



Crl.O.P.(MD)No.14169 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.08.2024

PRONOUNCED ON : 30.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14169 of 2024

and

Crl.M.P.(MD)No.8777 of 2024

Neelakandan

... Petitioner/Accused No.3

Vs.

1.State represented by
the Inspector of Police,
Central Crime Branch,
Madurai City, Madurai.
In Crime No.1 of 2020.

... 1st Respondent / Complainant

2.Meenakshisundaram,
S/o Kalyanasundaram,
Branch Manager,
Dhanalaxmi Bank Limited,
No.3, LIC Building,
West Marret Street,
Madurai – 625 001.

... 2nd Respondent/Defacto complainant



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PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, seeking to call for the entire records connection in case in Crime No.1 of 2020, on the file of the first respondent police and quash the same as against the petitioner/Accused No.3.

For Petitioner : Mr.Niranjan S.Kumar

For Respondents : Mr.P.Kottaichamy
Government Advocate (Crl.Side)
for R.1

ORDER

This Criminal Original Petition has been filed invoking Section 482 Cr.P.C., seeking orders to call for the entire records in Cr.No.1 of 2020, pending on the file of the first respondent and quash the same as illegal as against the petitioner.

2. The petitioner is the third accused in Cr.No.1 of 2020, on the file of the Central Crime Branch, Madurai City, Madurai. On the basis of the complaint lodged by the second respondent, F.I.R., came to be registered in Cr.No.1 of 2020 on 04.01.2020 against the three persons including the petitioner for the alleged offences under Sections 120B, 406, 409, 464, 468, 511 and 34 I.P.C.



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3. The case of the prosecution is that during the tenure of the first accused who worked as a branch manager of Dhanalakshmi Bank Ltd., between 14.05.2014 and 07.05.2016, the accused 2 and 3 had approached the first accused for housing loan for constructing a house under “Dhanam Housing Loan Scheme” and availed loan for which the second accused had executed memorandum of deposit of title deeds and other documents along with the third accused, that on internal investigation, they came to know that the first accused had done several fraudulent activities by misusing her official position and misappropriated the bank amount, that in the further investigation, they came to know that no house was constructed by the second accused in the proposed site shown by him while availing loan, that the work completion report submitted by the accused 2 and 3 were not issued by the concerned Architect and Valuer and that the accused 1 to 3 had committed the offences punishable under Sections 120B, 406, 409, 464, 468, 511 and 34 I.P.C.

4. The case of the petitioner is that the second accused is a schoolmate and friend of the petitioner – third accused and as per the request of the second accused, the petitioner stood as a guarantor for the loan obtained by the second



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accused before the second respondent Bank, that there was no nexus between the petitioner and the second accused in the process of obtaining the loan, that after the receipt of the summons from the first respondent, he approached the second accused and came to know that all dues towards the bank was already settled and the loan account was closed and the memorandum of title deed had already been cancelled and that the petitioner has submitted his explanation before the first respondent and despite the same, the first respondent had registered a F.I.R., on the basis of the direction issued in the petition filed under Section 156(3) Cr.P.C., that the second respondent has suppressed the entire facts and misled the Court and obtained a direction to register a criminal case and that the petitioner is no way connected with any of the criminal offences as alleged in the criminal case and therefore, the case registered as against the petitioner/third accused is liable to be quashed.

5. As rightly contended by the learned Government Advocate (Crl.Side), subsequent settlement of the loan amount, by no stretch of imagination can be taken as a reason or ground to quash the F.I.R., which came to be registered for the offences alleged to have been committed. Moreover, the petitioner himself has specifically admitted that he stood as a guarantor for the housing loan



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obtained by the second accused and signed in the loan documents and that therefore, the memorandum of title deed came to be registered.

6. As rightly contended by the learned Government Advocate (Crl.Side), the accused 2 and 3 had approached the bank authorities for availing a loan for the purpose of constructing a house in the site owned by the second accused and after availing the loan, no house was constructed in the proposed site and only on that basis, F.I.R., came to be registered. The learned Government Advocate (Crl.Side) would submit that in the F.I.R., it has been specifically stated that the petitioner as well as the second accused had approached the bank authorities and availed the home loan for the second accused, for which the petitioner stood as a guarantor and signed the loan documents, but subsequently no house came to be constructed, that the complaint disclosed cognizable offence and as such, the same has to be investigated and that considering the nature of the allegations and the existence of *prima facie* case, it is not a fit case for quashing the F.I.R., at this stage.

7. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7



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categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of



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the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;



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(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

9. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in **2021 (3) Crimes 247** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High



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Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

10. It is settled law that in the petition filed under Section 482 Cr.P.C., for quashing the F.I.R., allegations in the F.I.R.,/ complaint only are required to be considered and whether the cognizable offence is disclosed or not is required to be considered.

11. In the case on hand, as rightly contended by the learned Government Advocate (Crl.Side), a cursory perusal of the F.I.R., makes out a *prima facie* case against the petitioner/accused and it is a matter for investigation and as such, the question of quashing the F.I.R., at this stage does not arise at all.

12. Now turning to the technical objection that since the defacto complainant has not filed any affidavit along with the petition under Section 156(3) Cr.P.C., which is a mandatory requirement as per the dictum of 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***, the F.I.R., registered in the above case, in pursuance of the direction of the jurisdictional



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Magistrate under Section 156(3) Cr.P.C., stands vitiated and as such, the F.I.R., is liable to be quashed. The Hon'ble Supreme Court in **Priyanka Srivastava's case** above referred has laid a preposition that the applications under Section 156(3) Cr.P.C., are to be supported by an affidavit sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate and the relevant passages are extracted hereunder:

“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 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 somebody is determined to settle the scores.



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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 [(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.”

13. The learned Counsel for the petitioner would submit that the Hon'ble Supreme Court, subsequent to *Priyanka Srivastava's case*, in the case of *Babu Venkatesh and others Vs. State of Karnataka and another* reported in



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2022(4)CTC 487, referring to the passages 30 and 31 in **Priyanka Srivastava's case**, has specifically held that in the absence of an affidavit in support of the petition filed under Section 156(3) Cr.P.C., the Magistrate ought not to have entertained the application and thereby quashed the F.I.R. It is necessary to refer the following passages in **Babu Venkates's case**:

“21. It could thus be seen that, though this court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

22. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under [Section 156 \(3\)](#) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of [State of Haryana v. Bhajan Lal](#) (supra).”

14. The Hon'ble Apex Court in addition to the main ground that the complaint came to be lodged with a view to harass the appellants and by relying on the **Priyanka Srivastava's case**, since the petition filed under Section 156(3)



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Cr.P.c., was not supported by any affidavit of the applicant, set aside the judgment and orders of the High Court and consequently quashed the F.I.Rs.

15. No doubt, the Hon'ble Apex Court in a recent order has stated that the directions passed in the decision of ***Priyanka Srivastava's case*** are mandatory. When the F.I.R., was sought to be quashed, the Telungana High Court, by observing that non-filing of the affidavit does not vitiate the proceedings to quash the entire complaint, dismissed the quash petition and when the same was challenged before the Hon'ble Supreme Court, the Supreme Court has observed that “we are of the opinion that the directions given by this Court in ***Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*** are mandatory, however in the facts of the present case, we find that the informant had furnished the affidavit though belatedly and recording the aforesaid, we are inclined to dispose of the present Special Leave Petition without making any comments on the merits as the matter is pending investigation.”

16. In the case on hand, it is the specific case of the petitioner that the second respondent has not filed any affidavit in support of the petition filed under Section 156(3) Cr.P.C. Admittedly the F.I.R., came to be registered in the



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year 2020. It is pertinent to note that the very purpose of the directing the applicant under Section 156(3) Cr.P.C., to file an affidavit is to making him / her accountable for the allegations raised in the affidavit and that is why the Hon'ble Supreme Court has directed the Magistrates to verify the truth and also can verify the veracity of the allegations in appropriate cases.

17. While dictating the order, this Court entertains a doubt with regard to the submission of the learned Counsel for the petitioner that no affidavit came to be filed, directed the Registry to call for the records in Cr.M.P.No.6587 of 2019. After receiving the records, I have verified the same and found that the respondent Bank has not only filed a petition under Section 156(3) Cr.P.C., but also proof affidavit sworn by the Branch Head of the Dhanalaxmi Bank Limited, Madurai. Since the second respondent Bank has filed affidavit as directed by the Hon'ble Supreme Court in ***Priyanka Srivastava's case***, the above objections of the petitioner is absolutely devoid of substance and is liable for rejection.

18. Viewing from any angle, this Court has no hesitation to hold that the petitioner is not entitled to get the relief claimed. Considering the fact that the F.I.R., is pending from 2020, this Court is of the view that the first respondent



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has to be directed to complete the investigation and file a final report within a period of three months from the date of receipt of a copy of this order.

19. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The first respondent is directed to complete the investigation and file a final report before the jurisdictional Court, within a period of three months from the date of receipt of a copy of this order.

30.09.2024

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

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To

1. The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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