



Crl.R.C.No.977 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.977 of 2023
and Crl.MP.No.9113 of 2023

S.Senthil Kumar

... Petitioner

Vs.

1.The Superintendent of Police,
42G/249 Tiruchengode – Namakkal – Trichy Road,
near Collectorate Office,
Namakkal – 637 003.

2.The Deputy Superintendent of Police,
Mr.Lakshmanan
District Crime Branch
42G/249 Tiruchengode – Namakkal – Trichy Road,
Near Collectorate office,
Namakkal – 637 003.

... Respondent

Prayer : Criminal Revision filed under Section 397 & 401 of Criminal Procedure Code to set aside the orders dated 10.04.2022 passed in Crl.MP.No.6368 of 2022 on the file of the Judicial Magistrate No.I, Namakkal.

For Petitioner : Mr.C.Arun Kumar

For Respondent : Mr.J.Subbiah, Govt Advocate (Crl.side)



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ORDER

The present criminal revision petition is directed against the order dated 10.04.2022 passed by the Judicial Magistrate No.I, Namakkal in Crl.MP.No.6368 of 2022 in CMP.No.4037 of 2022.

2. The facts of the case in nutshell is as follows :-

The present revision petitioner preferred a complaint before the respondent / police on 01.08.2022 and since no action was taken by the police, he approached the learned Judicial Magistrate No.I, Namakkal by way of filing a private complaint under Section 200 CR.P.C. and the learned Judicial Magistrate No.I, after perusing the same referred the matter to the police for investigation under Section 156(3) Cr.PC. The police after examining the accused filed a closure report before the Judicial Magistrate. The present complainant approached this Court for a direction to the respondent / police to register an FIR as per Section 156(3) Cr.PC. This Court by an order dated 11.11.2022 in Crl.OP.No.27628 of 2022 had observed as follows :-



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“However, it is seen from the order of the learned Judicial Magistrate No.I that he got satisfied that a prima facie case has been made out. Therefore, the second respondent could have conducted the enquiry after registering the FIR. In any way, closure report has been filed already. If the petitioner has got grievance about the closure report, he is at liberty to file protest petition and seek appropriate legal recourse. The second respondent is directed to serve the copy of the closure report to the petitioner.”

3. Thereafter, the present revision petitioner filed a protest petition before the concerned Judicial Magistrate in Crl.MP.No.6368 of 2022. The learned Judicial Magistrate after considering the rival submissions of present revision petitioner as well as the police had dismissed the protest petition by an order dated 10.04.2023 on the following grounds :-

(i) the closure report is filed as the respondent/police lacks jurisdiction to investigate the case.



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(ii) the alleged "Forged Board Resolution" is not filed along with the petition.

(iii) the accused have neither opened any bank account nor transferred the shares using the "Forged Board Resolution".

(iv) the Civil Suit filed by the complainant was also dismissed.

(v) the investigating officer was transferred and hence no useful purpose would be served by allowing the protest petition.

(vi) with regard to the same offence a complaint was lodged before Mauritius police.

4. Aggrieved over the same, the present petition has been filed.

Mr.C.Arun Kumar, the learned counsel appearing for the revision petitioner contended that the observation made by the trial Court cannot be sustained and in the instant case, the police as per the directions of the Magistrate did not register any FIR under Section 156(3) Cr.PC. However, the closure report was filed in the instant case and the police merely based on the statement of the accused filed the said closure report and the same was also recorded by the Magistrate.



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5. According to him, in the protest petition, the complainant has narrated the sequence of events leading to a crime committed by the accused and merely because the investigating officer has been transferred to the some other place, the Magistrate should not have dismissed his protest petition. It is also the contention that the civil suit was filed and dismissed on the ground of maintainability and the present complainant has moved the NCLT which is the appropriate forum. Therefore, the dismissal of the civil suit has got nothing to do with the present complaint. He would further submit that the Forged Board Resolution is in the custody of the accused and he had done multiple transactions using the said Board Resolution and that no complaint is pending before Mauritius police. Therefore, prayed for setting aside the order passed by the Judicial Magistrate.

6. Per contra, the learned Government Advocate (Crl.side) would contend that the police after taking into account the various aspects of the case filed the closure report and the Magistrate has also exercised his jurisdiction and there is no reason for this Court to interfere



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with the same.

7. This Court gave anxious consideration to the rival submissions made by both the parties.

8. The observations made by the Judicial Magistrate cannot be sustained for the following reasons:

- i. The police did not substantiate their contention that a similar complaint was lodged with the Mauritius police and they failed to ascertain the facts.
- ii. Merely based on the statement of the accused, the closure report was filed by the police.
- iii. The Magistrate on his part had held that since the investigation officer is transferred no useful purpose would be served by sending the protest petition under Section 156(3) Cr.P.C.
- iv. The Magistrate ought to have examined the complainant and his other witnesses if any under Section 200 Cr.P.C. if he had come to a conclusion that no useful purpose would be served by referring



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- v. A perusal of records shows that the civil suit was dismissed on the ground that it lacks jurisdiction. Hence, the complainant had moved NCLT.
- vi. There is no bar for preferring a criminal complaint simultaneously.
- vii. The Judicial Magistrate had lost sight of Sections 200, 202 & 203 Cr.P.C.

9. In the said circumstances, the criminal revision petition is disposed of and the matter is remitted back to the Judicial Magistrate No.I, Namakkal for considering the protest petition afresh uninfluenced by any of the observation made by this Court while disposing of this criminal revision. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

- 1.The Public Prosecutor, High Court, Madras.
- 2.The Judicial Magistrate No.I, Namakkal.
3. The Superintendent of Police,
42G/249 Tiruchengode – Namakkal – Trichy Road,
near Collectorate Office,
Namakkal – 637 003.
- 4.The Deputy Superintendent of Police,
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R. HEMALATHA, J.
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