



Crl.R.C.(MD)No.826 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.08.2024

Pronounced on : 13.09.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.826 of 2024

H.Noor Deen

... Petitioner

Vs.

1.Commissioner of Police,
Office of the Commissioner of Police,
Madurai.

2.Inspector of Police,
Subramaniyapuram Police Station,
Madurai.

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records to the order dated 07.02.2024 made in Cr.M.P.No.473 of 2024 on the file of the Judicial Magistrate No.4 at Madurai and set aside the same as illegal and allow the above Criminal Revision.



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For Petitioner : Mr.K.Althaf Sheriff
for M/s.Ajmal Associates

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.473 of 2024 dated 07.02.2024 on the file of the Judicial Magistrate Court No.4, Madurai, dismissing the petition filed under Section 156(3) of the Code of Criminal Procedure.

2. The case of the petitioner is that the petitioner had been running a concern, namely, Ultimate Embroiders for more than 13 years, that the petitioner has purchased one automatic FEIYA-2005/BECS-128/228 model 128D0417D11 embroidering machine on 26.09.2018 for developing his business, that the petitioner's brother's brother-in-law Abbas, who was also engaged in embroidering business, had requested the petitioner to give the new machine purchased by the petitioner for using the same, that since the petitioner was not having sufficient space in his company for installing the machine, he had agreed to hand over the machine to the said Abbas, that the said Abbas had died in the year 2019



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and his business came to be stopped, that when the petitioner had demanded for returning of the said machine, the said Abbas's partner and friend one Annamalai @ Manjamalai had requested to take that machine on rental basis and accordingly, the said Annamalai agreeing to return the machine whenever demanded by the petitioner, had installed the same in his company by paying Rs.50,000/- as advance, that though the said Annamalai has agreed to pay Rs.7,500/- as monthly rent, he has paid only for some months and refused to pay subsequently, that when the petitioner had visited the company of the said Annamalai on 08.07.2023 and demanded to return the machine, the said Annamalai had threatened the petitioner that he would not make any payment, that when the petitioner had informed that he would prefer a police complaint, the said Annamalai had abused the petitioner in filthy language and attacked him and caused criminal intimidation, that though the petitioner has lodged a complaint, no action was taken by the respondent police, that though the petitioner has sent a complaint to the higher police officials, there was no response and that therefore the petitioner was constrained to file the present petition under Section 156(3) Cr.P.C. for direction to the respondents to register an FIR and for conducting investigation.



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3. The learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C. on file in Cr.M.P.No.473 of 2024, upon perusing the petition and on hearing the petitioner's side, has passed the impugned order dated 07.02.2024 by holding that the dispute is of civil in nature, dismissed the petition.

4. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***M/S Indian Oil Corporation vs M/S NEPC India Ltd., and Others, in Crl.A.No.834 of 2002, dated 20.07.2002***, wherein, the Hon'ble Apex Court has *deprecat*ed the practice of attempting to settle the civil disputes by applying pressure through criminal prosecution and the relevant passage is extracted hereunder:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood



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of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end



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of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

5. In ***Mitesh Kumar J Sha vs The State Of Karnataka (Crl.A.No. 1285 of 2021, dated 26.10.2021)***, the Hon'ble Supreme Court has reiterated that cloaking a civil dispute with a criminal nature in order to get quicker relief is an abuse of process of law which must be discouraged. Bearing the above legal position on mind, let us consider the case on hand.

6. As already pointed out, the petitioner has lodged the above petition mainly for non-payment of rental arrears by the said Annamalai, who had allegedly taken the petitioner's embroidering machine on rental basis.

7. The learned Magistrate has specifically observed that though the petitioner has alleged that he was attacked, he has not stated as to where



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he had taken medical treatment and that though the petitioner has mentioned that the accident was occurred on 08.07.2023, he has not mentioned the time at which the occurrence was held. Moreover, as rightly observed by the learned Magistrate, non-payment of arrears and non-returning of the alleged machine can only be taken as a dispute of civil in nature and by no stretch of imagination, can be taken as dispute of criminal nature.

8. The learned counsel appearing for the petitioner would submit that since their petition under Section 156(3) Cr.P.C. discloses the commission of cognizable offence, the Judicial Magistrate is duty bound to forward the complaint to the concerned police for registering an FIR and that he has no power or jurisdiction to dismiss the same by himself. The above contention of the learned counsel appearing for the petitioner is absolutely devoid of merit as the complainant does not have an unqualified right to demand a police investigation in all circumstances and moreover, it is not mandatory on the part of the Judicial Magistrate to refer the complaint to the concerned police for registration of the case. But it is pertinent to note that it is always open to the petitioner to file a private



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complaint and proceed to prosecute the accused even if the Judicial Magistrate refuses to exercise the power under Section 156(3) Cr.P.C. It is settled law that the Judicial Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot act as a post office and is duty bound to consider the nature of the accusation or the offences alleged and to decide about the course of action to be taken and it cannot be said that the order of Judicial Magistrate refusing to direct the police to register an F.I.R., completely shut out all the opportunities for the complainant. If the petitioner is having necessary particulars and materials to show a *prima facie* case against the proposed accused, he can very well file a private complaint under Section 200 Cr.P.C., and there is absolutely no bar or prohibition for filing a private complaint on the ground that the petition filed under Section 156(3) Cr.P.C., was dismissed by the Magistrate.

9. Considering the above, the impugned order dismissing the petition filed under Section 156(3) Cr.P.C. by the learned Magistrate cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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10. In the result, this Criminal Revision Petition is dismissed.

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13.09.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Judicial Magistrate No.4,
Madurai.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai.
- 3.The Inspector of Police,
Subramaniyapuram Police Station,
Madurai. .



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
Crl.R.C.(MD)No.826 of 2024

Dated : 13.09.2024