



Crl.R.C(MD)No.689 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.07.2023

Pronounced on : 19.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.689 of 2023

Arunchalam

.. Revision Petitioner /Complainant

Vs.

1.Selvaraj

2.Seethalakshmi

3.Palvannam

4.The State represented by,
The Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam,
Virudhunagar District.

.. Respondents/Respondents

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 28.03.2023 passed in Crl.M.P.No.1840 of 2023 on the file of the learned Judicial Magistrate, Rajapalayam and set aside the same.



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For Petitioner : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.Mahaboob Athif
for Mr.M.Vivek Bharathi
for R1 to R3

Mr.P.Sivakumar
Government Advocate (Criminal side)
For R4

ORDER

This criminal revision has been filed against the order dated 28.03.2023 passed in Crl.M.P.No.1840 of 2023 by the learned Judicial Magistrate, Rajapalayam.

2. The case of the prosecution is that the petitioner is the husband of the deceased Ashwini. The petitioner married the said Ashwini on 14.11.2013. Out of the wedlock, they have two children. Due to some difference of opinion between the husband and wife, she left the matrimonial home and started residing with her parents in her parental home. She committed suicide in her parental home on 21.12.2019. Therefore, the law enforcing agency registered a case for the offence under Section 174 Cr.P.C.



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Subsequently, the same was altered into Section 306 Cr.P.C in Crime No.686 of 2019. After completion of the investigation, the Law Enforcing Agency filed the final report against the petitioner as well as his parents. During the investigation, the investigation officer seized the suicide note left by the deceased and also collected other materials. Thereafter, the learned Judicial Magistrate, Rajapalayam, took cognizance of the case under Section 306 IPC against all the accused.

3. Thereafter, to quash the proceedings in P.R.C.No.24 of 2021 on the file of the learned Judicial Magistrate, Rajapalayam, the petitioner and his parents filed a petition before this Court in Crl.O.P(MD)No.19952 of 2021. This Court, on considering the suicide note and other circumstances, vide order dated 23.02.2022 allowed the quash petition in respect of the petitioner alone and in respect of the remaining accused, the case was pending.

4. After the order passed in the quash petition, the petitioner made a complaint to the law enforcing agency on 09.02.2023 alleging that his in-laws namely, father of the deceased, mother of the deceased and brother of the deceased are responsible for the death of his wife and he made a request to take action against the in-laws namely, mother-in-law, father-in-law and



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brother-in-law of the petitioner. But, no action was taken by the respondent police and hence the petitioner preferred a complaint under Section 156(3) Cr.P.C before the learned Judicial Magistrate, Rajapalayam. The learned Judicial Magistrate, after considering the delay in preferring the complaint, dismissed the petition by giving a specific finding that in order to create a fear psyche upon the witnesses, namely, the private respondents herein, the petitioner filed the said petition without any bona fide intention. Further, the allegation made in the petition is only for the purpose of causing humiliation to the witnesses in the criminal case pending against the petitioner and his family members in Crime No.686 of 2019 for the alleged offence under Section 306 IPC.

5. The learned counsel for the petitioner raised only one point that the learned Judicial Magistrate has no jurisdiction to dismiss the petition considering the merits of the case. His duty is only to find out the material averments to constitute any offence. For the said purpose, procedure is contemplated under the Criminal Procedure Code. Hence, discussion under Section 156 (3) Cr.P.C on merits is not in accordance with law. For that, he made reliance on the following judgement reported in **2023 SCC Online SC 569:**



“51.On the other hand, it is the case on behalf of the original complainant as well as the State that as mandated by this Court in the case of Lalita Kumari(supra), at the stage of registering the FIR, neither the Magistrate nor the police officer has any jurisdiction to verify the truth and veracity of the allegations and/or consider the truthfulness of the allegations. According to the respondents, what is required to be considered at that stage is, whether the allegations in the complaint/application disclose commission of any cognizable offence or not. Therefore, the main issue posed for the consideration of this Court is, whether in the facts and circumstances of the case, the learned CJM was justified in verifying the truth and veracity of the allegations at the stage of deciding the application under Section 156(3)Cr.P.C and whether at that stage the Magistrate is required to apply judicial mind or not?

80. The State of West Bengal has drawn our attention to the judgment of this Court in Gopal Das Sindhi v.State of Assam, AIR 1961 SC 986 to the effect that even when a private complaint is filed, the Magistrate is not bound to take cognizance under Section 190 as the word used therein is ‘may’, which should not be construed as ‘must’ for obvious reasons. The Magistrate may well exercise discretion in sending



such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628 which distinguishes between the power of the police to investigate under Section 156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance under Section 190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see Afaq Jahan (supra)).

81.The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar, (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to



exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

82. We do not intend to go into the question of the merits of the allegations, and what procedure the Magistrate should follow as this is an aspect which the Magistrate must first consider and decide judiciously and as per the law. What is impermissible and contrary to law is an adjudication on merits of the allegations and determination of the facts as baseless, without further scrutiny and examination. Therefore, the High Court was correct in remitting the matter to the judicial magistrate for further examination.

83. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of



the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari (supra).

84. We would refrain and not comment on the allegations made as this may affect the case put up by either side. The accused do not have any right to appear before the Magistrate before summons are issued. However, the law gives them a right to appear before the revisionary court in proceedings, when the complainant challenges the order rejecting an application under Section 156(3) of the Code. The appellants, therefore, had appeared before the High Court and contested the proceedings. They have filed several papers and documents before the High Court and this Court. To be fair to them, the copies of the papers and documents filed before the High Court and this Court would also be forwarded and kept on record of the Magistrate who would, thereupon, examine and consider the matter. However, the complainant/informant would be entitled to question the genuineness and the contents of the said documents.



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85.In view of the above and for the reasons stated above, while affirming the impugned judgment and order passed by the High Court remanding the matter back to the learned Magistrate, we set aside the subsequent order passed by the Magistrate on remand, pursuant to the impugned judgment and order passed by the High Court and remit the matter back to the learned Magistrate to examine and apply his judicial mind and then exercise discretion whether or not to issue directions under section 156(3) or whether he can take cognizance and follow the procedure under section 202. He can also direct the preliminary enquiry by the police in terms of the law laid down by this Court in the case of Lalita Kumari (supra). Copies of the papers and documents filed before the High Court and this Court could also be forwarded and brought on record of the Magistrate, who would thereupon examine and consider the matter. As observed hereinabove, the complainant/informant would be entitled to question the genuineness of the contents of the said documents.

86.The present appeals stand disposed of in terms of the above.”

6. Therefore, without following the above procedure, dismissing the complaint is illegal and hence, he prays to set aside the order dated



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28.03.2023 passed by the learned Judicial Magistrate, Rajapalayam, in
Crl.M.P.No.1840 of 2023.

7. Per contra, the learned counsel appearing for the respondents 1 to 3 submitted that this is an abuse of process of law. The said petition was filed in order to make a threat to the witnesses. In the suicide note, it is clearly stated about the involvement of the petitioner. To overcome the same, the petitioner, after getting the order in the quash petition, made such allegations against the parents of the deceased without any bona fide intention and also he stated that it is the duty of the learned Judicial Magistrate to look into Section 156 Cr.P.C, to prevent any unnecessary harassment under the guise of the enquiry and hence, the learned Judicial Magistrate, after considering all the aspect including the order passed in the quash petition, which form part of the petition filed under Section 156 Cr.P.C, came to a conclusion that the petitioner filed the said petition without any bona fide, which amounts to abuse of process of law and correctly dismissed the same.

8. This Court has considered the rival submissions made by the learned counsel appearing for both side and perused the materials available on record.



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9. As per the judgment of the Hon'ble Supreme Court reported in **2015**

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(6) SCC 287, it is the duty of the learned Judicial Magistrate to look into the matter to prevent the abuse of process of law before directing the registration of the complaint under Section 156(3) Cr.P.C. Further, it is the rule of law laid down that in all cases, truth and veracity of the allegation cannot be verified by the learned Judicial Magistrate. In appropriate cases, the learned Judicial Magistrate has to verify the truth and veracity of allegation. In this case, the learned Judicial Magistrate, considering the document annexed with the petition filed under Section 156 Cr.P.C, categorically held that the petitioner preferred only for obstructing the trial to find out the truth regarding the death of the deceased. Further, it indirectly would affect the mind of the witnesses. If these type of petitions are entertained, in no cases, the witnesses would give evidence without fear of mind. This is the classical example of the case where the petitioner preferred a complaint in order to derail the complaint pending before the Sessions Court on the allegation of Section 306 IPC against the parents of the petitioner. The petitioner had never taken any steps to re-unite with his wife and he has not even seen his children. In the said circumstances, his plea of taking interest in the wife is not correct and the same is invented for the purpose of filing this frivolous



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petition. Hence, this Court finds no merit in the contention of the learned
counsel for the petitioner.

10. In the result, this Criminal Revision Case is dismissed.

19.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
PJJ



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To

1. The Judicial Magistrate,
Rajapalayam.
2. The Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

**Order made in
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