



WEB COPY



Crl.O.P.No.20233 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.20233 of 2024

R.Mahesh Babu

... Petitioner

Vs.

1.The Superintendent of Police,
Erode District, Erode.

2.The Inspector of Police
SH-14, Gogichettipalayam,
Erode District.

3.Guna Sekaran

4.N. Manikumar

5.Kowsalya

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the docket order dated 17.03.2023 made in CMP.SR.No.3368 of 2023 filed u/s.156(3) of Cr.P.C., made by the learned Judicial Magistrate No.I, Gobichettipalayam and to direct the 2nd respondent to register an FIR based on the recent complaint dated 22.12.2022 made by the petitioner through his power-of-attorney

For Petitioner : Ms.M.Malaiyarasi

For R1 & R2 : Mr.S.Udayakumar
Government Advocate (Crl.Side)



CrI.O.P.No.20233 of 2024

ORDER

WEB COPY The petitioner herein has filed application under Section 156(3)

Cr.P.c., before the Judicial Magistrate No.1, Gobichettipalayam stating that the respondents by name Guna Sekaran, N. Manikumar and Kowsalya on promising to pay heavy returns for the investment had induced the petitioner to invest Rs.35 lakhs in the business by name M/s. K.S.Exports. Money was transferred through bank account of the wife of the petitioner under RTGS on 16.11.2016, 17.11.2016 & 19.11.2016. While so, the accused persons did not repay the money and promised profit. When the petitioner enquired them, the respondents gave contrary reasons. Having realised that he has been induced by the accused persons to deliver the money, complaint was given to the Superintendent of Police on 29.07.2017. Thereafter, on 16.03.2021 and 12.04.2021. In spite of complaints no action was taken by the police. Hence application under Section 156(3) Cr.P.C., filed.

2. The Judicial Magistrate has gone through the complaint and on application of his mind has returned the complaint stating that the dictum of Sugesan Vs. Transport case Section 154(1)(3) of Cr.P.C., not complied properly and hence returned the complaint on 17.03.2023.



CrI.O.P.No.20233 of 2024

WEB COPY

3. Challenging the docket order, the present Criminal Original Petition is filed on the ground that after giving complaint to the Inspector of Police, a representation was sent to the higher police officer as contemplated under Section 154 (1)(3) Cr.P.C., and thereafter, complaint through online was forwarded. Since no action taken by the respondent police, complaint under Section 156(3) Cr.P.C. was filed.

4. The learned Government Advocate (CrI.Side) appearing for the respondent police referring the documents filed along with the petition would submit that the first complaint alleged to have been given on 29.07.2019. Thereafter, on 16.03.2023 after lapse of 4 year, the application under Section 156(3) Cr.P.C., filed and the same was returned on 17.03.2023. Challenging the said docket order, this Criminal Original Petition is filed on 16.08.2024 nearly after one year and 5 months.

5. Heard the counsels and perused the records.

6. The complaint indicates that money was transferred to the account of K.S.Exports by one Suyambu Lakshmi, W/o Mahesh babu.



CrI.O.P.No.20233 of 2024

The money has been transferred on 16.11.2016, 17.11.2016 & 19.11.2016. The three persons, who are shown as accused in the complaint does not disclose how these three respondents 3 to 5 are related to K.S.Exports. Also the delay of 4 years been explained and attributed to the Covid situations and the fact that the petitioner was residing abroad. On the face of the complaint, this Court finds that it is a money transaction which took place in the year 2016. Now been given criminal colour after 7 years.

7. The complaint is bereft of details to infer any commission of cognizable offence. The trial Court before taking the petition on file had applied its mind and found that there is a procedural lapse and sought to represent. Instead of complying the said lapse, they have approached the High Court under Section 482 Cr.P.C. The material placed before this Court *prima facie* does not disclose any commission of cognizable offence. The money transaction admittedly done 7 years ago given criminal colour without disclosing that the fact that how the respondents 3 to 5 are connected with K.S.Exports and how and why Suyambu Lakshmi transferred Rs.35 lakhs into the account of K.S.Exports and there is no whisper about the accused/respondents 3 to 5 are connected



CrI.O.P.No.20233 of 2024

with K.S.Exports and where it is located. Mere filing of petition under Section 156(3) Cr.P.C., without details will not enure any right to the petitioner to sustain the complaint. Time and again the Hon'ble Supreme Court has insisted that the Magistrate before entertaining application under Section 156(3) Cr.P.C., should apply its mind and take the petition on file only if there is a *prima facie* material available that too after completion of other procedures contemplated under Section 154 Cr.P.C., and highlighted in Lalithakumari case. In this case the complainant has miserably failed to satisfy both the conditions.

8. Therefore, the complaint as it is not sustainable to entertain.

Hence this Criminal Original Petition is dismissed.

21.08.2024

Neutral Citation : Yes/No

Index : Yes/No

rpl

Dr.G.JAYACHANDRAN,J.

rpl

To

1.The Judicial Magistrate No.I, Gobichettipalayam



CrI.O.P.No.20233 of 2024

2.The Superintendent of Police,
Erode District, Erode.

3.The Inspector of Police
SH-14, Gogichettipalayam,
Erode District.

4.The Public Prosecutor,
High Court of Madras,
Chennai.

CrI.O.P.No.20233 of 2024

21.08.2024