



Crl.R.C.(MD).No.516 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	08.01.2024
Pronounced On	:	19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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A.Sundarapandi

... Petitioner/Petitioner

Vs.

1. Sethuraman

2. Panchavarnam

3. Muthukaruppan Chettiyar

4. The State through
The Sub Inspector of Police,
Karupayurani Police Station,
Madurai.

... Respondents/Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the trial court order dated 10.04.2023 in Cr.M.P.No.948 of 2023 on the file of the Judicial Magistrate No.2, Madurai and set aside the same by allowing the Criminal Revision Petition.



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For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.M.Muthukanikkam,
Government Advocate(Crl.Side) for R4

: Mr.T.Lenin Kumar for R1 to R3

ORDER

This petition has been filed set aside the trial court order dated 10.04.2023 in Cr.M.P.No.948 of 2023 on the file of the Judicial Magistrate No.2, Madurai.

2.The case of the prosecution is that the petitioner was in need of money. He approached the first respondent. The first respondent introduced the third respondent to the petitioner. The petitioner borrowed money of Rs.17,00,000/- from the third respondent. At the time of the borrowal, the third respondent obtained signed blank papers, unfilled signed blank cheques and stamp papers. The third respondent received the exorbitant interest and also he continuously demanded more interest. The respondents also criminally intimidated the petitioner to pay the exorbitant interest and the principal amount. Therefore, on 21.02.2023, he made a complaint before the respondent Police. The respondent Police received the complaint and issued C.S.R.No.10 of 2023. Thereafter, there was no progress.



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3. Therefore, the petitioner filed Cr.M.P.No.948 of 2023, before the learned Judicial Magistrate No.2, Madurai. On 06.02.2023, the learned Judicial Magistrate No.2, Madurai, directed the fourth respondent Police to conduct preliminary enquiry and submit report on or before 29.03.2023. the fourth respondent Police called both the parties and conducted the enquiry. The fourth respondent found that the petitioner made a complaint with false allegations and petitioner borrowed the money from various persons and frequently made the complaint against the borrowers with false averments of criminal intimidation and the false allegations that each creditor demanded exorbitant interest in order to thwart legal proceedings to recover the debt amount. The fourth respondent Police also found that the allegations made in the complaint that the respondents made criminal intimidation is false one. The said report was accepted by the learned Judicial Magistrate by passing the impugned order.

4. The learned counsel for the petitioner submitted that the learned Judicial Magistrate erroneously accepted the report of the fourth respondent Police and closed the case without directing the fourth respondent to register the case against the respondent Nos.1 to 3. Hence, the learned counsel further submitted that the complaint made out cognizable offence and the court has no jurisdiction



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to look into the merits of the allegations of the complaint.

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5.The learned counsel appearing first respondent filed the counter stating that the petitioner borrowed money of Rs.17 lakhs from him and also agreed to pay at the rate of 2% interest per month and he also executed mortgage by depositing his original title deed. He paid interest for only six months and failed to pay the periodical interest or settled the entire amount. Therefore, he requested to pay the principal amount amount with agreed interest. He clandestinely manner created a sale deed in favour of the third party as if his original document was lost. After that, he made a complaint as if the respondent made a claim of exorbitant interest.

6.Considering the above facts and submission on either side, this Court finds that the defacto complainant has not approached either the police officer or the Court with true facts. The police officers submitted the report before the learned Judicial Magistrate with specific finding that the petitioner filed this type of frivolous complaint in order to avoid his liability to repay the debt amount against all his creditors. The Police Officers also submitted that the allegations stated in the complaint that the respondent made assault and criminally



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intimidated him is false one. The learned Judicial Magistrate considered the same and dismissed the same. This Court finds no perversity in the said order of the learned Judicial Magistrate. From the document furnished by the first respondent, it is clear that the petitioner sold the mortgaged property in favour of the third parties without discharge of loan by making false representation that the original was lost. The first respondent also produced some other proceedings initiated against the petitioner at the instance of the borrower to recover the amount. In the said circumstances, this Court finds no merit in the contention of the petitioner that the respondents 1 to 3 committed criminal intimidation and claimed exorbitant interest. Hence, this Court is inclined to dismiss this petition.

7.Adding further, the learned counsel appearing for the first respondent submitted that the Honourable Supreme Court in CDJ 2015 SC 270 held that the complaint under Section 156(3) Cr.P.C., should always be accompanied by the affidavit of the complainant to verify the veracity of the allegations. In this case, no such affidavit was filed and there was no disclosure of true facts. Therefore, this Court accepts the contention of the first respondent and the same was supported with the judgment of the Honourable Supreme Court reported in **CDJ 2015 SC 270** and in the case of **Babu Venkatesh v. State of Karnataka** reported



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in **2022 5 SCC 639**, the relevant portion is extracted hereunder:.

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23. After analysing the law as to how the power under Section 156(3)CrPC has to be exercised, this Court in Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] has observed thus :

“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 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 undue advantage in a criminal court as if



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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 v. Govt. of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”



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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.

8. Accordingly, this Criminal Revision Case is dismissed and the impugned order passed in Cr.M.P.No.948 of 2023, dated 10.04.2023 by the learned Judicial Magistrate No.2, Madurai, is hereby confirmed.

19.01.2024

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

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1. The Sub Inspector of Police,
Karupayurani Police Station,
Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
3. 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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Pre-delivery Order made in
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19. 01.2024