



Crl.R.C(MD)No.1070 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.10.2023

Pronounced on : 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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K.G.Punithakumar

.. Revision Petitioner/Complainant

Vs.

1. The Inspector of Police,
Cantonment Police Station,
Trichy.

2. The Assistant Commissioner of Police,
Cantonment Range,
Trichy District.

.. Respondents Nos.1 & 2/
Respondents

3. K.S.Shankar Murali

.. Respondent No.3/Accused

PRAYER: Criminal Revision Petition has been filed under Section 397
r/w 401 of Cr.P.C., to call for the records pertaining to the impugned
order in S.R.No.1427 of 2023 dated 26.06.2023 filed under Section



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156(3) of Cr.P.C., on the file of the learned I-Additional District Judge (PCR), Tiruchirapalli, and set aside the same as illegal and direct the learned I-Additional District Court(PCR), Tiruchirapalli to take on file and number the petition filed under Section 156(3) of Cr.P.C.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.M.Muthumanikkam,
Government Advocate (Crl. Side)
for R1 & R2

ORDER

This revision petition has been filed against the order dated 26.06.2023 in S.R.No.1427of 2023 on the file of the learned I-Additional District Judge (PCR), Tiruchirappalli.

2. The petitioner is the complainant in SR.No.1427 of 2023 on the file of the I-Additional District Judge (PCR), Tiruchirappalli. The third respondent is the practising advocate. He suppressed the fact regarding the pendency of the civil suit between the petitioner's vendor relating to the property situated in the in Survey No.26/2 of the villagers. The petitioner gave Rs.15,00,000/- as brokerage amount. But he did not



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disclose the fact that the said property is without good title and a number of litigations are pending on the file of the competent Civil Court. Since the petitioner made a complaint against the third respondent and other persons stating that the said third respondent eventhough have knowledge about the pendency of the Civil suit, in order to cheat the petitioner, stated that there is no encumbrance in the said property. Hence, he asked the third respondent to return the brokerage amount. At that time, the third respondent abused him by using his caste name. Hence, he made a complaint before the jurisdictional police officers. But, they did not take any action and hence he made the petition to the higher officials and they also did not take any steps. Hence, he filed the petition before the I-Additional District Judge (PCR), Tiruchirapalli in SR.No. 1427 of 2023 to take action against the third respondent under section 156(3) Cr.P.C. The said petition was dismissed by the learned trial Judge holding that the petitioner did not establish the ingredients to constitute the offence and also not produced any evidence to prove the allegations made in the petition. Challenging the said order, the petitioner filed this revision.



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Cr.P.C., clearly stated the specific averments against the third respondent.

The third respondent is the advocate for the property purchased by the petitioner. He suppressed the fact that the said property is in dispute. He is the advocate to one of the parties. He received money from one of the parties and by suppressing the fact, he arranged for sale of the property and thereby the petitioner is unable to enjoy the properties. Hence, according to the petitioner, this petition is liable to be allowed. The petitioner further submitted that as per the law laid down in Lalitha Kumari case and other judgements of the Hon'ble Supreme Court, if the material averments constitute the offence, the proof for the said material is not the jurisdiction of the learned Judicial Magistrate to look into the possibility of conviction. Hence, he seeks to set aside the same. To substantiate his plea, he relied on the judgement of the Hon'ble Supreme Court reported in **2023 (2) MWN CrI 18 (SC)** and also relied the reported judgement of this Court in Crl.O.P.Nos.4341 and 4752 of 2021 and Crl.R.C.No.234 of 2021. The learned counsel further elaborated the argument that the petitioner has made out a case for enquiry by the



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jurisdictional police officers. But, without considering the same, the learned Judge passed the erroneous order and hence, he seeks to set aside the order.

4. This Court has considered the submission made by the learned counsel appearing on both side and perused the records and also the precedents relied upon by the learned counsel for the petitioner.

5. The petitioner specifically alleged in the compliant that the third respondent is the advocate of his vendor. He mediated the sale process. He specifically stated that no dispute existed relating to the property. On his inducement, the petitioner purchased the properties. He also received huge amount as brokerage. But, the property is the subject matter of the civil litigation between his vendor and other persons. In the said civil proceedings, the third respondent has appeared on behalf of the petitioner's vendor. But, with criminal intention to cheat the petitioner, third respondent wilfully suppressed the above existence of the civil dispute. Hence, the above averment *prima facie* constitutes the offence



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stated in the complaint. But, the learned trial Judge erroneously dismissed the petition under Section 156(3) Cr.P.C. Under Section 156(3) Cr.P.C, the learned Judge is duty-bound to direct the jurisdictional police to conduct enquiry as per the **Lalitha Kumari** case reported in **2014(2)SCC1** against the third respondent on the allegation made in the petition that the third respondent willfully suppressed the pendency of the Civil suit and received the brokerage and hence he has the knowledge of cheating and inception and hence, there is sufficient ingredients of the offence of cheating. Hence, this Court is inclined to accept submission of the learned counsel for the petitioner on the basis of the judgment of the Hon'ble Supreme Court reported in **2023(2)MWN(Cr.)18(SC)** in the case of **Kailash Vijayvargiya vs. Rajlakshmi Chaudhuri and others**. The learned trial Judge committed error in dismissing the petition that the petitioner has not proved the allegation. The same is beyond the jurisdiction of the scope of enquiry under Section 156(3) Cr.P.C. Therefore, this Court is inclined to set aside the order impugned in this petition.



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6. Accordingly, this Criminal Revision Petition is partly allowed and the impugned order in S.R.No.1427 of 2023 dated 26.06.2023 passed by the learned I-Additional District Judge (PCR), Tiruchirapalli, is hereby set aside. The second respondent police/the Assistant Commissioner of Police, Cantonment Range, Trichy District, is hereby directed to conduct the enquiry by issuing summons to the third respondents under Section 41 A of Cr.P.C and complete the same within a period of 14 days as fixed in the **Lalitha Kumari** case and register the case, if any cognizable offence is made out.

22.11.2023

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

PJL

To

1. The I-Additional District Judge(PCR),
Tiruchirapalli.
2. The Assistant Commissioner of Police,
Cantonment Range,
Trichy District.



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3. The Inspector of Police,
Cantonment Police Station,
Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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**Predelivery Order made in
Crl.R.C(MD)No.1070 of 2023**

22.11.2023