

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.08.2020

DELIVERED ON: 14.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.638 of 2020

A.K. Habibullah

Petitioner

vs.

1 State by
the Inspector of Police
N-1, Royapuram Police Station
Chennai 600 001

2 A. Jousua

3 Ayesha

4 A.A. Abdul Subhan

Respondents

Prayer: Criminal Revision under Section 397(1) and 401 Cr.P.C. seeking to call for the entire records from the file of the XVI Metropolitan Magistrate at George Town in Crl.M.P. No.791 of 2019 and quash the order dated 01.02.2020 and thereby, direct the first respondent to conduct investigation and file final report upon the petitioner's complaint dated 19.09.2019.

For petitioner Mr. P. Sidharthan

For R1

Mrs. P. Kritika Kamal

Govt. Advocate (Crl. Side)

ORDER

The petitioner has filed a complaint petition in Crl.M.P. No.791 of 2019 under Section 156(3) Cr.P.C. before the XVI Metropolitan Magistrate, George Town, Chennai, praying for a direction to the police to investigate the allegations made by him against Jousua, Ayesha and Abdul Subhan, who are respondents 2 to 4 herein.

2 The learned Magistrate, after carefully analysing the complaint petition filed by the petitioner, has, by the impugned order dated 01.02.2020, dismissed the same, holding that the allegations are purely civil in nature and that the petitioner has not made out any prima facie case for a direction to register an FIR. Aggrieved by the said order, the petitioner is before this Court.

3 Heard Mr. P. Sidharthan, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the first respondent police.

4 The learned counsel for the petitioner submitted that the petitioner had given on rent, a shop portion belonging to him, to Jousua (R.2) and has filed R.C.O.P. No.1632 of 2017 under the Tamil Nadu Rent Control Act, for eviction on the ground of wilful default; while so, the petitioner sold the property to Ayesha (R.3) and Abdul Subhan (R.4) and they have withheld a part of the sale price amounting to Rs.10 lakhs, on the ground that Jousua (R.2) is occupying a portion of the building. The learned counsel further contended that now Jousua (R.2) has joined hands with Ayesha (R.3) and Abdul Subhan (R.4) and that the trio is contending that a sum of Rs.8 lakhs has been paid to the petitioner for the rental dues of Jousua (R.2), which is not true.

5 The aforesaid allegations that have been made in the complaint did not find favour with the XVI Metropolitan Magistrate, George Town, Chennai, who dismissed the complaint petition on the ground that the same is civil in nature, as stated supra.

6 In the opinion of this Court, an order passed under Section 156(3) Cr.P.C. is not amenable to revisional jurisdiction as held by this Court in Nathan vs. Vaithinathan and others¹. An order passed by a Magistrate under Section 156 (3) Cr.P.C. refusing to direct the police to investigate does not leave the complainant remediless. The complainant can still file a private complaint and proceed under Section 200 Cr.P.C. to prove the allegations against the respondents. In fact, in Kamlapati Trivedi vs. State of West Bengal², the Supreme Court has held that even an order of further investigation is an executive order. The next question is whether the Court can exercise the power under Section 482 Cr.P.C. and give any relief to the petitioner. The answer to this question is an emphatic "No". What is expressly barred under Section 397(2) Cr.P.C. cannot be achieved via Section 482 Cr.P.C.

In the result, this criminal revision is dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CS III)

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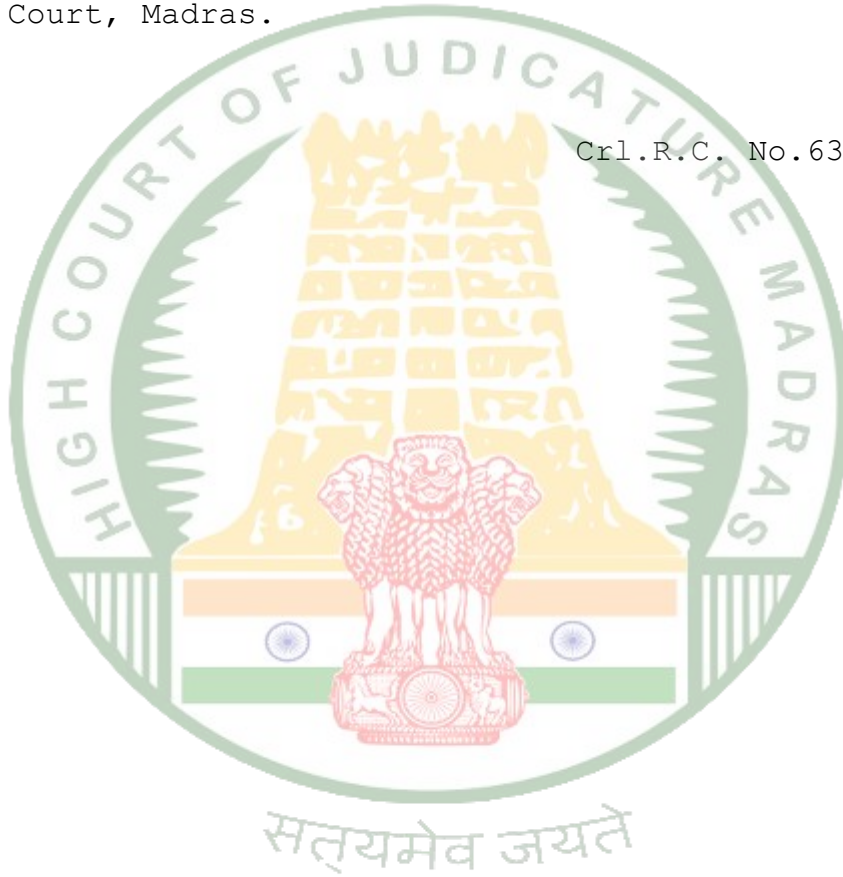
Sub Assistant Registrar

To

- 1 The Inspector of Police
N-1, Royapuram Police Station
Chennai 600 001
- 2 The XVI Metropolitan Magistrate
George Town
Chennai
- 3 The Public Prosecutor
High Court, Madras.

Mr(co)
krd 28/10

Cr1.R.C. No.638 of 2020



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