



Crl.R.C.No.317 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.03.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.317 of 2020

Mr.S.Daniel Fernando

.. Petitioner

/versus/

1.The Deputy Commissioner of Police,
Adyar District, L.B.Road,
Adyar, Chennai-600 020.

2.The Inspector of Police,
Thoraipakkam Police Station Limits,
Thoraipakkam,
Chennai-7.

3.M.Siddique @ Abubucker

4.A.Mallikannisha

5.Mr.Magesh Kumar

.. Respondents

Prayer: Criminal Revision Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code praying to set aside the order passed by the Judicial Magistrate Court, Alandur in C.M.P.No.6848/2019, dated 18.10.2019 and direct the 2nd respondent to register a FIR as against the 3rd to 5th respondents based on the complaint dated 21.07.2019.



Crl.R.C.No.317 of 2020

For Petitioner :Mr.T.Ramachandran
For Respondents :Mr.R.Krishore Kumar
Government Advocate (Crl.Side)
for R1 and R2
Unclaimed for R3 to R5

ORDER

This Criminal Revision Case is filed against the docket order passed by the Judicial Magistrate, Alandhur made in C.M.P.No.6848 of 2019, on 18.10.2019 which reads as below:-

“Heard. On perusal of complaint and enclosed document, his complaint concerned for taking action against the police officer, who has registered case against the complainant. Whether such FIR contents are true or not and it is sustainable cannot be decided in this petition. As per averment in this complaint, there is no prima facie for cognizable offence is made out, hence, this Court is of considered view that this complaint deserves to be dismissed.

In result, this complaint under Section 156(3) of Cr.P.C is dismissed.”

2. On perusal of the complaint and the enclosed documents, the order of the Judicial Magistrate, which is impugned in the revision petition, though a very short, however, the fact required for consideration, has been spelt out in it, but for



Crl.R.C.No.317 of 2020

further clarification, this Court venture to state the details of the complaint given by the petitioner herein, in which he sought for action to be taken against the police, who has registered the case against him and filed final report.

3. The revision petitioner S.Daniel Fernando has filed a petition in C.M.P.No.6848 of 2019 under Section 156(3) of Cr.P.C., before the Judicial Magistrate stating that around 13 cents of land owned by one Vimala, who is the mother-in-law of the petitioner has been fraudulently grabbed by certain persons particularly, M.Siddique @ Abubucker and his associates. In this regard, he has sought for action against them and earlier approached this Court in Crl.O.P.No.23717 of 2013 to register a case and file the final report.

4. Further, his complaint states that, pending his petition, the documents have been created by M.Siddique @ Abubucker and others in favour of R.S.Narayanan and they have cheated R.S.Narayanan to the tune of Rs.3 crores. In this connection, Central Crime Branch has registered a case in Crime No.47 of 2014 and arrested M.Siddique @ Abubucker and A.Mallikannisha. A case in Crime No.418 of 2014 was also registered against M.Siddique @ Abubucker,



Crl.R.C.No.317 of 2020

pursuant to the order passed by this Court in Crl.O.P.No.15678 of 2014.

M.Siddique @ Abubucker and A.Mallikannisha got conditional bail order in Crl.O.P.No.16057 of 2014 on 28.10.2014.

5. While so, again an attempt was made by M.Siddique @ Abubucker and others to trespass into the land of Vimala (mother-in-law of the petitioner) and in this connection, he gave a complaint on 10.11.2014 to the Inspector Mr.Maheshkumar and also forwarded the complaint to the Chief Minister (Cell) on 12.11.2014. In turn, M.Siddique @ Abubucker has given a counter complaint against the petitioner on 10.11.2014, which was taken as C.S.R.No.1140 of 2014. The said M.Siddique @ Abubucker filed a petition in Crl.O.P.No.31566 of 2014 before the High Court to register the First Information Report against the petitioner, based on the complaint dated 10.11.2014 and observing that this is not a case fit for issuing direction to register First Information Report, that petition was dismissed on 04.12.2014.

6. While the fact being so, the Inspector, Mr.Maheshkumar, has registered First Information Report in Crime No.2369 of 2014. The petitioner has given a



Crl.R.C.No.317 of 2020

complaint to the Commissioner of Police on 31.10.2015 and also approached the High Court by way of filing the petition in Crl.O.P.No.28102 of 2015. This Court, on considering the facts of the case in Crime No.28102 of 2015, directed the Inspector to take appropriate action. In spite of specific direction by the Court vide order dated 08.12.2015, the Inspector failed to take action. Hence, the petitioner filed Cont.P.No.1118 of 2019. When the contempt petition came up for hearing on 18.07.2019, a Report of the Inspector was filed stating that the complaint in Crime No.2369 of 2014 closed as “mistake of fact”. Stating that the Inspector of Police has not properly investigated the complaint, after the direction of the High Court in Crl.O.P.No.28102 of 2015, dated 11.11.2014, a case against Illayaraja, S/o Ponnusamy has been registered and recorded as referred (further action dropped).

7. Alleging that the enquiry officer Ponnusamy, Special Sub Inspector has uploaded wrong details in the portal in order to help the land grabbers and therefore, the action has to be taken against Mr.Maheshkumar, Inspector of Police, for joining hands with the land grabbers and registering the First Information Report, in spite of, the High Court found that there is no material to register the First Information Report, based on the CSR.



Crl.R.C.No.317 of 2020

8. The said complaint as narrated above indicates that, the police has taken up CSR for enquiry and had registered First Information Report against the complainant, inspite of the order of dismissal by this Court in the petition filed by M.Siddique @ Abubucker to register the First Information Report. Further, it is also contended in the complaint that the complaint given by the petitioner has been closed without proper investigation and dropped further action and therefore, the complaint has to be registered against Mr. Maheshkumar, Inspector, Thuraipakkam and others and after investigation, final report has to be filed before the Magistrate.

9. The learned counsel appearing for the petitioner, without clarity of the law, tried to impress upon this Court that the grave fraud of grabbing the land of Vimala has been committed by the complainant and others for which the police are hand in glove.

10. The content of the complaint and the order passed by the Judicial Magistrate does not require any revision by this Court under Section 397 of Cr.P.C., for the simple reason that there is no bar under law for the investigating



Crl.R.C.No.317 of 2020

officer to register the First Information Report, after *prima facie* satisfied that there is cognizable offence for investigation, just because this Court at the CSR stage does not entertain the petition to register First Information Report. It is not a statutory bar for the investigating officer to register First Information Report, based on the information collected.

11. As far as the complaint given by the petitioner and closed as 'mistake of fact', it is totally a different issue, which should have been agitated separately by the petitioner. By filing a petition under Section 156(3) of Cr.P.C., alleging that the First Information Report registered against him is done with mala fide intention and in connivance with the land grabbers and also at the same time, claiming that the complaint against by him closed as 'mistake of fact' was without proper investigation, clubbed under one complaint by invoking under Section 156(3) of Cr.P.C., and pray the Magistrate to forward the complaint to the Inspector of Thuraipakkam Police Station; to investigate and file the final report are mis-joinder of plea. By filing this petition, in fact, the petitioner herein tried to mislead the investigating officer, who should independently enquire two different complaints. No doubt, the dispute may be in connection with the same property, which he



Crl.R.C.No.317 of 2020

claims to be owned by one Vimala, who happens to be the mother-in-law of the petitioner, but for the said reason, when the investigating officer is independently acting upon either on their own or by direction of the High Court, the petitioner cannot try to divert the investigation in the manner as he requires or wishes.

12. This Court is not inclined to make any further comments upon the misadventure of the petition. The complaints lodged by both the sides are being taking up for investigation, if at all, the petitioner is aggrieved by closure of his complaint, he has to work out his remedy separately in the manner known to law and cannot club the case against him and the complaint given by him together and seeks the indulgence of the Judicial Magistrate to exercise power under Section 156 (3) of Cr.P.C to take action against the police for discharging his duty.

Section 156(3) of Cr.P.C., reads as below:-

156. Police officer' s power to investigate cognizable case:-

(3)Any Magistrate empowered under section 190 may
order such an investigation as above- mentioned.



CrI.R.C.No.317 of 2020

13. It does not empower the Magistrate to entertain the complaint against the police, where the investigation is pending or closed as 'mistake of fact' by the police. That is the reason the Magistrate has rightly dismissed the petition stating that the First Information Report, which has been now registered by the respondent police, has to go a long way and the truth or otherwise of the content in the First Information Report cannot be tested under Section 156(3) of Cr.P.C., by the Judicial Magistrate.

14. This Court does not find any manipulation of record or abuse of power by the police as alleged by the learned counsel for the petitioner. That apart, that is not a matter within the purview of Section 156(3) of Cr.P.C., for the Magistrate to decide. For that reason, the Criminal Revision Case deserves to be dismissed. Accordingly, this Criminal Revision Case is dismissed.

07.03.2023

Index:yes/no
speaking order/non speaking order
ari



Crl.R.C.No.317 of 2020

To:

- 1.The Judicial Magistrate Court, Alandur.
- 2.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.



WEB COPY



Crl.R.C.No.317 of 2020

ari

Crl.R.C.No.317 of 2020

07.03.2023