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Crl.R.C.(MD).No.403 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.403 of 2022

R.Kathiresan

... Appellant/Complainant

Vs.

1. K.Kalaichelvan @ Dhanush K.Raja

2. The Inspector of Police,
K.Pudur Police Station,
Madurai.

(against the order in Crl.M.P.No.393/2019
on the file of JM No.VI, 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 in connection with Cr.M.P.No.393 of 2019 on the file of the Learned Judicial Magistrate No.VI, Madurai and set aside the order dated 05.12.2020 and restore the petition on the file of the Learned Judicial Magistrate and direct to take the case on the file of Judicial Magistrate No.VI, Madurai.

For Petitioner : Mr.S.Titus

For Respondents : Mr. P.R.Raman,
Senior counsel
for Mr.C.Seethapathy for R1

: Mr.M.Muthumanikkam,
Government Advocate(Crl.Side) for R2



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ORDER

The revision petitioner, who is the defacto complainant, filed this Criminal Revision Case challenging the dismissal of the petition filed under Section 156 Cr.P.C., to take action against the first respondent.

2. Earlier, the petitioner initiated proceedings against the first respondent in M.C.No.15 of 2016 on the file of the learned Judicial Magistrate, Melur, claiming monthly maintenance of Rs.65,000/-. In the said petition, the petitioner has alleged that he is the father of the first respondent, who is bound to maintain the petitioner. The first respondent filed a counter denying the relationship. He stated that he is the son of one Kasthuri Raja and his name is Dhanush and not as alleged by the petitioner. The first respondent has specifically stated that he has no relationship with the petitioner and his father is Kasthuri Raja.

3. That being so, the first respondent filed Crl.O.P.(MD) No.480 of 2017 before this Court to quash the proceedings in M.C.No.15 of 2016. In the said proceedings, this Court considering in detail the submissions of the learned counsel appearing for the parties specifically observed that the first respondent is not the son of the petitioner and hence, the petitioner is not entitled for



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maintenance. Challenging the same, the petitioner filed Special Leave to Appeal

(Criminal) Diary No.22493 of 2017 before the Hon'ble Supreme Court and the same was dismissed, by judgment dated 04.09.2017. Thereafter, the petitioner found that the document produced before the Court during the proceedings of Crl.O.P.(MD) No.480 of 2017 by the first respondent is forged one and hence, he filed a petition before the learned Judicial Magistrate stating that the first respondent filed false document before this Court and obtained orders in Crl.O.P. (MD) No.480 of 2017. The learned Judicial Magistrate dismissed the said petition on the ground that there was no material to issue directions under Section 156(3) Cr.P.C., Challenging the same, the petitioner filed the present revision case.

4. The learned counsel for the petitioner would submit that the birth certificate obtained by the first respondent is forged one. Hence, he filed a petition under Section 156(3) Cr.P.C., to take action against the first respondent. After initiating the proceedings under Section 202 Cr.P.C., the learned Magistrate without jurisdiction had dismissed the petition under Section 156(3) Cr.P.C., and hence, there is jurisdictional error in dismissing the petition and accordingly, this case is liable to be allowed and also filed the detailed written submission. In the said written submission, it is stated that the learned Judicial



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Magistrate made false averments in his order as such, the Superior Court already

decided that the respondent is the son of the Kasthuriraja. He also further submitted that in the impugned order, it is erroneously stated that no supporting documents was produced on the side of the complainant that the documents were forged. It is the specific submission of the learned counsel for the petitioner that when the document itself is a forged one and there is no necessity to file the supporting documents.

5. The learned Senior Counsel appearing for the first respondent would submit that the allegation made in the petition that the first respondent produced the false certificate is itself not true. The petitioner has no authority to decide the paternity of the first respondent. The said issue has already been decided by this Court in Crl.O.P.(MD) No.480 of 2017. In the said circumstances, filing of this petition is without any *locus standi*. The learned Senior Counsel would further submit that there is no difference between the dismissal of the petition under Section 156(3) Cr.P.C., and under Section 203 Cr.P.C., The learned Magistrate after taking cognizance under Section 202 Cr.P.C., felt that the petition did not contain any merits to proceed further and hence dismissed the petition by passing the impugned order.



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6. From the perusal of the impugned order, it is seen that the learned Magistrate assigned the reason that the Hon'ble Supreme Court had already decided that the first respondent is the son of Kasthuri Raja. The complainant, namely the petitioner herein, never produced any document regarding the birth of the first respondent. The witnesses examined on the side of the petitioner stated that the petitioner was never treated by his son in proper manner. They asked the petitioner to join his son in Seethaiammal Higher Secondary School, Thirupathur. Thereafter, his son was discontinued from the school. One of the witnesses stated that the document furnished by the first respondent is false. But he has not deposed on what basis that he arrived the said conclusion. Hence, according to the learned Senior Counsel, the dismissal of the order passed by the learned trial Judge is in accordance with law.

7. The learned Senior Counsel further submitted that right from the beginning, the first respondent contested the case on merits by cooperating in all aspects. The said conduct of the first respondent itself is to be appreciated and from that, this Court has to presume the false claim made by the petitioner, who has filed this revision case in order to slur the image to the first respondent and hence, he seeks for dismissal of the revision case with cost.



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8. This Court considered the rival submissions and perused the records and the judgments produced by the learned counsel on either side.

Whether the impugned order passed by the court below is in accordance with law?

9. Before going into the legal issue, it is relevant to enumerate the relevant facts of the case:

(i) The first respondent “famously called as Danush” is a Cine Actor. He was born on 28.07.1983 to the couple Krishnamoorthy and Vijayalakshmi. He had completed his school education in Sathya Matriculation School, Saligramam Chennai. He belongs to Aadi Dravidar Schedule Caste Community. After he became a cine star, the respondent filed a petition in M.C.No.15 of 2016 before the learned Judicial Magistrate, Melur, under section 125 of Cr.P.C., claiming maintenance for himself and his wife. In the petition, it is stated that the said “Danush is their son and his original name is K.Kalaiselvan and he was born on 17.11.1985 at Rajaji Government Hospital Madurai, and he belongs Veerakudi Vellalar Community. He completed his 10th standard in the Government Higher Secondary School, Melur. He was admitted in the 11th standard in Arumugampillai Seethaiammal Higher Secondary School, Thirupathur,



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Sivagangai District. He left the school as well as the company of the petitioner

and joined in the film industry and become a great actor and married the daughter of Mr.Rajinikanth and settled in Chennai. He did not take care of the petitioner and his wife and hence, he is duty bound to give maintenance as a son of the petitioner.

(ii) Thereafter, actor Danush, filed a petition in Crl.O.P.(MD).No.480 of 2017 before this Court to quash the M.C.No.15 of 2016 on the file of the learned Judicial Magistrate, Melur. In the said proceedings, Danush produced number of documents to show that the petitioner is not his father, viz., birth certificate issued by the Corporation of Chennai, Transfer certificate issued by Tai Sathya Matriculation School, Saligramam, Chennai and Central Board of Film Certification issued on 15.03.2002 for the film Thulluvatho Ilamai and etc. This Court considered the documents produced by both the parties and allowed the application with the following specific finding:

“In the light of the above findings, this Court is the view that the Kathiresan couple has not made out a prima facie case for trial and their petition in M.C.No. 15 of 2016 is devoid of merits.”

(iii) Thereafter, the petitioner filed a petition in Crl.O.P.(MD)SR.No.2757



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of 2018 before this Court under Section 340 and 482 of Cr.P.C., to conduct preliminary enquiry and pass an order to prosecute the respondent for perjury stating that he produced forged birth certificate and transfer certificate. The said petition was dismissed and relevant portion of the order is as follows:

18. In view of the aforesaid decisions of the Hon'ble Supreme Court, Section 195(1)(b)(ii) Cr.P.C., would be attracted, when the offences enumerated in the said provision have been committed in respect to a document, after it has been produced or given in evidence in a proceedings in any court ie., during the time when the document was in custodia legis. In this case, as already pointed out that the case of the petitioners is that the respondent herein has committed forgery of the documents before the said documents were produced in this Court. Hence, Section 195 (I) (b) (ii) Cr.P.C., would not attract and as such, enquiry under Section 340(i) Cr.P.C, is not necessary.

19. For the aforesaid reasons, this Criminal Original Petition stands rejected as not maintainable.

10. Thereafter, the petitioner preferred complaint before the Inspector of Police, K.Pudur Police Station, and the same was not enquired and he filed the petition in Crl.O.P.(MD).No.5205 of 2018, before this Court and the Hon'ble Division Bench of this Court on reference to decide the maintainability of the



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petition under Section 482 of Cr.P.C., to register the case has passed a common

order in 1000 number of cases with a direction to approach the learned Judicial Magistrate to file petition under Section 156(3) of Cr.P.C. Therefore as per the direction he filed the petition before the learned Judicial Magistrate No-VI, Madurai in Crl.M.P.No.393 of 2019 seeking relief of direction to register the case. The same was dismissed by the learned Judicial Magistrate by passing the following impugned order:

“Complainant not present. Order pronounced. On perusal of evidence as well as documents cited by the complainant that there is no prima facie case made out against the accused. Since the Superior Court already decided that the said respondent who is the son of the Kasthuri Raja. The petitioner/complainant side never produced any documents regarding the birth of the respondent, that who is the son of petitioner. The evidence on his side of all witness stating that the respondent side produce the forgery documents before High Court.

But no supported documents were produced on the side of the complainant that the said documents was forgery. Hence, no prima facie made out. Complaint is dismissed accordingly.”



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11. The learned counsel for the petitioner submitted that there is a jurisdictional error in respect of the dismissal of the complaint filed under 156(3) Cr.P.C., when it is in accordance with law.

12. As per the Code of Criminal Procedure, if anybody files a petition under 156(3) Cr.P.C., the Court has two options. One is, the Court can peruse the affidavit of the petitioner/defacto complainant and apply its mind on the allegations made in the affidavit and if it is found that any *prima facie* case is made out to investigate the matter, the learned Magistrate has jurisdiction to issue directions to the jurisdictional Investigating Officer either to register a case or to conduct the enquiry on the basis of ***Lalitha Kumari Vs. Government of Uttar Pradesh*** reported in **2013 (6) CTC 353**. The other option available to the learned Magistrate is that he may follow the procedure under Section 200 Cr.P.C., and issue summons to the respondents, namely the proposed accused and proceed further as per Section 202 Cr.P.C., If after the appearance of the proposed accused, the learned Magistrate feels that issuance of summon is not necessary, he can dismiss the petition under Section 203 Cr.P.C., without proceeding further. This two courses of action are always within the jurisdiction of the learned Magistrate.



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13. In this case, the learned Magistrate followed the second course of the action as held by the Hon'ble Supreme Court in 2021 1 SCC 670 and dismissed the petition considering the counter filed by the first respondent and perusing the records including the order passed in Crl.O.P.(MD) No.480 of 2017, which was confirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) Diary No.22493 of 2017.

14. Setting the Criminal Law in motion against a person is a serious matter affecting one's dignity, self respect and the image in society. It is not a mechanical process or matter of course. Therefore, the Hon'ble Supreme Court has reiterated the principle that to prevent the innocent persons from harassment by the unscrupulous persons from filing false complaint it is duty bound to see that the process of criminal Court shall not be made as a weapon of harassment. In this aspect, it is relevant to extract the following principle of the Hon'ble Supreme Court:

(i) ***Baby Venkatesah and others vs. State of Karnataka and another*** reported in **2022 5 SCC 639**;

“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



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allegations. The Court has noted that, applications under Section 156(3) Cr.P.C., are filed in a routine manner without taking any responsibility only to harass certain persons.”

(ii) Krishna Lal Chawla v. State of U.P., (2021) 5 SCC 435 : (2021) 2 SCC (Cri) 601 : 2021 SCC OnLine SC 191 at page 447

Role of the lower judiciary in preventing abuse of court process

16. We find it imperative to observe that this is a case that should not have been allowed to reach as far as this Court. The justice dispensation machinery in India is plagued with backlogs, with 70% of the pendency before the subordinate courts being on the criminal side. [Roshni Sinha, “Examining Pendency of Cases in the Judiciary“, PRS INDIA (8-8-2019).] A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system—a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings.

17. Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence



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under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not.

*18. The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate — and must be exercised with great caution, and after suitable judicial application of mind. Observations in a similar vein were made by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] : (SCC p. 760, para 28)*

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of



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allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

(emphasis supplied)

This Court, thus, clearly emphasised that the power to issue a summoning order is a matter of grave importance, and that the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made.

19. Similarly, the power conferred on the Magistrate under Section 202 CrPC to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out of frivolous complaints that must be fully exercised. A four-Judge Bench of Hon'ble Supreme Court Court has eloquently expounded on this in Chandra Deo Singh v. Prokash Chandra Bose [Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430 : (1963) 2 Cri LJ 397] : (AIR p. 1433, para 7)



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*“7. ... No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and **it is to find out what material there is to support the allegations made in the complaint.** It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant.”*

(emphasis supplied)

Thus, it is clear that, on receipt of a private complaint, the Magistrate must first, scrutinise it to examine if the allegations made in the private complaint, inter alia, smack of an instance of frivolous litigation; and second, examine and elicit the material that supports the case of the complainant.

20. *It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in “fact-finding” owing to the adversarial nature of our justice system. However, Section 165 of the Evidence Act, 1872 by providing the Judge with*



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the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

23. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.

15. The complainant should make averments that the document



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is forged with all necessary ingredients of Section 466 and 468 of IPC,

etc. In this case, nothing is averred except saying that the document is forged one. The Hon'ble Four Judges Bench of the Hon'ble Supreme Court has eloquently expounded on this in ***Chandra Deo Sing v. Prokash Chandra Bose [Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430]***. In order to ascertain the prima facie case to summon the accused and to filter frivolous complaints, the learned Judicial Magistrate's duty is to find out what materials were produced to support the allegations made in the complaint in the following words:

“7. ... No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at



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20. It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in “fact-finding” owing to the adversarial nature of our justice system. However, Section 165 of the Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

The same was reiterated by the Hon'ble Supreme Court in the recent decision reported in (ii) ***Krishna Lal Chawla v. State of U.P., (2021) 5 SCC 435 : (2021) 2 SCC (Cri) 601 : 2021 SCC OnLine SC 191 at page 447***



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***Role of the lower judiciary in preventing abuse of
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16. We find it imperative to observe that this is a case that should not have been allowed to reach as far as this Court. The justice dispensation machinery in India is plagued with backlogs, with 70% of the pendency before the subordinate courts being on the criminal side. [Roshni Sinha, “Examining Pendency of Cases in the Judiciary“, PRS INDIA (8-8-2019).] A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system—a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings.

17. Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is



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set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not.

18. The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate — and must be exercised with great caution, and after suitable judicial application of mind.

23. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.



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16. From the perusal of the records, the first respondent all along peacefully contested the case. The said conduct is also to be taken into consideration by this Court. This Court in Crl.O.P.(MD) No.480 of 2017 discussed every aspects in detail and the petitioner did not disclose about the document then. Now, he comes to state that the document is forged one. That too without any basis. The allegations must be made supported by material facts to proceed under 156(3) Cr.P.C., Merely using the word forgery, he cannot expect to initiate proceedings under 156(3) Cr.P.C., In this case, the complaint does not spell as to how this document is forged one.

17. The learned Senior Counsel for the first respondent relied upon the judgment of the Hon'ble Supreme Court, wherein it is stated that the original petition filed under 156 (3) Cr.P.C., is not supported with the affidavit. As per ***Priyanka Srivastava & Another v. State of U.P.***, reported in ***2015 (6) SCC 287***, the complaint under 156 (3) Cr.P.C., should be filed along with affidavit, but the same was not filed and hence, this revision case is liable to be dismissed. From the submission of the learned Senior Counsel for the first respondent, this Court finds *prima facie* that the petitioner made complaints after complaints to defame the image of the first respondent.



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18. In the said circumstances, the plea raised by the learned counsel for the petitioner on the basis of the judgment of the Hon'ble Supreme Court 1973 (3) SCC 753 in the case of Nirmaljit singh Hoon Vs. The State of West Bengal and another is not accepted. In the said case, there is a specific averment with material particulars and such particulars are not available in this case. Even as on today, the petitioner has not produced any document to show that the first respondent is his son. In the said circumstances, this Court initially has taken the issue that the filing of this revision is without *locus standi*.

19. The petitioner has stated the following averments:

“தனுஷ் தரப்பில் போலியான ஆவணங்களை நீதிமன்றத்தில் தாக்கல் செய்தார்கள். சென்னனை உயர்நீதிமன்றம் வழக்கை தள்ளுபடி செய்தது பின்னிட்டு தெரியவந்தது. நிதிமன்றத்தை ஏமாற்றி எங்களையும் ஏமாற்றி போலியான ஆவணங்களை தாக்கல் செய்துள்ளார்கள். அது போலி ஆவணம் என்று தெரியவந்ததால் இந்த வழக்கை இந்த நீதிமன்றத்தில் தாக்கல் செய்துள்ளேன். ஆகவே புகாரில் கோரியவாறு வழக்கை விசாரணைக்கு எடுக்க வேண்டுகிறேன்.”

On the basis of the said allegation, the petitioner wants to register the case under Section 466 and 468 of IPC.

19.1. In Sheila Sebastian V. R.Jawaharaj 2018 7 SCC 581, it has been held that an offence of forgery cannot lie against a person who has not created it or



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signed it. Hence, in all aspects, the offence of forgery is not made out on the averment made in the petition. The relevant portion is as follows:-

25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

19.2. According to the petitioner, the birth certificate has no registration number and hence, there is a trace of forgery. The transfer certificate issued by the Sathya Matriculation School, Saligramam contained caste name of the respondent as Aadhi Dravidar Scheduled Caste” but according to the petitioner, since the petitioner belongs to Veerakudi Vellalar, his community is Veerakudi Vellalar. Therefore, with wrong caste name, the school certificate is also forged. The original birth certificate is produced and hence, there is no question of manipulation of the record. The said original birth certificate was issued very



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long back before the issue arose. The petitioner has not produced any evidence to show the contra date of birth of the respondent obtained through the legal source.

Further, this Court on earlier occasion specifically held that the petitioner is not the father of the respondent. In the said circumstances, without any adequate materials to prove that the respondent is the son of the petitioner and his date of birth is not 30.07.1983, the learned trial Judge, correctly declined to entertain the case of the petitioner. Further allegation that the respondent obtained forged certificate with community name as Aadi Dravidar Scheduled Caste instead of Veerakudi Vellalar Backward Caste, is without any substance. In earlier round of the litigation, it is clearly stated that the petitioner has no relationship with the respondent. In the said circumstances, without any proof of the relationship of the petitioner with the respondent, the description of the caste in the school certificate with community name as Aadi Dravidar Scheduled Caste cannot be found fault with.

20. The petitioner's specific case is that in the Criminal Original Proceedings in Crl.O.P.(MD).No.480 of 2017, the respondent is said to have produced forged documents and obtained the order. In the said circumstances, his remedy is to file the petition before this Court under Section 340 r/w 195 of Cr.P.C., to take action against the respondent for producing the forged



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documents.

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20.1. Section 340 of Cr.P.C., is as follows:

“340. Procedure in cases mentioned in Section 195.

—(1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the First Class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that



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court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of Section 195.”

20.2. In *K.T.M.S. Mohd. v. Union of India*, (1992) 3 SCC 178

35....The words “in or in relation to a proceeding in that court” show that the court which can take action under this section is only the court operating within the definition of Section 195(3) before which or in relation to whose proceeding the offence has been committed.

“At an enquiry held by the Court under Section 340(1), CrPC, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

... The two per-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC.”

21. As held by the Hon'ble Supreme Court, the petitioner filed the petition under section 156 (3) of Cr.P.C., before the learned Judicial Magistrate, Melur,



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without jurisdiction. He ought to have filed a petition before this Court under

Section 340 of Cr.P.C., r/w 195 of Cr.P.C. From the records, this Court finds that he already approached this Court under Section 340 of Cr.P.C., and the same was dismissed by this Court in Crl.O.P.SR.(MD).No.2757 of 2018. Suppressing the same, he filed another Crl.O.P.(MD).No.5205 of 2018 to register the case for the alleged offence under Sections 466 and 468 of IPC. Therefore, this Court feels that the petitioner filed the present complaint without jurisdiction before the learned Judicial Magistrate. The learned Judicial Magistrate has no jurisdiction at all to deal with the document filed before the Hon'ble High Court, to decide as to whether the said document either is forged or genuine. The above conduct of the petitioner filing the petition before the learned Judicial Magistrate after the dismissal of the petition under Section 340 of Cr.P.C., is nothing but abuse of process of law.

22. The petitioner in earlier round of litigation, disputed the paternity of the respondent and he claimed himself as a biological father of the respondent and the same has not been accepted by this Court and the Hon'ble Supreme Court. It is accepted principle that *Pater est quem nuptiae demonstrant*, which means, *the father is he whom the nuptials point out*. In this case, the respondent is the son of Krishnamoorthi and Vijayalakshmi. He has been brought up and he



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has grown, as a son of Krishnamoorthi and Vijayalakshmi. Suddenly, this petitioner disputed the said paternity. This Court on earlier occasion categorically declined to accept the said relationship of father and son between the petitioner and the respondent. The claim of the petitioner disputing the paternity of the respondent itself would leave a far-reaching stigma on him and would have caused stress and potential heart ache to him and turn his world upside down. Now, the petitioner has once again made another allegation of perjury that the 1st respondent obtained the order from this Court by producing the forged certificate, without any materials to substantiate the same. The Hon'ble Supreme Court in the case of ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.***, reported in ***2019 16 SCC 610*** has framed the following guidelines to entertain the private complaint:

35. To be summoned/to appear before the criminal court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank v. Surendra Prasad Sinha [Punjab National Bank v. Surendra Prasad Sinha,



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*1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] , it was held
that the issuance of process should not be mechanical nor
should be made an instrument of oppression or needless
harassment.*

23. Hence, in the considered opinion of this Court, the petitioner filed this petition not only with ulterior motive and also without any ingredients to constitute the offence. This Court hopes that the destiny of the respondent to face this type of frivolous litigation at the hands of the petitioner may come to end with the dismissal of this case. Therefore, this Court is inclined to dismiss this petition.

24. Accordingly, this Criminal Revision Case is dismissed.

12.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
mm/sbn



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To

1. The learned Judicial Magistrate No.VI,
Madurai.
2. The Inspector of Police,
K.Pudur Police Station, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

mm/sbn

Pre-delivery Order made in
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12.03.2024