



Crl.R.C.(MD)No.929 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.09.2024

Pronounced on : 06.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.929 of 2024

S.Annamalai

... Petitioner

Vs.

1.The Inspector of Police,
Keelarajakularaman Police Station,
Keelarajakularaman, Rajapalayam Taluk,
Virudhunagar District.

2.N.Ram Kumar

3.Nadarajan

4.R.Mari Maheshwari @ Maheswari

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records and set aside the order passed in Crl.M.P.No.8342 of 2023 dated 31.10.2023 on the file of the learned Judicial Magistrate, Rajapalayam by allowing this criminal revision petition.



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For Petitioner : Mr.D.Ramki
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.8342 of 2023 dated 31.10.2023 on the file of the Court of the Judicial Magistrate, Rajapalayam, dismissing the petition filed under Section 156(3) of the Code of Criminal Procedure.

2. The case of the petitioner is that the second respondent, who was working with the petitioner in Meena Surgical Mill earlier, has requested to advance a loan of Rs.5,00,000/- for marriage expenses and he would repay the same within a period of one year, that though the petitioner has expressed inability to advance the loan, the second respondent had been pressing for the loan, that the petitioner has given Rs.5,00,000/- by utilizing his son's savings and the amount available in his hand, that though the petitioner was demanding for returning of the loan amount, the second respondent was postponing the same on some pretext or the other, that in the meanwhile, the second respondent along with his father/third



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receiving of loan amount of Rs.2,50,000/- but refused the receipt of jewels, that the petitioner has then approached the District Legal Service Authority, Virudhunagar, that even in the enquiry conducted by the said authority, the second respondent had informed that he had not received any jewels and that the petitioner has then sent a complaint to the police higher officials and since there was no action, the petitioner was constrained to file a petition before the jurisdictional Court under Section 156(3) Cr.P.C.

3. The learned Judicial Magistrate has taken the petition filed under Section 156(3) Cr.P.C. on file in Crl.M.P.No.8342 of 2023 and upon perusing the petitioner's affidavit and the petition and on hearing the submission made by the learned counsel for the petitioner, by observing that the petitioner has not averred any reason or explanation for the delay in approaching the Court in filing the complaint and that the dispute is of civil in nature and as such, the complaint does not disclose any cognizable offence, dismissed the petition. Aggrieved by the order of dismissal, the present revision came to be filed.



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4. The learned counsel appearing for the petitioner would submit that merely because there is a civil remedy available, the petitioner cannot be driven out without deciding whether the respondents 2 to 4 have cheated the petitioner or not, that since the petition was filed under Section 156(3) Cr.P.C. seeking direction against the jurisdictional police to file FIR against the respondents 2 to 4, the learned Magistrate cannot simply decide the complaint on merits, as if, it is a private complaint, that the learned Magistrate in a petition filed under Section 156(3) Cr.P.C., can only seek report from the investigating officer and thereafter direct them to register FIR if any cognizable offence is made out as per the report, that the learned Magistrate in the present case has dealt with the complaint on merits and dismissed, citing limitation, which is also not applicable, that the learned Magistrate has failed to take note that the petitioner in his complaint has specifically stated that he was abused in filthy language and was criminally intimidated which would attract the offences under Sections 294(b) and 506(2) IPC, that though the petitioner has raised necessary allegations against the respondents 2 to 4 that the second respondent had obtained Rs.7,50,000/- with a promise to return the same within a year and he did not repay the same, the learned Magistrate has not



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considered the same, that the second respondent before the police has specifically stated that he did not obtain any money or jewels from the petitioner and also before the District Legal Service Authority and that would clearly show the actual intention of the second respondent to defraud the petitioner from the beginning itself, that the learned Magistrate ought to have directed the jurisdictional police to conduct enquiry and register an FIR and that therefore, the impugned order cannot legally be sustained.

5. 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.



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6. It is settled law that direction for investigation under Section 156(3) Cr.P.C. cannot be given mechanically by the Judicial Magistrates and application of mind is very much necessary. The Hon'ble Supreme Court in ***Ramdev Food Products Private Limited Vs. State of Gujarat*** reported in ***2015 (6) SCC 439***, has observed that the Magistrate under Section 156(3) Cr.P.C. is not bound to direct investigation by police and such direction could be given only on application of mind. It is also settled law that direction for investigation could not be granted even if all allegations made in the complaint constituted a cognizable offence and in cases where the complainant could prove the facts alleged in the complaint without assistance of police, then the Magistrate can proceed under Section 200 Cr.P.C. Hence, the contention of the petitioner that the Magistrate ought to have forwarded the complaint to the jurisdictional police for investigation, which is against the settled position of law, cannot be sustained.

7. 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



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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 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



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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 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."

8. 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



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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.

9. In the case on hand, as already pointed out, the petitioner's main complaint is that the respondents 2 to 4 have obtained loans and jewels from him promising to repay the same within a period of one year and despite repeated demands, they have not repaid the amount. In order to give criminal color, the petitioner has added that when the amount was demanded by him lastly, he was abused in filthy language and was criminally intimidated.

10. Even according to the petitioner, loans were advanced in the year 2019 and even the contention of the petitioner is accepted that the petitioner can take advantage of the judgment of the Hon'ble Supreme Court in *Re : Cognizance for Extension of Limitation* reported in **2022 (3) SCC 117** and ready to file a civil suit for recovery of amount, that was barred when the present complaint came to be lodged in 2023. As already pointed out, the dispute referred by the petitioner is of civil in nature and



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he is only attempting to give criminal color to the civil dispute.

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11. 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.

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

06.11.2024

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

To

1. The Judicial Magistrate,
Rajapalayam.
- 2.The Inspector of Police,
Keelarajakularaman Police Station,
Keelarajakularaman, Rajapalayam Taluk,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
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Dated : 06.11.2024