

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.R.C. No. 35 of 2021

K.Rajagopal,  
S/o. Kannan  
rep. By his Power of Attorney  
Agent P. Banumathi,  
W/o. Pugazhendi, Aged about 53 years  
Flat No.309, Devi Narayani Apartment,  
Rameswaram Road,  
T.Nagar, Chennai-17. ... Petitioner/Defacto  
Complainant

Versus

K.Krishnagopal,  
S/o. Kannan,  
Plot No.42, Door No.3,  
I Main Road, Rajeswari Nagar,  
Karambakkam Village,  
Porur, Chennai-116. ... Respondent/Accused

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 Criminal Procedure Code, praying to set aside the impugned order dated 20.03.2020 in Crl.M.P. Sr. No.1 of 2020 on the file of the learned Special Court for Exclusive Trial of Land Grabbing cases No.II, Egmore @ Allikulam, Chennai and consequently direct the learned Special Court for Exclusive Trial of Land Grabbing cases No.II, Egmore @ Allikulam, Chennai to allow the petitioner's complaint in Crl.M.P.Sr. No.01 of 2020 in accordance with law.

For Petitioner : Mr.L.Poovendra Perumal  
For Respondent : Mr.R.Suryaprakash,  
Govt. Advocate

O R D E R

The petitioner has filed the present Criminal Revision Petition stating that his father gave a complaint before the respondent police. Since the respondent police has not taken any steps in the complaint, he has filed a petition in Crl.O.P.No.3059 of 2016 before this Court seeking for a

direction and this Court by an order dated 11.02.2016, issued a direction directing the 2<sup>nd</sup> respondent therein to register the complaint of the petitioner dated 05.06.2015, to conduct enquiry in C.S.R.No.938 of 2015 following the dictum laid down in Lalitha Kumari Vs. Govt. of U.P. & others (2013 (4) Crimes 243 (SC) and to register a case, if any cognizance of offence is made out. However, after that, the matter was left pending without registration of any case. Subsequently, the petitioner has filed a complaint before the Special Court for Exclusive Trial of Land Grabbing cases No.II, Egmore @ Allikulam under Sec.156(3) seeking a direction to register a case and the learned Judge has rejected the petition and liberty was given to the petitioner to approach the appropriate forum. Challenging the said order, now, the petitioner is before this Court.

2. Mr.L.Poovendra Perumal, learned counsel appearing for petitioner would submit that the respondent has created a forged document. Therefore, his father has given a complaint against the respondent herein before the Commissioner of Police, Vepery, Chennai on 05.06.2015. He would submit that as there was no action against the respondent, his father has approached this Court in Crl.O.P.No.3059 of 2016 and this Court has directed the 2<sup>nd</sup> respondent therein to expedite the enquiry and follow the dictum laid down in Lalitha Kumari's case (as stated supra). Therefore, he has filed a complaint before the learned Magistrate (Special Court for Land Grabbing-I) at Egmore, Chennai and the learned Magistrate has dismissed the complaint without considering the fact that the respondent herein has forged the documents, committed fraud and also cheated the petitioner. He would submit that since the petitioner is in abroad, he could not proceed further and thereafter, his father died. He would submit that after the demise of his father, the petitioner came to know that the respondent has forged the document, and due to old age, his father could not follow the matter. Hence, now, the petitioner has filed a complaint before the learned Magistrate and the learned Magistrate has failed to consider his grievance. Challenging the said order, the petitioner is before this court.

3. The learned Government Advocate would submit that the petitioner is not the defacto complainant and his father only gave a complaint. He would submit that the court below has not given any positive direction, and not directed to register the F.I.R. He would submit that this Court only passed the order in Crl.O.P.No. 3059 of 2016 and directed the 2<sup>nd</sup> respondent therein to expedite the enquiry and to follow dictum laid down in Lalitha Kumari's case and in case prima facie is found, it can take necessary steps to register a complaint. He would submit that subsequent to the order passed in Crl.O.P.No.3059 of 2016, dated 11.02.2016, his father went to the respondent police

therein and withdrawn his complaint filed against the respondent and accordingly, the complaint was closed on 11.11.2016 itself. He would submit that his father was died only thereafter in the year 2019 and till the life time of his father, they have not taken any steps to redress his grievance. Therefore, he has withdrawn his complaint. He would also submit that the petitioner has neither filed a complaint nor impleaded the police officials as a party in any of the proceedings. Hence, under these circumstances, the learned Magistrate has rightly rejected the complaint.

4. On perusal of materials on record, it is seen that admittedly, the petitioner has filed a complaint under Section 156(3) of Crl.P.C. before the Special Court for Land-Grabbing cases seeking a direction directing the Inspector of Police, Team 18, Central Crime Branch, Vepery, Chennai to register the against the respondent/accused and investigate the same in accordance with law. The learned Magistrate has stated that the police official was not impleaded as party respondent and even after the direction of this Court, the police officials have not made any enquiry and failed to register the case. Hence, the petitioner has to proceed the matter in accordance with law. That means, the petitioner said to have filed a private complaint before the Magistrate against the respondent. So, without adopting the same, he straight away filed a petition under Sec.156(3) of Cr.P.C. Hence, the learned Magistrate has refused the same.

5. On perusal of entire records, it is also seen that originally, his father filed a complaint before the respondent police on 05.06.2015 against the respondent herein. Since there was no action, the father of the petitioner filed a Criminal Original Petition before this Court in Crl.O.P.No.3059 of 2016 and this Court passed an order dated 11.02.2016 directing the respondent police therein to enquire the complaint in C.S.R.No.938 of 2015, directing them to expedite the enquiry and follow the dictum laid down in Lalitha Kumari's case. If any cognizable offence is made out, then they are directed to register the case. After 11.02.2016, according to the petitioner, no action was taken.

6. According to the Government Advocate, during the life time of his father, he has withdrawn the complaint. Therefore, the complaint in C.S.R.No.938 of 2015 was closed. He has also stated in the counter that the proceedings in C.S.R.No.938 of 2015 has been destroyed vide proceedings C.No.167/ACOP CCB/Camp/2020, dated 18.03.2020. Therefore, as on date, there is no records are available. However, the fact remains that this Court gave a direction on 11.02.2016, admittedly, his father died in the year 2019, but during the life time of his father,

he has not approached either the learned Magistrate or this Court to give a further direction. Hence, the submission of the Government Advocate appears to be genuine and that, his father withdrawn the complaint. If at all, he has not withdrawn the complaint, and the police has not registered the case, certainly his father would have approached either the Magistrate by way of a private complaint under Section 200 of Cr.P.C. or he would have approached this court for further direction for non-compliance of the order. Therefore, after the death of his father, the petitioner would have filed a petition before the learned Magistrate under Section 156(3) of Cr.P.C. In such view of the matter, the petition under Section 156(3) of Cr.P.C. is not maintainable and already based on the complaint given to the police, the police has not registered the case and not proceeded further. If the police has not registered the case, it is always open to the petitioner to approach the concerned Magistrate to register a complaint, to implead the police as one of party respondent and to proceed further in accordance with law or he would have approached this Court seeking a direction for compliance of earlier orders. Therefore, under these circumstances, after the life time of defacto complainant/father of petitioner, the petitioner cannot straight away file a petition under Sec.156(3) of Cr.P.C. Hence, taking into consideration of the facts and circumstances, this Court does not find any perversity in the order passed by the learned Magistrate and if the petitioner is having any grievance, he is at liberty to file a fresh complaint in the manner known to law. Accordingly, this Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Special Court for exclusive  
Trial of Land-Grabbing No.II,  
Egmore @ Allikulam, Chennai.
2. The Public Prosecutor,  
High Court, Madras.

Cr1.R.C. No.35 of 2021

KV(CO)  
CSR 28.04.2021