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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.7044 OF 2022

T.Senthilkumar

... Petitioner/Complainant

.Vs.

The State Represented by
The Inspector of Police,
Dhally Police Station,
Tiruppur District.

... Respondent/Respondent

PRAYER:-

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order in Crl. Revision Petition No.34 of 2021 on the Principal District Sessions Judge, Tiruppur, dated 20.12.2021 and Crl.M.P.No.712 of 2021 on the file of Judicial Magistrate No.II, (FAC), Udumalaipet dated 30.09.2021.

For Petitioner : Mr.T.Senthilkumar
(Party-in-Person)

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed seeking to direct the learned Judicial Magistrate No.5, Salem, to set aside the order in Crl. Revision Petition No.34 of 2021 on the Principal District Sessions Judge, Tiruppur, dated 20.12.2021 and Crl.M.P.No.712 of 2021 on the file of Judicial Magistrate No.II, (FAC), Udumalaipet dated 30.09.2021.

2. Brief facts of the case is that the petitioner had purchased 3.49 acres of land 14 years ago and the adjacent land owners are his brothers viz., A.Velusamy and A.Palanisamy in S.F.No.6/32. The access to the petitioner's garden is through a



car track, which belongs to the petitioner's brother and as per the petitioner, the same was enjoyed jointly without any interference for more than 12 years. Earlier, the proposed accused had interfered and the petitioner had given a complaint to the Inspector of Police, Dhally and the police have advised the petitioner to settle the disputes through civil forum. Thereafter, there was no quarrel for about 8 months. As the petitioner is working in a private company, taking advantage of the absence of the petitioner, the proposed accused Palanisamy and his wife had trespassed into the petitioner's garden with sickle and had caused damage to the trees, saplings, pipeline and blocked the pathway to the petitioner's garden with bushes. The petitioner after returning from the company had come to know about the incident at about 10.00 pm. and reported the same to the local police station. The Police after receiving the complaint, have not issued CSR in spite of the petitioner producing CCTV footage. Since, the petitioner was not having pathway to come to his lands, he has given a complaint along with the CCTV footage and other documents to the Deputy Superintendent of Police and the enquiry was conducted in CSR and later the police have dropped the action.

3. Thereafter, the petitioner had sent the complainant to the Superintendent of Police through registered post and since, no action was taken, the petitioner had filed the Cr.M.P.No.712 of 2021 under Sections 200 & 156 (3) Cr.P.C before the Judicial Magistrate No.II, (FAC), Udumalaipet seeking to register the case and to give protection. The Judicial Magistrate after perusing the complaint and the materials produced, had dismissed the petition on 30.09.2021, stating that it was purely a civil dispute and the petitioner had not made out the case for issuing orders under Section 156(3) for registering the case. Against the dismissal of the same, the petitioner had preferred the Criminal Revision before the Principal Sessions Judge, Tiruppur in C.R.P.No.34 of 2021 and the learned Judge, finding that the petition was not supported by an affidavit, had dismissed the same. Against which the present petition has been filed.

4. Mr.T.Senthilkumar, Party-in-Person would submit that the petitioner was using the pathway for a long time and the proposed accused, who are his brothers have trespassed into the property of the petitioner and caused damage to the trees, saplings, pipe lines and had also blocked the pathway to his property by putting bushes in the area. Even, the activities of the proposed accused and the dispute is recorded in the CCTV footage, the learned Judicial Magistrate failed to issue directions.

5. Heard the learned counsel and perused the materials available on record.



6. Taking into consideration the facts and submissions, it is seen that the petitioner has not filed the supporting affidavit as required along with the petition filed under Section 156(3) Cr.P.C. The Apex Court in the case of Priyanka Srivastava v. State of Uttar Pradesh reported in (2015) 6 SCC 287 has observed that the applications filed under Section 156 (3) are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate.

7. The above view of the Hon'ble Apex Court has been recently reiterated by the Hon'ble Apex Court in Babu Venkatesh and others vs. State of Karnataka reported in (2022) SCC online SC 200 as follows:-

'24. After analyzing the law as to how the power under Section 156(3) of Cr.P.C. has to be exercised, this court in the case of Priyanka Srivastava v. State of Uttar Pradesh has observed thus:

'30. 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 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.

31. 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



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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* [(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."

25. This court has clearly held that, a stage has come where applications under Section 156(3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156(3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under Section 156(3) of the Cr.P.C., there have to be applications under Section 154(1) and 154(3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) of the Cr.P.C. In as much as if the



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affidavit is found to be false, the person would be liable for prosecution in accordance with law.

28. In the present case, we find that the learned Magistrate while passing the order under Section 156(3) of the Cr.P.C., has totally failed to consider the law laid down by this court.

29. From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3) of the Cr.P.C. The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of Priyanka Srivastava v. State of U.P. (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint.''

8. In view of the above, this Court does not find any infirmity in the orders passed by the Courts below. Thereby, the present petition deserves to be dismissed. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgi/ham

To

1. The Principal District Sessions Judge,
Tiruppur.
2. The Judicial Magistrate No.II,
(FAC), Udumalaipet.
3. The Inspector of Police,
Dhally Police Station,
Tiruppur District.



4. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.T.Senthilkumar, Advocate, S.R.No.21322

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SKM(CO)
PBS/12/04/2022