



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.06.2019
Pronounced on : 20.09.2019

CORAM

THE HONOURABLE JUSTICE MRS.T.KRISHNAVALLI

CRL.RC (MD) No.356 of 2019

D.R. Sabapathy Nadar : Petitioner/Complainant

Vs

State rep. By
The Inspector of Police,
District Crime Branch,
O/o District Superintendent of Police Campus
Gorampallam,
Thoothukudi District. : Respondent/Respondent

Prayer: This Criminal Revision is filed Under Section 397 and 401 of Criminal Procedure Code against the order, dated 09.05.2019 passed in Cr.M.P.No.4864 of 2019 by the Judicial Magistrate No.III, Thoothukudi.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.A.P.G.Ohm Chairman Prabhu
Government Advocate (Criminal side)

J U D G M E N T

The criminal revision is directed against the against the order, dated 09.05.2019 passed in Cr.M.P.No.4864 of 2019 by the Judicial Magistrate No.III, Thoothukudi.

2.The petitioner is a member of "Dhakshanamara Nadar Sangam", a Society registered under Societies Registration Act. The said Society runs a Higher Secondary School namely D.M.N.S.Sivanthi Adithanar Metric Higher Secondary School at Thoothukudi. The Secretary namely R.Shanmugavel and a Committee Member V.S.Ganesan involved in the large scale misappropriation of funds to the tune of Rs.6,78,735/- and Rs.3,07,274/- from the Bank account of school to one Akito Auto Tech Company and they have also diverted a sum of Rs.2,38,996/-, Rs.1,68,300/- and Rs.1,73,222/- to one M.K.Mara

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



own use. The petitioner preferred a complaint on 10.11.2018 and 10.12.2018 to the Superintendent of Police, Thoothukudi District and followed representation to the respondent police, which went in vain. Hence, the petitioner preferred a complaint under Section 156 (3) Cr.P.C before the Judicial Magistrate No.III, Thoothukudi seeking a direction to the respondent police to register FIR. The said petition was dismissed on the ground of point of jurisdiction of the court and no prima facie case for registering the FIR. Aggrieved by the order of the trial court, the petitioner is before this court.

3. Heard both sides and perused the materials available on record.

4. The main contention raised on the side of the revision petitioner/respondent is that the offence is committed in the school, which is situated at Thoothukodi, within the jurisdiction of the Judicial Magistrate No.III, Thoothukudi and as such, the learned Magistrate has got jurisdiction to direct the respondent/police to register the FIR, but the learned Judicial Magistrate dismissed the complainant stating that the Society is situated in Thoothukodi, without adhering to the contents of the complaint. The facts are that the offence was committed in the School registered by the Society at Thoothukodi, which is within the jurisdiction of the learned Judicial Magistrate and the learned Judicial Magistrate ought to have issued a direction to the police to register the FIR and prays that the criminal revision has to be allowed.

4. The Registration of FIR is mandatory under Section 154 of Cr.P.C, if the information discloses the commission of an Cognizable offence and no preliminary enquiry is permissible. In such a situation, the learned Judicial Magistrate ought to have directed the respondent/police to register the case. For that, the learned Senior counsel appearing for the submitted the ruling reported in (2014)2 SCC 1 (Lalitha Kumari Vs. Government of Uttar Pradesh and others), wherein it has been held as follows:-

120.1 The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of the cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

<https://hcservices.ecourts.gov.in/hcserve/120.3> If the inquiry disclosed the commission of



a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him disclosed a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which case preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

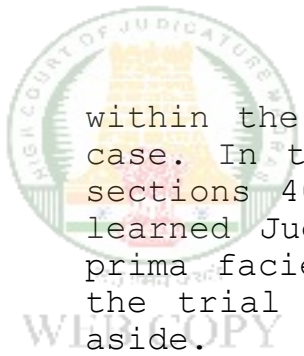
- a) Matrimonial disputes/family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

5. In this case, it is stated in the petition that the alleged misappropriation was committed in the School, which is situated at Thoothukudi and the School was run by a Society named as "Dhakshanamara Nadar Sangam".

6. It is stated in the complainant that the accused misappropriated a sum of Rs.6,78,735/- from the bank account of the School to one Akiti Auto Tech Company. Hence, the alleged occurrence took place in the school, which is situated at Thoothukudi. Hence, it is held that the learned Judicial Magistrate, Thoothukudi is having jurisdiction to try the case. The findings of the trial court that the Judicial Magistrate, Thoothukudi has no jurisdiction to try the case is not correct.

7. On perusal of the decision reported in (2014)2 SCC 1, in para 120, it is held that the information disclosed in cognizable offence



within the Court, the court can direct the police to register the case. In this case, the petitioner disclosed the offence, such as sections 406, 420, 471, 465, 120(b), 109 and 34 of IPC. But the learned Judicial Magistrate simply came to the conclusion that no prima facie case is made out. Hence, the impugned order passed by the trial court is not correct and the same is liable to be set aside.

8.In the result, this criminal revision is allowed. The impugned order passed by the trial court is set aside. The case is remitted back to the trial court for fresh disposal, after giving reasonable opportunity to the parties concerned by adducing evidence and marking documents and dispose of the same within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.III, Thoothukudi
2. The Inspector of Police, District Crime Branch,
O/o District Superintendent of Police Campus
Gorampallam, Thoothukudi District.

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