



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.04.2022**

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN**

Crl.R.C.(MD)No.774 of 2021

R.Manikandan

... Petitioner/Petitioner

Vs.

1. Thangapazham
2. Thangapazhams Car Driver  
(Name not known)
3. Saravanan

4. The State represented by  
The Inspector of Police,  
Puliyangudi Police Station,  
Tenkasi District.

(R4 impleaded as per order of this Court dated  
16.03.2022 in Crl.M.P(MD)No.3496 of 2022  
in Crl.O.P(MD)No.774 of 2021)

... Respondents/Accused

**Prayer :** This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Sivagiri, Tirunelveli District, dated 12.02.2021 and to set aside the same and consequently, to direct the Inspector of Police Puliyangudi Police Station, Sivagiri Taluk, Tirunelveli District, to register F.I.R on the complaint given by the petitioner in C.S.R No.269 of 2018.

For Petitioner : Mr.P.Gunasekaran

For Respondents : Mr.V.Kathirvelu

Senior Counsel for Mr.K.Prabhu  
for R.1 to R.3

Mrs.M.Aasha

Government Advocate (Crl.Side)for R.4

### **O R D E R**

This Criminal Revision Case has been filed to set aside the order passed by the learned Judicial Magistrate, Sivagiri, Tirunelveli District, dated 12.02.2021 and to direct the Inspector of Police Puliyangudi Police Station, Sivagiri Taluk, Tirunelveli District, to register F.I.R on the complaint given by the petitioner in C.S.R No.269 of 2018.

2. The case of the prosecution is that on 26.05.2018, at about 09.30 p.m while the petitioner was unloading the sand at Vasudevanallur Rajendran Petrol Bulk from a lorry, the lorry driver was not knowing that the vacant site belongs to the first



accused parked the lorry. On knowing this, the petitioner told the lorry driver to remove the lorry from the vacant site. Soon after, the first accused came to the spot in the car bearing Registration No.TN-76-2727 along with his car driver, the second accused and one, Saravanan / the third accused. The first accused spelt obscene words towards the petitioner and the second accused obstructed the petitioner by holding his hands and the first accused slapped the petitioner on his face and the third accused beaten the petitioner with a stick. Immediately, the petitioner was admitted to the Government Hospital, Rajapalayam and the same was duly intimated to the fourth respondent herein. However, the fourth respondent recording the statement of the petitioner had closed the complaint as 'mistake of fact'. Therefore, the petitioner filed a complaint for direction under Section 156(3) Cr.P.C.

3. The learned counsel for the petitioner submitted that petition was filed seeking for direction under Section 156(3) Cr.P.C, whereas, the learned Additional District Munsif-cum-Judicial Magistrate, Sivagiri conducted the trial and dismiss the complaint as if it was filed under Section 200 Cr.P.C. Further submitted that on specific allegation and also specific overtact against each of the accused, the learned Magistrate ought to have issued a direction for the police to register the case for investigation. He also relied upon the Accident Register which was marked as P.2 issued by the Government Hospital, Rajapalayam. In support of this, he also relied upon the judgment of Hon'ble Supreme Court judgment reported in Criminal Appeal No.1158 of 2010. In which the Hon'ble Supreme Court laid that it has to be seen that whether or no sufficient ground for proceeding against the accused. The learned Magistrate finds that the evidence ridiculously as if the Magistrate Court is that of the trial Court. The trial to be conducted by the Magistrate is not same which is to be kept in view at the stage of criminal charges. Further it is seen that where there was prima facie evidence and even though the present charge levelled in the complaint might have defensive in nature, the matter has to be left to decided by an appropriate forum at the appropriate stage.

4. The learned Senior Counsel appearing for the respondents 2 and 3 submitted that there is absolutely no bar for the learned Magistrate to conduct an enquiry on the complaint seeking direction under Section 163(3) Cr.P.C. Police officer found that the complaint lodged by the petitioner is a false one and closed the same as 'mistake of fact'. The learned Magistrate can very well conduct the enquiry and witnesses in support of the prosecution case. Accordingly, the learned Magistrate enquired and recorded the evidence of P.W.1 to 3 on the side of the complainant, marked as Exs.P.1 to P.6.



5. Perused of all witness materials produced by the petitioner, the learned Magistrate can see that there is no prima facie case made out as against the respondents 1 to 3 and dismiss the complaint under Section 203 Cr.P.C in support of his contention, the learned counsel relied upon the judgment of [2021] 0 Supreme(Mad) 1332, in which, in (1972) 3 SCC 414 and the Hon'ble Supreme Court laid that the learned Magistrate has proceed as if it is purely civil in nature and dismiss the same.

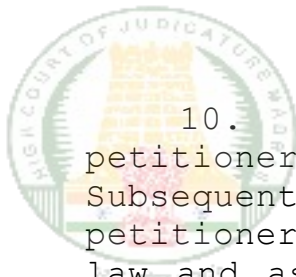
6. Further, laid that order of dismissal of Section 203 Cr.P.C has to be made on judicial, it can be only be made whether reasons given discloses that the proceedings cannot be terminated successfully in conviction.

7. A perusal of the complaint lodged by the petitioner revealed that the petitioner was attacked by the respondents 1 to 3 herein on 26.05.2018. Though the petitioner stated that the petitioner's statement was recorded in the Government Hospital at Rajapalayam and the fourth respondent failed to register any FIR and closed the complaint as 'mistake of fact'. The petitioner's evidence would show that the statement was recorded by the fourth respondent and closed as 'mistake of fact'.

8. Further the petitioner has not executed the P.W.1 and 2 issued by the Medical officer, Government Hospital, Rajapalayam and the Accident Register dated 26.01.2018, where as the alleged occurrence was took place on 26.05.2018 at about 09.30.p.m.

9. The learned Additional Public Prosecutor produce the cases registered as against the petitioner is as follows:-

- 1) Puliyangudi PS Cr.No.25 of 2007 under Sections 294(B), 324 IPC-ACQ
- 2) Puliyangudi PS Cr.No.126 of 2012 under Section 107 Cr.P.C-AD
- 3) Puliyangudi PS Cr.No.416 of 2015 under Sections 294(B), 506 (ii) IPC and 3(1)(x) SC/ST Act - ACQ
- 4) Puliyangudi PS Cr.No.291 of 2016 under Sections 294(b), 506 (ii) IPC and 3 of TNPPDL Act r/w 3(1)(r), 3(1)(s), 3(2)(va) SC/ST Act-ACQ
- 5) Puliyangudi PS Cr.No.191 of 2018 under Sections 294(b), 323 and 506(i) IPC-PT
- 6) Puliyangudi PS Cr.No.364 of 2019 under Sections 294(b), 323, 324, 341 and 506(ii) IPC-PT
- 7) Puliyangudi PS Cr.No.442 of 2020 under Sections 294(b), 323, 341 and 506(ii) IPC-MF
- 8) Vasudevanallur pS-Cr.No.23 of 2021 under Sections 294(b), 307, 324 and 506(ii) IPC-NTF



10. In pursuant to the cases registered against the petitioner, the petitioner was retained as 'Gundas' under Act 14. Subsequently, it was set aside by this Court. However, the petitioner filed the complaint only to escape from the clutches of law and as such, the learned Magistrate had rightly rejected the complaint as no prima facie is made out. That apart the learned Magistrate has to enquire the complaint even filed for direction under Section 156(3) Cr.P.C. Even according to the petitioner, after recording the statement of Accident Register, the fourth respondent failed to register the case. Therefore, any direction issued by the learned Magistrate under Section 156(3) Cr.P.C no purpose will be served. Therefore, the learned Magistrate rightly conducted the enquiry and examine P.W.1 to 3 and marked Exs.P.1 to P.4 and concluded that it is not the fit case to take cognizance as against the accused persons and dismiss the complaint under Section 203 Cr.P.C. There is no infirmity or illegality in the order passed by the Court below. Therefore, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (C.O.)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:-

1. The Judicial Magistrate,  
Sivagiri, Tirunelveli District.
2. The Inspector of Police,  
Puliyangudi Police Station,  
Tenkasi District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.JEYAMOHAN, Advocate (SR-16640[F] dated 05/04/2022)

Crl.R.C.(MD)No.774 of 2021  
04.04.2022

USK/13.05.2022/4P/5C