



Crl.O.P.(MD)No.11348 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.11348 of 2023

and

Crl.M.P.(MD) No.8945 of 2023

Senthilkumar

... Petitioner

Vs.

1.The Inspector of Police,
B6 Jaihindpuram Police Station,
Madurai City.
(Crime No.284 of 2023)

... 1st Respondent/
Complainant

2.K.Pandiammal

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the case in Crime No.284 of 2023 on the file of the Inspector of Police, Jaihindpuram Police Station, Madurai City and quash the same as against the petitioner.



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For Petitioner : Mr.R.L.Dhilipan Pandian
For R1 Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
For R2 : No appearance

ORDER

This Criminal Original Petition is filed seeking quashment of FIR in Crime No.284 of 2023 on the file of the first respondent police.

2.The facts in brief are that the husband of the respondent No.2, by name Kannan was running a steel shop in the land adjacent to their house situated at 279, Jeeva Nagar 1st Street, Jaihindpuram and in the business, he sustained loss to the tune of Rs.3 lakhs. The said Kannan borrowed an amount of Rs.3 lakhs from one Sivapriya and committed default in payment of interest. Accused No.1, Sivapriya and 6 others tried to grab the land of the respondent No.2 by creating forged documents, on which the petitioner has filed a complaint before the Jurisdictional Magistrate under 156(3) Cr.P.C., in Cr.M.P.No.8518 of 2021 and as per the directions of the learned Magistrate, a case has been registered against 7 persons for the offences punishable under Sections 447, 294(b), 341,



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506(i) IPC and Section 4 of Tamil nadu Prohibition of Harassment of Women Act, 2002.

3.It is submitted by the learned counsel for the petitioner/accused that the allegations levelled against the petitioner are false and the respondent No.2 and her family members by offering to sell their land have cheated him to the tune of Rs.1 Crore. It is submitted further that the criminal case registered against the petitioner will not sustain as the police failed to follow the directions of the Hon'ble Supreme Court in *Priyanka Srivastava & Another v. State of U.P.*, reported in **2015 (6) SCC 287**, thereby, the FIR can be quashed as per the judgment of the Hon'ble Apex Court in *State of Haryana v. Bhajanlal* reported in **1992 SCC (Cri) 426**.

4. Heard both sides and perused the materials available on record.

5. The petitioner has sought for quashing of the FIR in Crime No. 284 of 2023 mainly on two grounds. Firstly, on the ground that the allegations levelled against the petitioner are false. This Court while



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considering the application under 482 Cr.P.C., cannot decide as to which version of the petitioner or the defacto complainant is correct. Unless regular trial is conducted by giving opportunity to both the parties concerned and only after conclusion of trial, the trial Court will come to the conclusion in respect of the allegations levelled against the petitioner.

6.Learned Additional Public Prosecutor appearing for the defacto complainant submits that the FIR cannot be quashed unless there is a strong material as during the course of investigation, there is likelihood of the evidence may be collected by the Police against the accused and submitted further that as per FIR there are clean overt acts against the petitioner/accused. On going through the records including the complaint, there is a prima facie material against the petitioner. Hence, on this count, the FIR filed against the petitioner cannot be quashed.



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7. Normally, if a complaint is filed before the police, the police would register FIR in case cognizable offence is made out and proceed with investigation. However, in case the police fails to register FIR, the aggrieved party is expected to send a complaint to the concerned Superintendent of Police under Section 154(3) of Cr.P.C. and in case, if still there is no positive response, then the aggrieved person can file a complaint under Section 156(3) of Cr.P.C. seeking direction from the learned Magistrate Court to the police to investigate the case. However, it has become practice for most of the complainants to file complaint before the Court directly either under Section 156(3) of Cr.P.C. or under Section 200 of Cr.P.C. without even approaching the police thereby, the Hon'ble Apex Court has passed elaborate orders in ***Priyanka Srivastava & Another v. State of U.P.***, reported in 2015 (6) SCC 287 and in the case of ***Babu Venkatesh v. State of Karnataka***, reported in 2022 (5) SCC 639.

8. The Hon'ble Apex Court in ***Priyanka Srivastava*** observed as follows:-

"29. At this stage it is seemly to state that power



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under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be with Cr.M.P. No. 1596 of 2017 well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take



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undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."



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9. Further, in ***BABU VENKATESH AND OTHERS Vs. STATE OF KARNATAKA AND ANOTHER {(2022) 5 SUPREME COURT CASES 639}***, the Hon'ble Supreme Court has held as follows:-

“24. This Court has clearly held that a stage has come where applications under Section 156 (3) CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This Court further held that in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that applications under Section 156 (3) CrPC are filed in a routine manner without taking any responsibility only to harass certain persons.



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26. This Court has further held that prior to the filing of a petition under Section 156 (3) CrPC, there have to applications under Sections 154 (1) and 154 (3) CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) CrPC. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

27. In the present case, we find that the learned Magistrate while passing the order under Section 156 (3) CrPC, has totally failed to consider the law laid down by this Court.



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28. From the perusal of the complaint it can be seen that the complainant respondent No.2 himself has made averments with regard to the filing of the original suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) CrPC. The High Court has also failed to take into consideration the legal position as has been enunciated by this Court in Priyanka Srivastava Vs. State of UP and has dismissed the petitions by merely observing that serious allegations are made in the complaint.

29. We are therefore, of the considered view that continuation of the present proceedings would amount to nothing but an abuse of process of law.”



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10. Considering the above directions, it is clear that without following the procedure contemplated under Section 154(3) of Cr.P.C. one cannot file complaint directly before the learned Magistrate under Section 156(3) of Cr.P.C. The defacto complainant, in the case on hand, has not filed any affidavit before the learned Magistrate along with the complaint filed under Section 156 (3) of Cr.P.C. stating that the defacto complainant has sent a representation to the Superintendent of Police as required under Section 154(3) of Cr.P.C. The defacto complainant is expected to enclose the copies of receipts if any to show that representation was sent to Superintendent of Police, along with a complaint filed under Section 156 (3) of Cr.P.C. Further, learned Magistrate has to record his satisfaction that the directions given in ***Priyanka Srivastava*** and ***Babu Venkatesh*** have been followed prior to taking a decision for referring the complaint to the police under Section 156(3) of Cr.P.C. Therefore, in the absence of such basic requirements as mandate by the Hon'ble Apex Court the FIR shall not sustain.

11. However, considering the contents on the complaint filed



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before the learned Magistrate under Section 156 (3) of Cr.P.C. It is clear that there are serious and strong allegations against the accused. Quashing the FIR on technical grounds may cause lot of hardships to the defacto complainant.

12. In a case decided between ***Kaluva Kumar v. State of AP*** in Criminal Petition No.4229 of 2019, dated 28.08.2019, the Andhra Pradesh High Court at Amaravathi held as under:-

"15. Thus, at the outset, the impugned order of the learned Magistrate in referring the complaint under Section 156(3) Cr.P.C. suffers legal infirmity for not recording reasons and therefore, consequential registration of F.I.R. basing on the impugned order is not legally sustainable and hence, the F.I.R. is liable to be quashed. In similar circumstances, in S.Purnachandra Rao's case (supra) and in Anne Srinivasa Rao's case (supra), learned Judges of this Court remanded back the matter to concerned Magistrate directing him to pass an order showing application of mind to the facts in issue while referring the case to police for



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investigation and to follow preconditions laid down by the Hon'ble Apex Court in Priyanka's case while referring the case to the concerned police for investigation. Therefore, following the afore stated precedents, similar order can be passed in the instant case.

16. In the result, this Criminal Petition is allowed and F.I.R. in Cr.No.81/2019 on the file of Nandalur Police Station, YSR Kadapa District, is quashed and the impugned order of the learned Judicial First Class Magistrate, Nandalur dated 04.06.2019 is set aside and the matter is remanded back to concerned Magistrate directing him to pass an order showing application of mind to the facts in issue. If he proposes to refer the case to police for investigation under Section 156(3) Cr.P.C., he shall direct the complainant to file sworn affidavit in the light of the direction given by the Apex Court in Priyanka Srivastava's case (supra)."

13. Considering the fact that there are serious allegations against the accused if FIR is quashed, prejudice will be caused to the



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respondent/complainant. Therefore, as observed by the High Court of Andhra Pradesh *in Kaluva Kumar v. State of AP* in Criminal Petition No.4229 of 2019, while quashing the FIR, defacto complainant shall be given liberty to file a fresh complaint before the learned Magistrate under Section 156 (3) of Cr.P.C., after complying all the requirements of *Priyanka Srivastava* and *Babu Venkatesh* (supra), so that learned Magistrate shall consider the same, record the reason and forward the same to the police for investigation.

14.In view of the above, this Criminal Original Petition is disposed of by quashing the entire proceedings in Crime No.284 of 2023 registered against the petitioner. However, the second respondent/defacto complainant is at liberty to file a fresh complaint before the learned Magistrate by complying all the requirements as enumerated in *Priyanka Srivastava* and *Babu Venkatesh* (supra), on such complaint made by the defacto complainant, learned Magistrate is hereby directed to dispose of the same as expeditiously as possible by following due process of law. It is made clear that the petitioner and second respondent shall not add any other ground other than the grounds raised. Consequently, connected



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Miscellaneous Petition is closed.

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

mm/mvs.

To

- 1.The Inspector of Police,
B6 Jaihindpuram Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

mm/mvs.

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