



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.02.2021
PRONOUNCED ON : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD) .No.7 of 2017

A.M.Vijayaraja

... Petitioner/Petitioner

Vs.

1.The State represented by
The Inspector of Police,
Muthaiahpuram Police Station,
Thoothukudi.

2.The Superintendent of Police,
Thoothukudi.

3.Deivaasirvatham

4.Jebachandran

5.Jesu Sagayam

6.Johnson Daniel

7.Jeyanth Jason Thomas

...Respondents/Respondents

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records in Cr.M.P.No.6851 of 2016 on the file of the Judicial Magistrate No.II, Thoothukudi, dated 18.11.2016 and set aside the same and further direct the first respondent to register FIR on the basis of the complaint of the petitioner filed Under Section 156(3) Cr.P.C dated 24.10.2016 before the Judicial Magistrate No.II, Thoothukudi.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side) for R1&R2

No appearance for R3

Mr.M.Shajahan, for R4 to R7.



ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.NO.6851 of 2016, dated 18.11.2016 on the file of the Judicial Magistrate No.II, Tuticorin, dismissing the petition filed under Section 153(3) Cr.P.C.

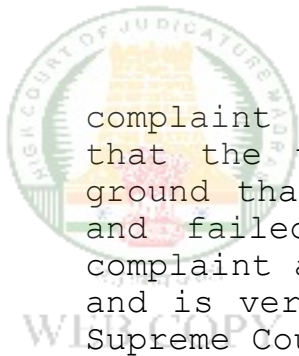
2.The revision petitioner has filed a petition under Section 156(3) Cr.P.C against the respondents 3 to 7 alleging that they had been involving various Foreign currency frauds and acting against their Diocese and the Indian Sovereignty, that he came to know from a magazine that the respondents 3 to 7 had paid Rs.9,00,000/- to the accused in Crime No.18 of 2013 of Tharuvaikulam Marine Police Station, involved in the illegal transportation of weapons through a ship, that the said accused were convicted and sentenced to undergo 5 years Rigorous Imprisonment in S.C.No.262 of 2015 by the District Sessions Court, Tuticorin, that though the revision petitioner has preferred a complaint to the second respondent in person on 15.09.2016 and through post on 20.09.2016, he has not taken any action and that therefore, he was constrained to file the above complaint, seeking orders directing the first respondent to register a case and to proceed further.

3.The learned Magistrate, after receipt of the said petition, on hearing the petitioner's side and on perusal of the records, has passed the impugned order, dated 18.11.2016, dismissing the petition. Aggrieved by the said order, the petitioner has come forward with the present revision case.

4.Whether the impugned order passed in Cr.M.P.No.6851 of 2016, dated 18.11.2016, on the file of the Judicial Magistrate No.II, Thoothukudi, is liable to be set aside? is the point for consideration.

5.It is not in dispute that the revision petitioner has filed a petition under Section 156(3) Cr.P.C, against the respondents 3 to 7, seeking a direction to register FIR for the offences alleged to have been committed under the provisions of Indian Penal Code and National Security Act. The learned Magistrate, by holding that no information was disclosed about, the purpose for which, the money was allegedly received and whether the same was converted into some other purpose and whether the offences alleged are cognizable or not and that the way in which, the respondents 3 to 7 were connected with it and that there was no disclosure of commission of any cognizable offence, dismissed the petition.

6.The learned counsel for the revision petitioner would contend that the learned Magistrate ought to have forwarded the complaint under Section 156(3) Cr.P.C for investigation, that the trial Court ought to have either directed the respondent to investigate the case by registering the FIR or take up the case into file as a private



complaint and to proceed with the same under Section 200 Cr.P.C, that the trial Court erred in dismissing the application on the ground that the complaint does not disclose any cognizable offence and failed to consider the documents filed in support of the complaint and that the procedure adopted by the trial Court is wrong and is very much against the legal dictum laid down by the Hon'ble Supreme Court and by this Court.

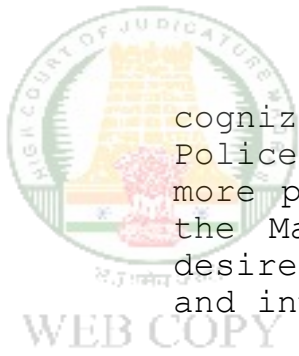
7.Regarding the powers of the Magistrates in forwarding the petitions filed under Section 156(3) Cr.P.C to the police for registration of FIR and for investigation or in proceeding with the case as a private complaint under Section 200 Cr.P.C, it is necessary to refer the following passages in the decision given by this Court in Crl.R.C(MD)No.150 of 2017, dated 09.02.2021 **(P.Pitchiyappan Vs. Karpagam and others)**

"8.No doubt, if the petition is filed under Section 156 (3) Cr.P.C, the learned Magistrate has to apply his mind to know whether the allegations in the complaint *prima facie* make out a case and the Magistrate should not mechanically pass order directing the Police to investigate the case. In case, if the allegations constitute a cognizable offence, then, the Magistrate is duty bound to forward the complaint to the concerned Police for registering the FIR and for further investigation.

9.It is pertinent to mention that it is not mandatory on the part of the Magistrate to send the complaint to the concerned Police to register and investigate the case, if the said petition does not reveal any *prima facie* case to proceed further.

10.It is settled law that when a complaint is filed before the Court of competent jurisdiction, the Magistrate will have two options and as per the first option, he can take the complaint on file under Section 200 Cr.P.C by examining the complainant and witnesses, if any and he can pass orders either to dismiss the same under Section 203 Cr.P.C or to issue process under Section 204 Cr.P.C. As per the second option, if the complaint discloses any cognizable offence, he can refer the matter for investigation under Section 156(3) Cr.P.C to find out the truth of the allegations. But if a petition is filed under Section 156(3) Cr.P.C, the Magistrate can either forward the said petition to the Police for investigation or treat the said petition as a private complaint under Section 200 Cr.P.C. In cases of civil nature and in the cases, where the police do not entertain the complaint, the persons with vested interest and with some oblique motive, rushes to the criminal Court and files a petition under Section 156(3)

<https://hcservices.courts.gov.in/hcservices/> making some allegations to constitute the



cognizable offence and wants an order or direction to the Police for registering the FIR and for investigation and more petitions under Section 156(3) are being filed in all the Magistrate Courts and are attempting to achieve the desired results through the orders for registration of FIR and investigation.

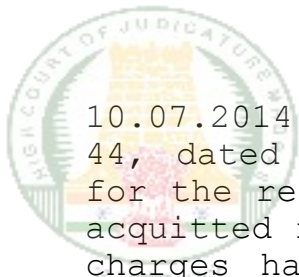
11. In such a scenario, the Magistrates are duty bound to see as to whether the averments in the petition would constitute cognizable offences and the same is supported by any materials. More importantly, mere allegation about the commission of the offence without any material in support thereof would not justify the order for investigation under Section 156(3) Cr.P.C."

8. In the case on hand, the petitioner has alleged that a sum of Rs.9,00,000/- belonging to the Mission of Seafarers, was paid by the respondents 3 to 7 and that therefore, the respondents 3 to 7 are also guilty and are punishable for the offences under the Indian Penal Code as well as the National Security Act.

9. The learned counsel for the respondents 3 to 7 would submit that FIR came to be registered in Crime No.18 of 2013 of Tharuvaikulam Marine Police Station against 35 persons, who travelled in a M.V.Seman Guard Ohio vessel, under the provisions of Arms Act, 1959, Essential Commodities Act, 1955 and Motor Spirit and High Speed Diesel (Regulation of supply Distribution and Prevention of Malpractices) order 1998, that the case was subsequently transferred to the crime Branch CBCID and after investigation, final report was filed against 45 accused for the offences under the provisions of Arms Act, 1959, Essential Commodities Act, 1955 and Motor Spirit and High Speed Diesel (Regulation of supply Distribution and Prevention of Malpractices) order 1998 and under Section 120 B IPC, that subsequently, some of the accused have invoked the jurisdiction of this Court under Section 482 of Cr.P.C in Crl.O.P.(MD)No.6719 of 2014 and one accused has filed a criminal revision in Crl.R.C.(MD)No.204 of 2014 and that this Court has passed an order on 10.07.2014, quashing the prosecution of the petitioners therein under the Arms Act, 1959.

10. He would further submit that subsequently, the trial was conducted and the learned Principal District and Sessions Judge, Tuticorin has passed the judgment of conviction dated 11.01.2016, imposing sentence on them, that this Court in criminal appeal in Crl.A.(MD)Nos.41, 43 and 44 of 2016 has passed the judgment on 27.11.2017, setting aside the judgment of conviction and acquitted all the accused and that therefore, the present complaint of the revision petitioner is absolutely absurd and untenable.

11. I have perused the common order passed by this Court in Crl.O.P.(MD)No.6719 of 2014 and Crl.O.P.(MD)No. 6719 of 2014, dated



10.07.2014 and the common judgment passed in Crl.A(MD)No.41, 43 and 44, dated 27.11.2017. As rightly contented by the learned counsel for the respondents 3 to 7, the accused in Crime No.18 of 2013 were acquitted from all the charges levelled against them. More over, the charges have been framed against them for the offences under the provisions of Arms Act, Essential Commodities Act and under Section 120(b) IPC and not under the National Security Act as alleged by the revision petitioner.

12.As rightly contended by the learned Government Advocate (Criminal Side) as well as the learned counsel for the respondents 3 to 7, the revision petitioner has filed the above petition, only on the basis of the information allegedly obtained from a magazine. It is the specific contention of the counsel for the respondents 3 to 7 that the revision petitioner was an Ex.employee and for his misconduct, he was terminated from the service and that therefore, the above petition came to be filed with ulterior motive. Whatever it is, as rightly observed by the learned Magistrate, the complaint does not disclose any of the commission of cognizable offence. More over, the revision petitioner has neither pleaded nor shown any material in support of his requisition and seven documents filed by him does not advance the petitioner's case in any way.

13.Considering the above, this Court is of the clear view that no commission of cognizable offence is made out and no *prima facie* case is shown. Hence, this Court decides that there is nothing to interfere with the dismissal order and consequently, the above revision, which is devoid of merits is liable to be dismissed.

14.In the result, the Criminal Revision case is dismissed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

DAS

To

1.The Judicial Magistrate No.II,
Thoothukudi.

2.The Chief Judicial Magistrate,
Thoothukudi District.

3.The Inspector of Police,
Muthaiahpuram Police Station,

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Superintendent of Police,
Thoothukudi.

5.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2-copies)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-11653[F] dated 17/03/2021)

+1 CC to Mr.J.KINGSLY SOLOMON, Advocate (SR-11932[F] dated
17/03/2021)

Order made in
CRL.R.C. (MD) .No.7 of 2017
16.03.2021

SSS (CO)
SRS/26.03.2021/6P/9C