



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.08.2022

Delivered on : 21.09.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.556 of 2022

Arokiyam

: Petitioner

Vs.

1.The Superintendent of Police,
Virudhunagar District,
Collectrate Officer Building,
Virudhunagar.

2.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.

3.Amutzharajan

4.Biruntharani @ Brunthadevei

5.Kalaiyarasan

6.Mareeswari @ Easwari

7.Lakshmi

: Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records pertaining to the order passed in Cr.M.P.No.961 of 2022, dated 11.04.2022 on the file of the learned Judicial Magistrate Court, Rajapalayam and set aside the same and direct the second respondent to register



a case based on the petitioner's complaint, dated 29.06.2019 and to proceed in accordance with law.

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For Petitioner : Mr.S.Bharathi,
For Respondents : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor, for R1 & R2.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.961 of 2022, dated 11.04.2022 on the file of the Judicial Magistrate Court, Rajapalayam, dismissing the petition filed under Section 156(3) of the Code of Criminal Procedure.

2. The petitioner's case is that he was running a fancy shop in the name and style of Shyam Fancy Store near Chokkar Temple, Rajapalayam; that on 24.06.2020, at about 11.00 am, the respondents 3 to 7 came to the said shop and picked up a quarrel with the petitioner; that thereafter, on 29.06.2021 at about 04.30 am, when the petitioner opened up his shop, it was found that valuable articles kept in the shop were stolen; that artificial jewellery, C.C TV camera and the hard disk worth about Rs.40 lakhs were stolen; that they have found on enquiry, four persons were taking the stolen articles in an auto-rickshaw and that therefore, the petitioner preferred a complaint before the second respondent Police, on 29.06.2021 and the same was registered as CSR.



3. It is further case of the petitioner that since no case was registered on his complaint, he preferred an appeal, dated 19.07.2021 under Section 154 Cr.P.C before the first respondent and requested him to direct the second respondent to register the case and that since there was inaction on the part of the first and second respondents, the petitioner was constrained to file the above petition under Section 156(3) Cr.P.C before the jurisdictional Court.

4. The learned Judicial Magistrate, Rajapalayam, after receipt of the petition filed under Section 156(3) Cr.P.C, upon perusing the materials placed on record and on hearing the submissions made by the learned counsel for the petitioner and the Assistant Public Prosecutor, has passed the impugned order, dated 11.04.2022, dismissing the petition filed under Section 156(3) Cr.P.C. Aggrieved by the said order of dismissal, the complainant has now come forward with the present revision.

5. The learned counsel for the petitioner would submit that the registration of a case is *sine qua non* for commencement of investigation, that any investigation without a crime number is illegal; that the second respondent violating the above said position of law, made a closure report, dated 04.10.2021 with regard to the complaint preferred by the petitioner; that the above closure report would reveal that the second respondent had examined the proposed



accused as well as other witnesses, but without recording their statements; that the learned Magistrate has failed to consider that the petitioner's complaint was closed prematurely even without registration of the case and that the learned Magistrate without considering the above aspects in proper perspective, dismissed the petition.

6. It is not in dispute that the complaint preferred by the petitioner before the first respondent- Superintendent of Police, was forwarded to the Sub-Inspector of Police, South Police Station, Rajapalayam and he conducted an enquiry and came to the decision that the complaint lodged by the petitioner is false and as such, the complaint was ordered to be closed.

7. Admittedly, FIR was not registered on the complaint preferred by the petitioner. But after registering the same as CSR, proceeded with enquiry and examined all the proposed accused and the witnesses on the complainant side, closed the matter as the complaint itself is proved to be false.

8. It is pertinent to note that if a complaint discloses the commission of a cognizable offence, then the Investigating Officer has no other business, except registering the FIR. Generally, the Police is expected to conduct investigation, after registration of FIR and not before the registration.



9. The petitioner has also produced the copy of the closure report and wherein, it is evident that the Investigating Officer has examined the proposed accused, petitioner and the complainant and came to the finding above mentioned.

10. As rightly contended by the learned counsel for the petitioner, the Police is not having any power or jurisdiction to conduct investigation without registering the case and that too after registering CSR.

11. In the case on hand, as already pointed out, the second respondent without registering FIR has proceeded with elaborate enquiry and examined many of the witnesses and came to the decision.

12. As rightly contended by the learned Government Advocate (Criminal Side), just because elaborate investigation was conducted before registering the case and closure report was filed, it cannot be said that the investigation and the closure report are illegal. But at the same time, the mode or method adopted by the Investigating Officer is definitely improper.

13. It is not in dispute that the petitioner has earlier filed a writ petition in W.P.(MD)No.13369 of 2021, against the Police Officials, seeking writ of



mandamus to direct the Director General of Police to take appropriate action against the respondents 4 to 6 as per the guidelines issued by the Hon'ble Constitutional Bench of the Supreme Court of India, in **Lalitha Kumari Vs. State of Uttar Pradesh**, reported in (2014) 2 SCC 1 and on the basis of the representation submitted by the petitioner, dated 20.07.2021 in accordance with law within the time stipulated by this Court and when the matter was taken up on 04.08.2021, a learned Judge of this Court, considering the submissions of the learned Additional Public Prosecutor that the petitioner's wife was involved in job rocketing and one Brindha Rani gave a complaint before the District Crime Branch, Virudhunagar and enquiry was pending and only as a counter blast, the complaint was given and that neither the petitioner nor his wife has made a statement with regard to the articles that they have been stolen from the shop, has observed that since it is a matter for enquiry or investigation let enquiry result be intimated to this Court for further consideration. Subsequently, when the matter was taken up for final disposal on 22.02.2022, considering the submission made by the learned Government Advocate (Criminal Side) that based on the complaint lodged by the petitioner, dated 20.07.2021, the respondent Police conducted enquiry and the same was closed on 04.10.2021 and in view of the above, the Writ Petition was dismissed.



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14. The second respondent has also filed a counter affidavit that on 29.06.2021 night at around 21.00 to 21.30 hours, the respondents 3 to 7 used a duplicate key to the shop and trespassed into the shop and broke open the lock and took jewels worth about Rs.40 lakhs; that the said incident was reported to the Police and that the key to shop was surrendered before the third respondent and it was in the custody of the third respondent and after conducting enquiry, CSR No.114 of 2021 was closed on 04.10.2021. In the counter affidavit, it has been further stated that the petitioner after coming to know about the missing of jewels did not approach the respondent Police immediately, but only after ten days, the complaint was made.

15. It has been further stated in the counter affidavit that in pursuance of the summons issued, the respondents and the petitioners have appeared and enquiry was conducted with the people near the shops as well as the landlord of the property and that the enquiry revealed that the petitioners have cheated huge amount on job rocketing matter.

16. It is further case of the second respondent that after closing of the complaint on 04.10.2021 and on coming to know that this case was closed, approached the learned Judicial Magistrate, Rajapalayam through a petition



under Section 156(3) Cr.P.C, directing the respondents 1 and 2 to file FIR and take action against the respondents 3 to 7. The learned Government Advocate (Criminal Side) would submit that subsequently on the basis of the complaint lodged against the petitioner's wife, FIR came to be registered in Crime No.16 of 2022, dated 20.08.2022 for the offence under Sections 406 and 420 IPC on the file of the DCB, Virudhunagar.

17. No doubt, the learned Magistrate, after considering the closure report, has come to the decision that the offence of theft alleged by the petitioner is false and that the complaint does not disclose any cognizable offence, dismissed the complaint.

18. It is settled law that a Magistrate has discretion either to direct registration of a case under Section 156(3) Cr.P.C or to conduct enquiry himself as the situation may warrant and that the said discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available.

19. No doubt, direction under Section 156(3) Cr.P.C to register a criminal case and to investigate, is to be exercised where the Magistrate is satisfied that *prima facie* a cognizable offence has been committed.



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20. As already pointed out, since the Police has conducted an enquiry and after coming to a decision that the complaint was false and as such the same was ordered to be closed, he could have approached the jurisdictional Magistrate with a private complaint under Section 200 Cr.P.C and not under Section 156(3) Cr.P.C.

21. As already pointed out, the learned Judicial Magistrate, after referring to the closure report of the Police and by observing that no cognizable offence was committed, dismissed the petition. Since the Police after conducting elaborate enquiry has closed the complaint, there was no need or necessity for the Magistrate to forward the complaint under Section 156(3) Cr.P.C for registration of the case and no purpose would be served in sending the case to the Police.

22. Considering the above, the impugned order of the learned Magistrate in dismissing the petition filed under Section 156(3) Cr.P.C cannot be found fault with. In case, if the petitioner is having necessary evidence, he can very well file a private complaint and there is absolutely no bar or prohibition for filing the private complaint. Hence, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.



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23. In the result, the Criminal Revision is dismissed. The petitioner is at liberty to file private complaint under Section 200 Cr.P.C and on such filing of the complaint, the Jurisdictional Magistrate is directed to proceed in accordance with law. Consequently, connected Miscellaneous Petition is closed.

21.09.2022

Index : Yes/No

Internet : Yes/No

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Virudhunagar District,
Collectrate Officer Building,
Virudhunagar.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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