



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.R.C.No.212 of 2018

Kuzhanthaivel

...Petitioner

Vs.

1.The Revenue Inspector,
Nallur Village,
Paramathi, Vellore Tk.

2.The Tahsidar,
Padamudipalayam,
Paramathi, Vellore Tk.

3.The Village Administrative Officer,
Kunnamalai, Nallur Village,
Paramathi, Vellore Tk.

4.The Village Assistant,
Kunnamalai, Nallur Village,
Paramathi, Vellore Tk.

5.Kasthuri

6.Raja @ Rajkumar

...Respondents

PRAYER : Criminal Revision has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.8392 of 2017 dated 30.01.2018 on the file of the learned Judicial Magistrate at Paramathi.

For Petitioner :Mr.K.Govindan(Legal Aid counsel

For R1 to R4 :Mr.A.Gopinath
Government Advocate (Crl.Side)

For R5 & R6 :Mr.T.Muthukrishnan



ORDER

This Criminal Revision Case has been preferred challenging the order of the learned Judicial Magistrate, Paramathi dated 30.01.2018 made in Crl.M.P.No.8392 of 2017.

2. The petitioner is said to have filed a complaint before the learned Magistrate for ordering investigation into the matter as per Section 156 (3) of Cr.P.C., for certain allegations against the respondents especially for not issuing patta and not removing the encroachment.

3. The learned Magistrate rejected the petition on the ground that the allegations in the complaint do not have any incriminating material against the respondents for taking action under criminal law. Aggrieved over that, the petitioner has preferred this Criminal Revision Case.

4. The learned counsel for the petitioner submitted that once the complaint is filed before the Magistrate for seeking investigation, he is bound to order for initiating investigation and hence the order has to be set aside.

5. The learned counsel for the respondents 5 and 6 submitted that the matter involved in this petition is purely civil in nature and in which no criminal action can be taken.

6. The learned Government Advocate (Crl.Side) appearing for the respondents 1 to 4 submitted that whenever any complaint has been filed for invoking the power under Section 156(3) of Cr.P.C., that has to be accompanied with an affidavit and the impugned petition does not even have an affidavit in support of the complaint. In order to substantiate the said submission, he also relied upon the judgment reported in MANU/SC/0344/2015 in the case of Priyanka Srivastava and another -vs- State of Uttar Pradesh and others, and the relevant portion is extracted here under:-

"27. In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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



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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 the 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. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari reported in [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."



7. Further, it is seen from the allegations of the very complaint filed before the Magistrate that there is no averments as to the commission of any criminal offence. Without any prima facie materials for taking criminal action against the respondents, the Magistrate cannot order for investigation in a matter which is civil in nature. Hence, I find no illegality and infirmity and it does not warrant any interference.

8. In the result, this Criminal Revision Case is dismissed and the judgment of the learned Judicial Magistrate is hereby confirmed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

rpl
To
1.The Judicial Magistrate, Paramathi.

Cr1.R.C.No.212 of 2018

PL(CO)
SP(13/12/2021)