



CRL OP(MD). No.10140 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**Date : 08.02.2024**

**CORAM**

**The Hon`ble Mr.Justice M. DHANDAPANI**

**CRL OP(MD) No.10140 of 2022  
and Crl.M.P.No.6343 of 2022**

Chandirika Gnana Lakshmi

... Petitioner

**Vs**

1. State Rep by  
The Inspector of Police,  
District Crime Branch,  
Anti Land Grabbing Special Cell,  
Thoothukudi,  
Thoothukudi District.

2. Jeyanthi,

... Respondents

**PRAYER :-** Criminal Original Petition file under section 482 of Cr.P.C., to call for the records and set aside the order 23.05.2022 passed in Cr.M.P.No.79 of 2021 on the file of the Learned Judicial Magistrate (Special Court for Land Grabbing Cases), Thoothukudi, Thoothukudi District.

For Petitioner : M/s. R. Anand for Mr.R.Ilayaraja

For Respondents : M/s. S. Manikandan for R1  
Additional Public Prosecutor  
M/s. V. Malaiyendran for R2



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## **ORDER**

This petition has been filed to set aside the order dated 23.05.2022 passed in Cr.M.P.No.79 of 2021 on the file of the Learned Judicial Magistrate (Special Court for Land Grabbing Cases), Thoothukudi, Thoothukudi District.

2.It is the case of the prosecution that the 2<sup>nd</sup> respondent is the complainant. A petition under Section 156(3) Cr.P.C. has been filed before the learned Magistrate on the ground that the de-facto complainant has given power of attorney to Mayavanathan, Shankar and Subramanian and the said power has also been registered for various properties. While so, without paying the contribution to the de-facto complainant, the power of attorney holders have sold the properties. It is the specific case of the de-facto complainant that no signature was obtained by any of them in the life certificate for alienating the property and the petitioner being the medical officer has issued the life certificate without even ascertaining the fact as to whether the de-facto complainant is alive or not and without getting any signature from the de-facto



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complainant in the life certificate, the life certificate has been issued by the petitioner and hence, the complaint. The said complaint/petition preferred under Section 156(3) Cr.P.C. was taken cognizance by the learned Magistrate, thereby, including the petitioner as an accused, for setting aside the said order, the petitioner is before this court.

3.The learned counsel for the petitioner would submit that the petitioner being the medical officer has the duty to see as to whether the person for whom life certificate was sought for is alive or not and that there is no role played by the petitioner other than the issuance of the life certificate and the petitioner has nothing to do with the alleged offence as narrated by the de-facto complainant in her petition/complaint before the learned Magistrate. He would further submit that since because the petitioner has given the life certificate, it does not mean that the petitioner has also a part of the transactions. On these grounds, the learned counsel prays for interference.

4.To substantiate his contention, the learned counsel has placed reliance on the decision in (2015) 6 SCC 257 (Priyanka Srivastava and another v. State of Uttarpradesh and others).



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5. Heard the learned counsel for the 2<sup>nd</sup> respondent/de-facto complainant, who would submit that when the 2<sup>nd</sup> respondent has not signed the certificate, it is not known how the petitioner has issued such a certificate and therefore, she has given a complaint/petition to take cognizance along with other persons. It is further submitted that with the help of the life certificate alone, the power holders have alienated the properties and cheated the de-facto complainant and hence, prays for dismissal.

6. Heard the learned Government Advocate (Crl. Side) on the submissions made by the learned counsel for the petitioner and the 2<sup>nd</sup> respondent.

7. This Court has given its anxious consideration to the rival submissions.

8. At the outset, it is to be noted that the petition filed under Section 156(3) Cr.P.C. was taken cognizance by the learned Magistrate and an order was passed to the effect of registering an FIR against the



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accused persons including the petitioner herein, who was arrayed as the first accused. It is seen that the petitioner has neither part of the transaction nor he is related to the other accused persons. When that being the case, the implication of the petitioner merely on the basis of the issuance of life certificate is baseless and per se illegal.

9. The learned Magistrate has neither gone into the averments made in the complaint and the veracity of the allegations levelled therein. Before taking cognizance, the learned Magistrate has to satisfy himself about the veracity of the complaint and allegations levelled against the accused persons and thereafter shall take cognizance. However, in the present case, without verifying the veracity of the complaint as to the involvement of the petitioner, the learned Magistrate has taken cognizance. It is also to be borne in mind that there is no sworn affidavit filed by the complainant to establish/strengthen her case.

9. At this juncture, it is relevant to take note of the decision relied on in Priyanka Srivastava (supra), wherein, it is held as under:

“30. In our considered opinion, a stage has come in this



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country where [Section 156\(3\)](#) Cr.P.C. 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 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 said Act or under [Article 226](#) of the Constitution of India. But it cannot be done to take 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 Section 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 the application under Section 156(3) be supported by an



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affidavit 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.”

10. It is to be seen from the above judgment that the complainant has not filed the sworn affidavit for invocation of the jurisdiction of the Magistrate. Therefore, in the absence of the application of mind and in the absence of the sworn affidavit, the order passed by the learned



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Magistrate has to be interfered with.

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11. Accordingly, the criminal original petition is allowed and the impugned order is set aside and the matter is remanded back to the trial Court. The parties are at liberty to work out their remedies in the manner known to law, before the trial Court. If any petition/material is filed before the Magistrate, the learned Magistrate is directed to strictly adhere to the decision rendered in Priyanka Srivastava's case (supra). Consequently connected Miscellaneous Petition is closed.

**08.02.2024**

NCC : Yes/No

Index : Yes/No

RR

TO

1. The Judicial Magistrate  
(Special Court for Land Grabbing Cases),  
Thoothukudi,  
Thoothukudi District

2. The Inspector of Police,  
District Crime Branch,  
Anti Land Grabbing Special Cell,  
Thoothukudi, Thoothukudi District.

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**M.DHANDAPANI. J**

**RR**

**ORDER  
IN  
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