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CrI.O.P.No.12797 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM :
THE HONOURABLE MS. JUSTICE R.N.MANJULA

CrI.O.P.No.12797 of 2021
and
CrI.M.P.No.7077 of 2021

1.Devi
2.Santhosh

... Petitioners/Accused

Vs.

1.The State Rep. by
Inspector of Police,
Ice House Police Station,
Mylapore.

... 1st Respondent/Prosecuting Complainant

2.M.Shanthi

... 2nd Respondent/Defacto Complainant

PRAYER:

Criminal Original Petition has been filed under Section 482 of Cr.P.C., calling for records pertaining to the order dated 08.01.2021 passed in CrI.M.P.No.13961 of 2019 by the learned II Metropolitan Magistrate Court, Egmore, Chennai and to set aside the same.

For Petitioner : Mr.D.Dayalan

For Respondent 1 : A.Damodaran
Additional Public Prosecutor

For Respondent 2 : Mr.D.Jai Sankar



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ORDER

This Criminal Original Petition has been preferred challenging the order of the learned II Metropolitan Magistrate (FAC), Egmore, Chennai dated 08.01.2021 made in Crl.M.P.No.13961 of 2019.

2. The petitioners are the accused in the complaint filed by the second respondent in Crl.M.P.No.13961 of 2019 before the learned II Metropolitan Magistrate (FAC), Egmore, Chennai. seeking for direction under Section 156 (3) of Cr.P.C. In the said complaint, the learned Magistrate has passed the following order:

“It is a fit case for police investigation. Hence, complaint is forwarded u/sec.156(3) Cr.P.C to the Inspector of Police, (Crime), D3 Ice House Police Station, to investigate the case in accordance with law and to submit final report on or before 05.03.2021”.

Aggrieved over the said order, the petitioners/accused 1 & 2 have preferred this Criminal Original Petition.



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3. Heard Mr.D.Dayalan, learned counsel for the petitioners and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the 1st respondent Police.

4. The learned counsel for the petitioners submitted that the learned Magistrate has passed an order on the complaint filed by the second respondent under Section 156 (3) of Cr.P.C without insisting upon any supporting affidavit.

4.1. In support of his argument, he cited the decision of the Hon'ble Supreme Court held in the case of ***Priyanka Srivastava and Another Vs. State of Uttar Pradesh and others*** reported in ***2015 (6) SCC 287***. The relevant portion of the said judgment is extracted hereunder:

“27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. 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



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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 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 Section 154(1) and 154(3) while filing a petition under Section 156(3) be supported by an affidavit 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 causally 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,



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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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

5. On a perusal of the above order of the learned Magistrate and the records, it is seen that the learned Magistrate did not have any occasion to see whether any duly sworn affidavit was filed by the second respondent seeking orders under Section 156 (3) Cr.P.C. The order of the learned Magistrate under Section 156 (3) Cr.P.C should be passed only after seeing an affidavit and not in a routine fashion. But the order of the learned Magistrate has already been complied and F.I.R. has been registered. Even if a wrong order has been complied and FIR has been registered, the same has to be challenged only in accordance with law. Hence, the petitioners are at liberty to challenge the F.I.R and seek to quash the F.I.R, if they believe that the F.I.R has been registered without any *prima facie* materials.

6. With the above observations, this Criminal Original Petition is



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disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

R.N.MANJULA,J.

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To:

1. Inspector of Police,
Ice House Police Station,
Mylapore.

2. The Public Prosecutor,
Madras High Court,
Chennai.

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