



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.08.2019

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

Crl.RC. (MD)No.534 of 2019

WEB COPY

Mahalaxmi

: Revision Petitioner/
Petitioner

Vs.

The State rep.by
The Inspector of Police,
Palakkarai Police Station,
Trichy City.

: Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure against the order, dated 29.03.2019 made in Cr.M.P.No.1795 of 2019 on the file of the Judicial Magistrate No.5, Trichy District and consequently to direct the respondent to register the first information report and investigate the same based on the complaint dated 20.01.2019.

For Revision Petitioner : Mr.K.M.Karunakaran

For Respondent : Mr.APG Omh Chairma Prabhu
Government Advocate
(Criminal Side)

O R D E R

This Criminal Revision is directed against the order, dated 29.03.2019 made in Cr.M.P.No.1795 of 2019 on the file of the Judicial Magistrate No.5, Trichy and consequently direct the respondent to register the First Information Report and investigate the same based on the complaint, dated 20.01.2019.

2.It is the case of the petitioner that one Sambathkumar approved her for purchase of lorry for a sum of Rs.8,50,000/- and the sale amount was fixed and a sum of Rs.75,000/- was paid on 13.10.2018 and the balance has to be paid on or before 03.11.2018. The lorry was handed over to the said Sambathkumar and subsequently, he sent Rs.63,000/- to the bank account of the petitioner. Thereafter, the petitioner demanded the said Sambathkumar to pay the balance amount, but he did not pay the any amount, instead issuing threat to her life and limb. In this regard, the petitioner gave a complaint before the respondent police on 20.01.2019 to take immediate action against the said Sampathkumar. The respondent police issued CSR No.34 of 2019, but there is no further enquiry or any action. Subsequently, the petitioner sent a detailed complaint



by registered post to the Commissioner of Police, Trichy City on 15.03.2019. But no action has been taken so far. In the above circumstances, the petitioner filed Cr.M.P.No.1795 of 2019 before the Judicial Magistrate No.5, Trichy under Section 156(3) Cr.P.C seeking for a direction to the respondent to register a complaint and take necessary action. The learned Judicial Magistrate simply dismissed the petition on 29.03.2019. Hence, 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 is that the provisions of Section 156(3) of Cr.P.C provides for a check by the Magistrate on the police performing duties under Chapter XII of Cr.P.C in cases where the Magistrate finds that the police has not done its duty of investigating the cases at all or has not done it satisfactorily, he can issue a direction to the police to investigate properly and can monitor the same and in this case, without giving any direction to the respondent police by the learned Judicial Magistrate and determine the verdict on the basis of the oral examination and glance of documents is not sustainable in law and the allegations made in the petition discloses various cognizance criminal offence under Sections 406 and 420 IPC and the learned Judicial Magistrate has no power to take any decision under Section 156(3) of Cr.P.C, but is only to direct or monitor through proper investigation agency, but contrary to that, the learned Judicial Magistrate directly entertaining the process of complaint and passed orders and hence, it is liable to be set aside and prays that the criminal revision may be allowed. For that, the learned counsel submitted a ruling reported in **2006(1) SCC 626 (Mohammed Yusuf Vs. Afaq Jahan and another)**, wherein it has been held as follows:-

..the clear position therefore, is that any judicial magistrate before taking cognizance of the offence can order investigation under Section 156(3) of Cr.P.C. If he does so, it not examine the complainant on oath because he was not taking into 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 F.I.R. There is nothing illegal in doing so and after all registration of FIR involves only the process of entering the substance of the information relating to the commission of cognizable offence in a Book kept by the Officer in charge of the police station as indicated in Section 154 of Code."



5. In this case, the petitioner filed the petition under Section 156(3) of the Code of Criminal Procedure. On perusal of the allegations stated in the petition, it reveals that the commission of some cognizance offence and at this stage, it is the duty of the Magistrate to direct the police to register the case and after the investigation, there is commission of any cognizance case and the police filed the charge sheet and if there is no commission of cognizance offence, the police very well close the case. But in this case, the allegations stated in the petition reveals the commission of cognizable offence. Hence, the court should direct the police to register the case and investigate it. But the learned Magistrate without discussing anything passed an order. Therefore, the order passed by the learned Judicial Magistrate is liable to be dismissed.

6. For the reasons stated above, this court is of the considered view that the impugned order passed by the trial court is set aside and accordingly, it is set aside.

7. In the result, the Criminal Revision is **allowed**. The impugned order passed by the Judicial Magistrate No.5, Trichy, in Cr.M.P.No.1795 of 2019, dated 29.03.2019 is set aside. The matter is remitted back to the trial court to pass a detailed order in CMP No.1795 of 2019 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

// True Copy //

Sub Assistant Registrar(CS)

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To,

1. The Inspector of Police, Palakkarai Police Station, Trichy City.

2. The Judicial Magistrate No.5,
Trichy.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.M. KARUNAKARAN, Advocate (SR-83851[F] dated 28/08/2019)

Crl.RC (MD) No.534 of 2019
28.08.2019

KK/SAR/12.12.2019/3P-5C/