BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:24.09.2019
CORAM:
THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**
Crl.O.P.(MD) No.2192 of 2018
and
Crl.M.P(MD) No.977 of 2018

G. Naresh Kumar
S/o. D.Govindasamy
Trustee
Dr.Alagappa Chettiar Educational Trust
Algappapuram,Karaikudi
Sivagangai District ... Petitioner/Proposed Accused

Vs.

1. The Inspector of Police
Karaikudi North Police Station
Sivagangai District ... 1st Respondent

2.A. Palaniappan ... 2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order made in Cr.M.P No. 4221 of 2017, dated 15.12.2017 passed by the Principal District Munsif cum Judicial Magistrate, Karaikudi.

For Petitioner : Mr.M.Ajmal Khan Senior Counsel, for Mr.B.Vijay

For Respondents No.1 : Mr.K.Suyambulinga Bharathi Government Advocate(Crl.Side)

No.2 : Mr. Maheswaran

ORDER

This petition has been filed challenging the order passed in Cr.M.P No. 4221 of 2017, dated 15.12.2017 passed by the Principal District Munsif cum Judicial Magistrate, Karaikudi, thereby directing the first respondent to register the First Information Report and investigate the case in accordance with law.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is one of the trustee in Dr.Alagappa Chettiar Educational Trust and Asoka Charitable Trust. The second respondent is none other than the son of Mrs.Valliammai

and she is distant relative of Secretary of Alaggappa Chettiyar Trust. Since she lost her husband she was employed by the trust out of sympathy . She has been given promotion to the level of Administrative Officer in the school run by the trust. At that stage, she introduced second respondent being her son as book supplier to the school, using the opportunity the second respondent supplied children books created so many false records, falsified invoices, forged signatures of publishers etc without actually purchasing. Thereby the second respondent and his mother has misappropriated trust funds to the tune of more than five crore rupees. As such the trust preferred criminal complaint and a case has been registered in Crime No. 8 of 2017 for the offences under Sections 420,406,408,467,468,471,120(B), 506(i) and 511 of IPC. In fact the second respondent also filed writ petition in W.P.No.15925 of 2016 before the Principal Bench of Madras High Court challenging the founder quota conferred by the state government of Tamil Nadu in favour of trust and it is pending without any interim order. He further submitted that on the false representation the second respondent obtained bail before the Principal District and Sessions Court, Sivagangai on condition that to deposit title deeds for value of Rs.1.5 crores. Infact the trust has filed cancellation of bail petition in Crl.O.P No.14169 of 2017 before this Court to cancel the bail granted by the Principal District and Sessions Court, Sivagangai and it is pending. While being so, the second respondent filed private complaint seeking direction under Section 156(3) Cr.P.C on the file of the learned Judicial Magistrate, Karaikudi with false allegations. The learned Magistrate without following the procedure contemplated under Sections 154 and 156(3) of Cr.P.C mechanically directed the first respondent to register the case on the complaint lodged by the second respondent herein. He further submitted that the learned Magistrate without even satisfying the essential requirements provided under Section 156(3) Cr.P.C issued direction to the first respondent to register First Information Report when the complaint does not make any cognizable offence. He further submitted that the impugned order is non-speaking one and without assigning any reason mechanically directed the first respondent to register the case. He further relied on the judgment reported in ***(2015)6 Supreme Court Cases 287*** to substantiate his arguments. He further submitted that without lodging any complaint before the concerned jurisdictional police straightaway the second respondent lodged private complaint with false and frivolous allegations and the same was not considered. Again the second respondent sent complaint to the higher officials by registered post.

3. The learned counsel for the second respondent would submit that in respect of irregularities in the trust he filed suit in C.S. No. 11661 of 2016 and also filed writ petition in W.P.No.15925 of 2016 and both are pending on the file of the Principal Bench of this Court. While being so, on 28.08.2017 the accused persons on instructions of the trustees along with other accused persons have

trespassed into the office of the second respondent and threatened them to withdraw the case filed by this against the trust namely the writ petition and civil suit. They also abused him with filthy language and threatened him with dire consequences. Further he lodged complaint on 28.10.2017 before the Inspector of Police, Karaikudi North Police Station . He also sent compliant through registered post to all the higher officials . Even then the complaint was not considered by the police officials and did not take action on the complaint, hence he is constrained to file the private complaint before the learned Magistrate and the learned Magistrate after conducting enquiry rightly directed the first respondent to register the First Information Report as against the accused persons. Hence he sought for dismissal of the petition.

4. Heard Mr. Ajmal Khan, learned Senior Counsel appearing for the petitioner and Mr.K.Suyambulinga Bharathi learned Government Advocate(Crl.Side) appearing for the first respondent and Mr. R.Maheswaran learned counsel appearing for the second respondent.

5. The second respondent lodged complaint before the learned Magistrate and the learned Magistrate directed the first respondent to register the First Information Report and investigate the same in accordance with law under Section 156(3)of Cr.P.C. The learned Magistrate further directed the first respondent to file report within a period of two weeks. On perusal of the private complaint lodged by the second respondent alleging that the petitioner and other accused persons have trespassed into the officer and threatened him to withdraw the case in C.S. No. 11661 of 2016 and W.P.No.15925 of 2016 pending on the file of the Principal Bench of this Court. He also abused him in filthy language and threatened him with dire consequences. In this regard the second respondent lodged a complaint only on 28.10.2017 that too by sending complaint by registered post. In the private complaint no proof has been attached. The learned Magistrate while directing the first respondent to register the case passed the following order and the relevant portion is extracted hereunder:

> " *Petitioner present. Petition and material perused. Complaint would disclose the cognizance offence. The complaint is forwarded to north police station u/s.156(3) Crpc with direction to register FIR and investigate the case in accordance with law. Report to be filed within 2 weeks".*

6. When there is no annexure in the private complaint learned Magistrate mechanically recorded that the Petition and material perused and further recorded Complaint would disclose the cognizance offence. It is seen from the allegation that on 28.08.2017 the petitioner and other have trespassed into the office and threatened the defacto complainant, whereas the second respondent lodged complaint on 28.10.2017, that too by registered

post, for which absolutely there is no proof and no acknowledgement annexed with the private complaint. Further the learned Senior Counsel rightly pointed out that the learned Magistrate while directing the first respondent not at all followed the procedure contemplated under Section 156(3) Cr.P.C. Inorder to substantiate the submission made by the learned Senior Counsel he also relied upon judgment reported in ***(2015)6 Supreme Court Cases 287 in the case of Priyanka Srivastava and another -vs- State of Uttar Pradesh and others,*** and the relevant portion is extracted here under:

> *"20. The learned Magistrate, as we find, while exercising the power under Section 156(3) Cr.P.C. has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot be marginalized. To understand the real purport of the same, we think it apt to reproduce the said provision:*
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> *"156. Police officer's power to investigate congnizable case. -(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was no empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."*
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> *21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others[2], had to express thus:*
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> *"It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173."*
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> *22. In Anil Kumar v. M.K. Aiyappa[3], the two-Judge Bench had to say this:*

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order.

The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

23. In Dilawar Singh v. State of Delhi[4], this Court ruled thus:

"18. ...11. 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 investigation 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 complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. [5], the Court while dealing with the power of Magistrate *taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure.*

And again:

"18.When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under [pic] Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156 (3)."

25. 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:

"22.1 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.

22.2 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."

26. At this stage, we may usefully refer to what the Constitution Bench has to say in Lalita Kumari v. Govt.

of U.P.[7] in this regard. The larger Bench had posed the following two questions:-

"(i) Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused."

Answering the questions posed, the larger Bench opined thus:

"49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable [pic]offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

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72. It is thus unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

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111. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the

Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

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115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:-

"120.6. As to what type and in which cases 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.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

We have referred to the aforesaid pronouncement for the *purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not.*

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been *able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.*

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

30. 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. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores"

7. The Honourable Supreme Court of India has held that the learned Magistrate while exercising jurisdiction under Section 156 (3) of Cr.P.C the learned Magistrate has to apply his mind and state reasons for ordering investigation. Further when a complaint filed for direction under Section 156(3) Cr.P.C it should be submitted by affidavit sworn by the applicant. In the case on hand, the complaint lodged by the second respondent is not supported by affidavit of the second respondent herein. Further the learned Magistrate ought to have gone through the complaint and records received for sending complaint for registration of a case. Further

the above judgment squarely applies to the case on hand and the impugned order cannot be sustained.

8. That apart, the occurrence took place on 28.07.2018, whereas he lodged complaint before the police officials on 28.10.2018, that too without proof for the same. Therefore the private complaint lodged by the second respondent is nothing, but clear abuse of process of law. When he is facing criminal case in registered in Crime No. 8 of 2017 for the offences under Sections 420,406,408,467,468,471,120(B), 506(i) and 511 of IPC, lodging the present complaint is nothing but to escape from the clutches of law of the above crime.

9. In view of the above, the order passed by the Principal District Munsif cum Judicial Magistrate, Karaikudi in Cr.M.P No. 4221 of 2017, dated 15.12.2017 is set aside and the Criminal Original Petition is allowed. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

2. The Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.

Copy to: The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1 CC to Mr.V.VIJAY, Advocate SR-88930.

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and
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CS(14.10.2019) 11P 5C