It is further stated that the land belongs to the father of the petitioner and the respondent removed the name of the petitioner's father in the patta. When the petitioner approached the Tahsildar, he refused to cancel the patta. The respondent are creating sale agreement and sale deed whereas the private respondent are no way connected with the property and the petitioner approached the learned Judicial Magistrate to forwarding the complaint to the police under Section 156(3) Cr.P.C. It is stated that the learned Magistrate is not having any power to go through the merits of the case and to dismiss the petition at the initial stage.

5. On the side of the respondent, it is stated that entire case is civil in nature and from the year 2007 onwards, there are transactions and the original suit before the Sub Court, Valliyoor in O.S.No.181 of 2005 was dismissed. I.A.No.35 of 2007 was dismissed on 26.04.2007. Another case in O.S.No.8 of 2007 was filed before the lower Court. I.A.No.277 of 2009 was dismissed as withdrawn. On withdrawal of I.A.No.277 of 2009, another case in O.S.No.57 of 2011 was filed before the learned Principal District Munsif Court, Nanguneri. All these cases were not stated in the complaint. As the civil suit is pending, no direction is needed for taking cognizance of the petition. This suit is pending for the evidence of this petitioner. Instead of getting into the box, the petitioner has filed fictitious petitions and misusing the Court.

6. Records perused. A perusal of the records reveals that there is a suit in O.S.No.8 of 2007 before the Sub Court, Valliyoor. I.A.No.35 of 2007 was filed before the learned Additional Munsif Court, Nanguneri. The petitioner prayed for injunction which was dismissed by the lower Court. On 29.03.2010, in I.A.No.277 of 2009, the petitioner has filed a petition for withdrawal of the suit. There is another case in O.S.No.57 of 2011 before the learned Principal District Munsif Court, Nanguneri. O.S.No.57 of 2011 and it is stated that all this cases are posted for evidence of the petitioner. The petitioner has not stated any of these facts in the petition filed by him. Giving a color of criminal jurisdiction to a civil case, this petition was filed by the petitioner.



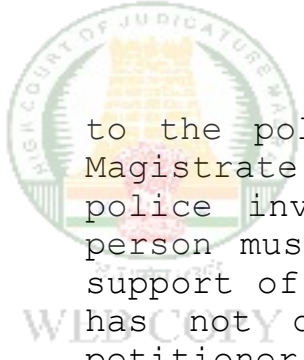
7. On the side of the petitioner, it is stated that once an offence is disclosed in an application filed under Section 156(3) Cr.P.C., the learned Magistrate is left with no other option but to order for investigation. As the applicant has invoked the administrative jurisdiction of the Magistrate for directing the appellant to register a FIR, the learned Magistrate act illegally and not granting the said relief.

8. This Court relied upon the Judgment passed by the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Another v. State of Uttar Pradesh and Others** in **Criminal Appeal No.781 of 2012**, which reads as follows:

"22. Recently, in *Ramdev Food Products Private Limited v. State of Gujarat*[6], while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: ".... the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed.""

"27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. 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."

9. The Hon'ble Supreme Court has held that learned Magistrate is suppose to apply his mind and the learned Magistrate requested facts mention in the application is to be supported by an affidavit. It is difficult for the learned Magistrate to decide the application on the basis of the facts mentioned therein. Under Section 156(3) of Cr.P.C., instead of spending judicial mind on the facts and issues, the Magistrate can forward the complaint to the police under Section 156(3) of Cr.P.C., it does not mean that the learned Magistrate should not apply his mind. Nowhere it is stated that the learned Magistrate has to act only as a post office just forwarding whatever complaint given by the petitioner



to the police. There is nothing wrong for the learned Judicial Magistrate to find out whether a preliminary case is made out for police investigation from the submission of the complainant. A person must approach the Court with clean hands. No affidavit in support of the petition is filed by the petitioner. The petitioner has not disclosed that a civil suit is pending between the petitioner and the respondent.

10. In the above circumstances, the petitioner is misusing the Court by filing petitions by suppressing the material facts. As the petitioner has not approached the lower Court with clean hands, this Court find no fault in the decision passed by the learned Judicial Magistrate and as such there is no merits in this petition. Hence, this Criminal Revision case is dismissed.

Sd/-  
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

**To**

The Special Judicial Magistrate,  
Special Court for Land Grabbing Cases,  
Tirunelveli.

+ 1 CC TO Mr.P.SUBBARAJ, ADVOCATE IN SR No. 70418  
+ 1 CC TO Mr.R.J.KARTHIK, ADVOCATE IN SR No. 70443

MRN  
TE/RP/SAR-4 : 13/07/2018 : 4P/4C

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