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Cont P. No.1330 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2021

PRONOUNCED ON : 31.01.2022

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cont P No.1330 of 2021

in

Crl.R.C.No.112 of 2021

S.Vasanthi,
Keerampur Village & Post,
Namakkal District

...Petitioner/Petitioner

Vs.

M.Baggiyalakshmi
Inspector of Police,
District Crime Branch,
Namakkal District.

... Respondent/Respondent

Contempt Petition filed under Section 11 of the Contempt of the Courts Act, 1971, to punish the respondent for wilful disobedience of the order passed by this Court in Crl.R.C.No.112 of 2021, dated 16.03.2021.

For Petitioner : Mr.R.Singaravelan

Senior Advocate
for Mr.V.L.Akshai Sajin Kumar

For Respondent : Mr.S.Sugendran
Government Advocate(Crl.side)

ORDER

This Contempt Petition is filed to punish the respondent for his wilful disobedience of the order, dated 16.03.2021 passed by this Court in

Crl.R.C.No.112 of 2021.

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2.The petitioner is the de-facto complainant. The respondent is the Investigating Officer. Originally, the petitioner gave a complaint before the Inspector of Police, District Crime Branch, Namakkal District, against one Natesan and Rajavelu. On the basis of the complaint given by the petitioner, the respondent police registered a case in Crime No.32 of 2011 for the offence under Sections 147, 148, 447, 294(b), 120(b), 420, 467, 468, 471 and 506(ii) IPC. After completing the investigation, the respondent police closed the case as 'Mistake of Fact' on 10.02.2014 and did not serve RCS notice to the petitioner. Since the petitioner did not receive the Referred Charge Sheet Notice from the respondent police, this Court directed the respondent police to serve RCS notice forthwith to the petitioner and granted liberty to the petitioner to file a protest petition in the manner known to law. Subsequently, the petitioner filed protest petition before the learned Judicial Magistrate, Tiruchengode in C.M.P.No.1045 of 2020. The learned Magistrate, after hearing the arguments and considering the materials available on record, has given certain directions based on the decision of the Hon'ble Supreme Court in the case of ***Vishnu Kumar Tiwari -vs- State of Uttar Pradesh***, reported in ***2019(3) MLJ (Crl.) 406 SC***. Challenging the same, the petitioner filed Criminal Revision Petition before this Court in



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Crl.R.C.No.112 of 2021. This Court, after hearing the arguments, directed the respondent to conduct fresh investigation and also directed to expedite the investigation and file a charge sheet in accordance with law, within a period of three months from the date of receipt of a copy of this order. Subsequently, the present respondent, who is an Investigating Officer, took up the investigation and completed the same. After completion of investigation, the respondent police closed the case in Crime No.32 of 2011 as 'mistake of fact', on 10.02.2014 and served RCS notice on the same day and also filed final report before the learned Judicial Magistrate, Tiruchengode. Therefore, the petitioner has filed the present Contempt Petition that the respondent wilfully disobey the order of this dated 16.03.2021 in Crl.R.C.No.112 of 2021, when notice was served to the respondent and he appeared through the Government Advocate and also filed her counter.

3.The learned Senior Advocate appearing for the petitioner would submit that this Court has specifically directed the respondent police to conduct fresh investigation in accordance with law, despite the respondent has not conducted the investigation in a fair manner. Therefore, the respondent police has disobeyed the order of this Court.



4.The learned Government Advocate (Crl.side) appearing for the respondent would submit that the respondent police has conducted fresh investigation, as directed by this Court and during the investigation, 15 witnesses were examined. The petitioner/de-facto complainant was examined as L.W.1 and the sister-in-law of the petitioner was also examined as L.W.2 and one S.N.Pandian was examined as L.W.10 and also the statement, under Section 164(5) Cr.P.C before the learned Judicial Magistrate, was recorded. After the completion of investigation, the respondent police finds that the dispute between the parties is civil in nature and there is no prima facie offence made out and she has conducted the investigation in a fair manner and therefore, the Investigating Officer closed the case as mistake of fact and served RCS notice to the petitioner and also filed final report before the learned Judicial Magistrate and she has also tendered her unconditional apology for any wrong doing on her part. Therefore, she has not disobeyed the order of this Court.

5.Heard Mr.R.Singaravelan, learned Senior Advocate appearing for the petitioner and Mr.S.Sugendran, learned Government Advocate (Crl.side) appearing for the respondent and perused the materials placed before this Court.



6. Admittedly, the petitioner is the power of attorney and she has filed a complaint against one Natesan and Rajavelu before the respondent police and the respondent police had registered the case against the said persons in Crime No.32 of 2011 for the offence under Sections 147, 148, 447, 294(b), 120(b), 420, 467, 468, 471 and 506(ii) IPC. After completion of investigation, the respondent police filed referred charge sheet before the jurisdictional Magistrate Court and subsequently, the petitioner filed a protest petition before the Judicial Magistrate Court, Tiruchengode. While deciding the protest petition, the learned Magistrate gave certain directions. Challenging the said order, the petitioner has filed Criminal Revision Case before this Court. This Court, after hearing the arguments, directed the respondent police to conduct fresh investigation. As per the direction of this Court, once again the present respondent police, who is the Investigating Officer, has investigated the case and after completion of investigation, the the said complaint was closed, as 'mistake of fact', that the dispute involved in the case is civil in nature. Therefore, the petitioner has filed the present contempt petition that the respondent police wilfully disobey the order of this Court dated 16.03.2021 passed in CrI.R.C.No.112 of 2021.



7.A reading of the materials, it is seen that the respondent police conducted fresh investigation, as per the direction of this Court and during the course of investigation, the petitioner was examined as L.W.1 and recorded her statement. One S.N.Pandian/L.W.10 is also one of the attestors to the disputed document in Document No.379/2000, dated 02.02.2000 and he was produced before the learned Judicial Magistrate, Kumarapalayam and recorded his statement under Section 164 Cr.P.C. The said S.N.Pandian knows one Kamalam, who is the executor of the said disputed document, was brought by one of her relatives and she executed the sale deed, wherein, the said Pandian signed the document as one of the attestors. Based on the statement of the list of witnesses, the learned Magistrate has come to the conclusion that the dispute between the parties is civil in nature and therefore, the respondent police has closed the criminal case and served RCS notice to the petitioner and also filed referred charge sheet before the jurisdictional Magistrate.

8.On a careful perusal of the records, this Court does not find that the respondent police wilfully disobey the order of this Court. Since the respondent police, after completion of investigation, has filed charge sheet before the Jurisdictional Magistrate Court, the petitioner can file protest



petition before the Judicial Magistrate and proceed with the case in accordance with law. Though this Court finds that the capacity of the investigating officer is not upto the mark and within her capacity she has investigated the case, the incapacity of the investigation officer cannot be treated as wilfully disobey the order of this Court. Unfortunately, as on date, the police department is running with 90% of the corruptive officers as well as the officers not having adequate capacity to do the investigation and only 10% of the officers are honest and abled officers. The 10% of officials alone cannot do all the investigation. Therefore, it is right time to sensitize the officials and find out to eradicate corruptive officers and give adequate training to the officers those who are not corruptive but they are incapacity to do investigation. It is relevant to state that on the date of preferring original complaint the alleged executor of the sale deed was very much alive, if the respondent police immediately examined the said Kamalam, the entire truth would have come out. Whereas till the death of the said Kamalam, the respondent police did not examine her.

9. In view of the above, this Court finds that there is no wilful disobedience by the respondent police. Hence, this Contempt Petition is closed. However, the petitioner is at liberty to take action against the



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respondent police for her incapacity, in the manner known to law and also work out her remedy before the Judicial Magistrate, by way of filing the protest petition and proceed with the case further in accordance with law.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

ns

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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GS/16/02/2022

To

1.The Inspector of Police,
District Crime Branch,
Namakkal District.

2.The Public Prosecutor,
High Court,
Madras.