



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.07.2019

CORAM

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC.(MD)No.61 of 2019

Raman

: Revision Petitioner/
Petitioner

Vs.

1.The Superintendent of Police,
Madurai District,
Madurai.

2.The Inspector of Police,
Usilampatti Town Police Station,
Madurai District.

: Respondent/Complainant

Prayer: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 25.01.2019 in C.R.M.P.No.6811 of 2018 passed by the Judicial Magistrate No.1, Usilampatti.

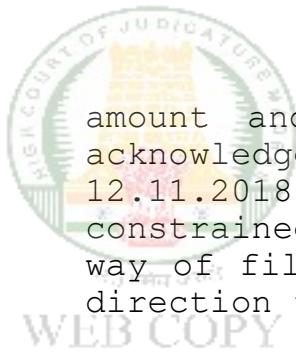
For Revision Petitioner : Mr.K.R.Selvakumar

For Respondents : Mr.A.Robinson
Government Advocate
(Criminal Side)

O R D E R

This criminal revision is directed against the order, dated 25.01.2019 passed in CRMP No.6811 of 2018 by the Judicial Magistrate No.1, Usilampatti.

2.The petitioner preferred the complaint on 11.11.2018 before the 2nd respondent police for the alleged offence under Sections 406, 420, 294(b) and 506(i) IPC against one V.M.Rajendran alleging that V.M.Rajendran is none other than his brother-in-law and by making false promise, he induced the petitioner with a bad intention to cheat, asked him for Rs.5,00,000/- and thereafter, the petitioner had issued a demand draft for Rs.5,00,000/- on 28.01.2015 and subsequently, when the petitioner approached the said V.M.Rajendr and asked to repay the amount, but he has not chosen to repay the



amount and also threatened the petitioner. The 2nd respondent acknowledged the above complaint in CSR No.405 of 2018, dated 12.11.2018. But no case was registered. Hence, the petitioner is constrained to approach the Judicial Magistrate No.1, Usilampatti by way of filing a petition under Section 156(3) Cr.P.C seeking for a direction to register a case against the said person.

3.The learned Judicial Magistrate, after examination of the witnesses had dismissed the petition filed by the petitioner under Section 156(3) Cr.P.C. Aggrieved by the said order, the petitioner is before this court.

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

5.The contention raised on the side of the revision petitioner/complainant is that *prima facie* cognizance offence has been committed, the direction under section 156(3) of Cr.P.C to register a criminal case and to investigate is to be exercised and where on account of credibility of information is available, it is necessary to direct the respondents 1 and 2 to register a case as against the accused as the impugned order reveals that the trial court extended the scope of section 156(3) Cr.P.C and conducted a mini trial without applying judicial mind and verifying the truth and veracity of allegations appreciating ocular evidence and material evidence are matters for trial if the Investigating Officer files final report under Section 156(3) Cr.P.C affirmatively against the accused persons and the complaint disclosed the cognizance offence and sufficient ground to initiate proceedings, as such the learned Magistrate ought to have directed the police for investigation and in this case, a demand draft worth Rs.5 Lakhs was given to the accused by the petitioner, which makes out a *prima facie* case and correctness or otherwise whereof can be determined only during investigation and on the basis of the available records adverse inference can be drawn that there is a *prima facie* case to issue a direction for investigation and the materials brought on record by the petitioner directly connect the accused with the alleged offences to create strong suspicion against the accused and the mens rea can be found only during investigation and prays that the criminal revision has to be allowed.

6.In this case, the petitioner filed the petition under section 156(3) Cr.P.C directing the respondents 1 and 2 to register the case as against the accused. This court has carefully perused the records. In this case, already the petitioner gave the complaint before the police on 11.11.2018 stating that he gave Rs.5 Lakhs to his brother-in-law V.M.Rajendran for purchasing a lorry on 28.01.2015 by way of Indian Bank in Haryana to the bank account of V.M.Rajendran in Usilampatti and he requested V.M.Rajendran to return the above money, for that he stated that he returned the



money by way of contribution received by him in his daughter's puberty function, but after the completion of the above function, V.M.Rajendran refused to return the money received by him from the petitioner and requested the police to take action against the accused to get back Rs.5 Lakhs from V.M.Rajendran. But the above complaint was treated as "petition enquiry" and it was closed since both the petitioner and V.M.Rajendran agreed to settle the matter amicably. But the contention of the petitioner is that after the settlement talk, the accused has not paid the above amount and cheated him and again he sent a complaint to the police, but no action was taken and hence, he filed the petition under Section 156 (3) Cr.P.C.

7.Further, the learned counsel appearing for the petitioner submitted that when the petition disclosed cognizable offence, the Magistrate is under legal duty to direct the police to register the case and the Magistrate has no power to convert it into complaint and it was the choice of the victim to file complaint or an application under Section 156(3) Cr.P.C and prays that the impugned order treating petition under section 156(3) Cr.P.C as complaint was liable to be set aside. Further, the learned counsel appearing for the petitioner submitted a ruling reported in **2007(2) Crimes 682 (Phool Singh Vs. State of U.P . & others)**, wherein it has been held as follows:-

"The Magistrate was powerless to convert the application under Section 156(3) Cr.P.C is a pre-cognizance stage under Chapter XII of Cr.P.C whereas filing of a complaint is, cognizable stage under Chapter XIV of the Cr.P.C. The filing of a complaint, leading to evidence and bringing of witnesses in the Court all are the rights, which are given to the complainant. In the absence of complainant even the complaint filed by the complainant can be dismissed. Further, the Magistrate does not have any power of investigation, and consequently, he also lacks all ancillary power to decide whether the investigation in a cognizable offence is required or not. Power to investigate the cognizable offence is vested with the police. It is for the police to decide whether a cognizable offence should be investigated or not under Section 157(1), Cr.P.C. The Magistrate cannot usurp the power of the police under Sections 156(1) and 157(1) Cr.P.C and shut out a legitimately required investigation by usurping the power under Chapter XIV, Cr.P.C., when the same was neither desired nor prayed for by the aggrieved person, the complainant. The right of filing a complaint since vested in the complainant the Magistrate cannot transform the prayer of



registration of FIR and investigation of offences. It was the choice of the victim to file the complaint or an application under Section 156(3) Cr.P.C."

8. Further the learned counsel appearing for the accused submitted that when the police refused to register the FIR, the remedy open to aggrieved person to approach the Superintendent of Police under Section 154(3) Cr.P.C by an application under Section 154(3) Cr.P.C or can file application under Section 156(3) before the concerned Magistrate. For that, the learned counsel appearing for the accused submitted a decision reported in **AIR 2008 SC 907 (Sakiri Vasu Vs. State of U.P & others)**. In that case, it has been held in para 12, 16 and 17 as follows:-

"12. Thus in Mohd. Yousuf vs. Smt. Afaq Jahan & Anr. JT 2006(1) SC 10, this Court observed:

The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156 (3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter..

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16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. A.C. Saldanna AIR 1980 SC 326 (para 19).



17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

9. The complaint filed by the petitioner was carefully perused. The petitioner stated that the accused cheated him. Hence, the offence is cognizable in nature. Therefore, it is the bounden duty of the Magistrate to direct the concerned police to register the case. After investigation, when there is no *prima facie* case made out, the police will close the case as "Mistake of Fact" and when *prima facie* case is made out, the police should register the case and after completing the investigation file the charge sheet.

10. In this case, the allegations stated in the petition was the cognizable in nature. Therefore, the Judicial Magistrate before taking cognizance of the offence can order investigation under section 156(3) Cr.P.C and for that, it is not necessary to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation, it is open to the Magistrate to direct the police to register the FIR. Hence, the order passed by the learned Judicial Magistrate stating that no *prima facie* case is made out is not correct. Therefore, it is necessary to interfere with the findings given by the trial court.

11. In the result, the Criminal Revision is **allowed**. The impugned order passed by the Judicial Magistrate No.1, Usilampatti, is set aside. The matter is remitted back to the trial court to dispose of the case afresh, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)



To,

The Judicial Magistrate No.1,
Usilampatti.

Copy to:

The Section officer, (2 Copies)
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.SELVAM, Advocate (SR-77053[F] dated 23/07/2019)

Cr1.RC(MD)No.61 of 2019
22.07.2019

JMN(11.12.2019) 6P : 5C