



CRL RC(MD). No.756 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 23.09.2022

PRESENT

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

CRL RC(MD) No.756 of 2022

E.Suryanarayanan

... Petitioner

Vs

1.Asika Anwar

2.Anwar

3.The Inspector of Police,
District Crime Branch,
Tuticorin,
Tuticorin District.

... Respondents

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records in Crl.M.P.No.3235 of 2022 dated 19.07.2022 on the file of the learned Judicial Magistrate-IV, Tuticorin, Tuticorin District and set-aside the above order.

For Petitioner : Mr.KA.Ramakrsihnan

For R3 : Mr.R.M.S.Sethuraman
Additional Government Pleader



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ORDER

This revision has been filed against the order of dismissal that was passed by the trial Court in Crl.M.P.No.3235 of 2022 dated 19.07.2022.

2.The aforementioned petition was filed under Section 156 (3) Cr.P.C., seeking a direction to the District Crime Branch, Tuticorin to register a case filed by the petitioner with the following allegations:

(a) The petitioner/revision petitioner herein is doing a forwarding and clearing business under the name of 'Sep Logistic' for the past fifteen years. He was sending goods through Tuticorin port. On 19.12.2020, the accused persons approached the petitioner to send goods to Colombu harbor. Seventeen shipments were forwarded, but the amount was paid only for eight shipments.

(b) On the basis of the promise to pay the balance amount within a week for the container, the petitioner paid the total consignment for a sum of Rs.8,29,491/-. The balance amount of Rs.4,03,344/- remains to be paid. The petitioner contacted the accused persons several times. But there was no response. Hence, the petitioner lodged a complaint on



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21.09.2021 to the Superintendent of Police, Tuticorin. That was followed by repeated complaints as there was no action. Hence, the petitioner has filed the present petition.

3. On perusal of the allegations made in the complaint, the trial Court found that it is an out and out business transaction between the parties. Moreover, the petitioner has exhausted the remedy under Section 154(3) Cr.P.C.. The trial Court on finding that it is the cognizable offence, issued a direction to the Inspector of Police, District Crime Branch, Tuticorin to investigate the matter by order dated 17.06.2022.

4. In pursuance to the aforesaid direction, the Inspector of Police, District Crime Branch, Tuticorin filed a report before the trial Court stating that it is a civil issue and the petitioner was directed to approach the appropriate forum for remedy. This petitioner filed objection to the said report stating that investigation that was undertaken by the police is defective. After perusal of the records and the report of the Inspector of Police, the trial Court has recorded a finding that it is a civil issue, in which the respondent police has no role to play. Accordingly, the final



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report was accepted by directing the defacto complainant to approach the appropriate forum for appropriate remedy. With the aforesaid lines, the petition was dismissed. Challenging the dismissal order, this revision has been filed by the petitioner.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor and perused the records.

6.The learned Additional Public Prosecutor has also produced the entire enquiry file. The grievance of the petitioner is that the learned Magistrate has committed the jurisdictional error to record a contra finding. In the order dated 17.06.2022, it has been stated that *prima facie* case has been made out. But quite contra to the same, on 19.07.2022 he had recorded a finding that it is purely a civil issue. Once he has decided the complaint with the direction, then dismissal of the same complaint is not at all maintainable, since there is a bar under Section 362 Cr.P.C.



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7.I am unable to agree this line of argument for a simple reason that there is an erroneous observation by the trial Magistrate in the concluding portion of the order. Since the investigation has been closed as civil issue by directing the petitioner to approach the concerned forum for appropriate relief, it would have closed the matter at this stage. But it has dismissed the petition itself. Though this is an erroneous order, on going through the entire factual aspects and the allegations that has been made by the petitioner in the complaint as observed by the enquiry officer, it is clear that it is a case of business issue between the parties, for which no criminal liability can be attached. On the basis of the available business communication, the petitioner ought to have approached the concerned civil forum for appropriate remedy. Instead of that he has chosen to file this petition by exaggerating facts.

8.It is also seen that the earlier complaint that was given by the petitioner was closed by the District Crime Branch, Tuticorin as early as on 10.05.2022 and closure report was also issued to the petitioner. He also participated in the aforesaid enquiry process. By suppressing the aforesaid enquiry, it appears that again this complaint has been given



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before the trial Magistrate, as if no action was taken on the basis of the complaint given by him on 21.05.2022. File reads that the complaint dated 25.01.2022 was thoroughly enquired.

9. As I mentioned earlier, the petitioner had participated in the enquiry process and by suppressing the said fact he has approached this Court by way of this complaint under Section 156 (3) Cr.P.C., This suppression of facts itself shows that the petitioner has misused the process of the Court and Law. I absolutely find no merit in this petition. Accordingly this revision is dismissed.

(G I J)
23.09.2022

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To

- 1.The Inspector of Police,
District Crime Branch,
Tuticorin,
Tuticorin District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J

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