



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	24.06.2021
DELIVERED ON	09/07/21

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
Cr1.RC(MD)No. 707 of 2016

A.Vavamydeen

...Revision petitioner/Petitioner

Vs.

1.Murugiah
2.Nagoor Meeran
3.Sheik Mohammed
4.Erimalai @ Abdul Rahuman
5.Thangam

...Respondents/Respondents

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records from the Lower Courts and set aside the order passed in Cr.M.P.No.5484 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Shenkottai, dated 10.08.2016 by allowing this revision.

For Petitioner : Mr.H.Arumugam

For Respondents : No Appearance

O R D E R

This Criminal Revision Case has been filed to set aside the order, dated 10.08.2016 in Cr.M.P.No.5484 of 2016 passed by the learned District Munsif cum Judicial Magistrate Court, Shenkottai.

2. The petitioner/complainant has filed a petition U/s 156 (3) of Criminal Procedure Code before the learned District Munsif cum Judicial Magistrate Court, Shenkottai on 25.04.2016 as against the respondents herein. The relief sought for in the petition is that a case to be registered as against the respondents herein based on his complaint dated 14.02.2016 by the Inspector of Police, Atchanpudur Police Station for the offences punishable under Sections 294(b), 395 and 506(ii) of IPC.

3. The learned District Munsif cum Judicial Magistrate Court, Shenkottai, has dismissed the Cr.M.P.No.5484 of 2016 vide the order impugned, dated 10.08.2016 on the ground that no material witnesses have been produced by the petitioner. Hence, he has

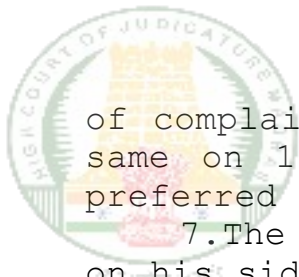


preferred the instant criminal revision case.

4. The learned Counsel for the petitioner submitted that the reasons assigned by the Court below in dismissing the private complaint by the petitioner is against law, weight of evidence and probabilities of the case. He further submitted that the facts as adduced in the private complaint have made out the offences, but the Court below failed to allow the same and consequently dismissed the private complaint. He further submitted that the offences committed by the respondents would squarely come under the ambit of various offences. He further submitted that the other reasons given by the Court below in dismissing the said private complaint is unsound and unsustainable in law. Therefore, he prays for allowing this petition.

5. Heard the learned Counsel appearing for the petitioner and perused the material documents available on record.

6. It is stated in the petition that the petitioner is the cultivating tenant of agricultural land in S.No.330/2, 332/1 and 239/1 totally to an extent of 1.33 ½ acres. The said land originally belonged to one Sheik Mohammed and the petitioner is in possession and enjoyment of the land as cultivating tenant for the past six years and the proceedings for record of tenancy is pending. While the paddy crops of the petitioner was about to harvest, the first respondent at the instigation of the respondents 2 to 5, preferred a false complaint against the petitioner, as such the petitioner was away from the village for getting anticipatory bail and taking advantage of absence of the petitioner, the respondents trespassed into the agricultural land and harvested the crops illegally on 10.02.2016. The said occurrence was witnessed by one Amanullah, Ismail and Syed Ali. Eventhough they advised the respondents to take away the paddy. Subsequently, after obtaining anticipatory bail, the petitioner went to the agricultural land on 14.02.2016 and found the damage worth about Rs.50,000/-. When he enquired the same with the respondents on 14.02.2016 at 12.00 p.m near Vadakarai VAO office, they scolded the petitioner in filthy language and also threatened him with dire consequence. Therefore, the petitioner gave a complaint before the Atchanpudur Police. Since the Atchanpudur Police did not evoke any response, the petitioner sent a complaint through registered post on 28.03.2016 and the same was received by the Atchanpudur Police on 29.03.2016 even that was no response. Hence, he sent a complaint to the Superintendent of Police on 05.04.2016 and the same was delivered on 06.04.2016; however, that was also not taken into consideration. Hence, the petitioner filed a petition in Cr.M.P.No.5484 of 2016 before the District Munsif cum Judicial Magistrate Court, Shenkottai under Section 156(3) of Cr.P.C. The learned Judicial Magistrate without proper appreciation



of complaint and the oral and documentary evidence, dismissed the same on 10.08.2016. As against the said order, the petitioner preferred this revision.

7. The revision petitioner was examined himself and two others on his side. In this revision, even though notice was served on the respondents, no one is appeared before this Court.

8. The ingredients of Section 156(3) is extracted here under:

"Power of Magistrate to direct investigation arises in two situations:

(i) when FIR is refused to be lodged; and

(ii) when statutory power of investigation for some reason or the other is not exercised. When order is passed under Section 156(3), investigation must be carried out, which culminates in filing a charge-sheet if prima facie case is made out. When however, IO finds that alleged offence has not been committed, a report to that effect needs to be submitted, Dharmeshbha Vasudev bhai Vs. State of Gujarat, (2009) 6 SCC 576. "

9. P.W.2 and P.W.3 were examined on the side of the petitioner are alleged to be eye witnesses. As per their evidence, the respondents came to the petitioner's field and harvested the grains on the occurrence day. On that day, the petitioner/complainant was not present. They also produced copy of the photographs. It *prima facie* reveals that there was an occurrence. Thereafter, the petitioner gave a complaint to the Atchanpudur Police Station and the Superintendent of Police and also filed acknowledgment card along with his complaint. It is the duty of police, once a complaint given to them, the police officials should register an FIR and then investigate. If no material found in the investigation, the police officials may close the complaint as otherwise. But the police officials did not register the case on the basis of the complaint given by the revision petitioner. So, the revision petitioner/complainant filed a petition under Section 156(3) of Cr.P.C.

10. The relevant portion of the Judgment reported in **(2010) 8 SCC 206, Srinivas Gundluri and Others Vs. Sepco Electric Power Construction Corporation and Others**, is extracted hereunder:

"...19. In Devarapalli Lakshminarayana Reddy, a Bench of three Hon'ble Judges has explained the power of the Magistrate under Section 156(3) and Sections 200 and 202.

The following discussion and ultimate conclusion are



relevant which read as under:

"13. It is well settled that 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. This is clear from the use of the words 'may take cognizance' which in the context in which they occur cannot be equated with 'must take cognizance'. The word 'may' gives a discretion to the Magistrate 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 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, himself.

....17. Section 156(3) occurs in Chapter XII, under the caption: 'Information to the Police and their powers to investigate', while Section 202 is in Chapter XV which bears the heading: 'Of complaints to Magistrates'. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a 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). But if he once takes cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). 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 charge-sheet under Section 173...."

11. The relevant portion of the judgment reported in **AIR 2010 SC 1877, Rameshbhai Pandurao Hedau Vs. State of Gujarat**, is extracted hereunder:-

<https://hcservices.ecourts.gov.in/hcservices> 18. The power to direct an investigation to the



police authorities is available to the Magistrate both under Section 156(3) Cr.P.C. and under Section 202 Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated 17 herein before, the power under Section 156(3) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post-cognizance stage. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under Section 200 of the Code and has thereafter proceeded under Section 202 Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint under Section 203 or proceed in terms of Section 193 and commit the case to the Court of Sessions..."

12.The revision petitioner/complainant examined three witnesses. He cannot collect all the evidences. Only the police officials can collect the evidences. If an investigation is done, the police could not find any material, he can very well close the First Information Report. So, *prima facie*, the revision petitioner/complainant made out a cognizable case. The District Munsif cum Judicial Magistrate ought to have directed the police to register an FIR and to investigate the matter instead of dismissing the complaint under Section 202 of Cr.P.C.

13.In the result, the Criminal Revision Case is allowed. The order passed by the learned District Munsif cum Judicial Magistrate Court, Shenkottai, in Cr.M.P.No.5484 of 2016, dated 10.08.2016 is hereby set aside.

Sd/-

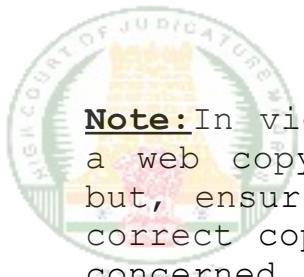
Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

sjj



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

WEB COPY

1. The District Munsif cum Judicial Magistrate Court,
Shenkottai.

**Order made in
Cr1.RC(MD)No. 707 of 2016**

09.07.2021

CN(16.07.2021) 6P 2C