



Crl.O.P.(MD)No.15873 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.15873 of 2022

Thamarai Selvi

... petitioner

Vs.

1.State represented by its,
the Inspector of Police,
Land Grabbing Special Cell,
Campus of Superintendent of Police,
Ramanathapuram District.

2.G.Tamil Vendan

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the order dated 27.07.2022 made in Cr.M.P.No.24 of 2022 on the file of the Land Grabbing Special Court, Ramanathapuram and set aside the same as illegal.

For petitioner

: Mr.K.Atthaf Sheriff

for Mr.J.Sulthan Basha

For R-1

: Mr.S.Manikandan,

Government Advocate

(Criminal Side)

For R-2

: No Appearance



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ORDER

This Criminal Original Petition has been filed seeking to set aside the order dated 27.07.2022 made in Cr.M.P.No.24 of 2022 on the file of the Land Grabbing Special Court, Ramanathapuram.

2. The case of the prosecution is that the second respondent, who is an Advocate, has filed a private complaint under Section 156(3) of Cr.P.C. against the first respondent Police alleging that the petitioner has lodged a complaint on 22.07.2022 to the first respondent Police against the petitioner and others, but the first respondent Police did not take any action against the petitioner and others. It is alleged that the petitioner colluded with others had created forged life certificate in connection with power of attorney of his grandfather and thereby, trying to grab his ancestral property.

4. The trial Court, by its Order dated 27.07.2022 after satisfying all the *prima facie* materials, issued a direction to the respondent Police to file a report within a month. Challenging the same, the present petition has been filed.



5. The learned counsel appearing for the petitioner would submit that the petitioner and the second respondent are sister and brother respectively. The second respondent filed a private complaint under Section 156(3) Cr.P.C, before the trial Court. He would further submit that if at all any dispute arose with regard to the genuineness of the life certificate, it is a matter for adjudication before the trial Court and not before this Court. He would further submit that the learned Judicial Magistrate has mechanically passed the order without verifying as to whether the complaint is filed with a sworn affidavit by the complainant or not. He would further submit that in the present case, without filing a sworn affidavit, the mere petition filed seeking a direction is illegal and the same is contrary to the law laid down by the decision rendered by the Hon'ble Apex Court in the case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*** reported in ***2015 (6) SCC 287***. Accordingly, he prays for allowing the petition.

6. Though the name of the second respondent has been printed in the cause list, today neither the second respondent nor his counsel is present before this court to prosecute the matter.



7. Considering the pendency of this petition, even though none appears on behalf of the second respondent, this petition is taken up for final disposal.

8. The learned Government Advocate (Criminal Side) appearing for the respondent Police would submit that there is no sworn affidavit filed by the complainant before the trial Court. In the absence of sworn affidavit, the trial Court has issued a direction to register the case, pursuant to which, the first respondent Police has registered a case in Crime No.12 of 2022 for the offence under Sections 465, 468, 420, 471 r/w 120(b) IPC. Accordingly, he prayed for appropriate orders.

9. Considering the submissions made on either side, this Court is of the view that the application filed under Section 156(3) of Cr.P.C. has to be supported by an affidavit duly sworn by the applicant, who seeks invocation of the jurisdiction of the Magistrate. However, in the present case, without filing sworn affidavit, the complaint has been filed before the trial Court by the second respondent, which was taken cognizance by the trial Court. It is relevant to extract Paragraph Nos.30 and 31 of the decision rendered by the Hon'ble Apex Court in the case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*** reported in ***2015 (6) SCC 287*** :



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



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. In view of the above decision of the Hon’ble Supreme Court prior to filing of a petition under Section 156(3) of Cr.P.C. there shall be applications under Sections 154(1) and 154(3) Cr.P.C. This Court emphasises the necessity to file an affidavit, so that, the persons should be conscious, while making the application and they shall not make any false affidavit. In the present case, this Court finds that the learned Magistrate, while passing the order under Section 156(3) Cr.P.C., has



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totally failed to consider the legal position as has been enunciated in

Priyanka Srivastava's case and the law laid down therein.

11. In view of the above, the reasons given by the petitioner are sufficient enough to set aside the order passed by the trial Court. Hence, this Court is inclined to set aside the order passed by the trial Court.

12. Accordingly, this Criminal Original Petition stands allowed and the order dated 27.07.2022 made in Cr.M.P.No.24 of 2022 on the file of the Land Grabbing Special Court, Ramanathapuram, is set aside. However, liberty is granted to the second respondent to file a fresh application before the concerned forum under Section 156(3) of Cr.P.C. in terms of the decision rendered by the the Hon'ble Supreme Court in the case of ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others reported in 2015 (6) SCC 287.***

29.02.2024

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



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To

1.The Land Grabbing Special Court,
Ramanathapuram.

2.The Inspector of Police,
Land Grabbing Special Cell,
Campus of Superintendent of Police,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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