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Crl.R.C.(MD).No.1385 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	26.04.2024
Pronounced On	:	02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.1385 of 2023

and

Crl.M.P.(MD).No.4841 of 2023

S.Vaikundarajan

... Petitioner/Accused No.1

Vs.

1. State Rep. by
Inspector of Police,
CBCID, Organized Crime Unit,
Tirunelveli District
in Crime No.3 of 2022

2.J.Chenthil Rajan

... Respondents

(R2 impleaded as per order of this Court in Crl.M.P(MD).No.4841 of 2024 in Crl.R.C(MD).No.1385 of 2023)

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order of the lower court passed in Crl.M.P.No.29743 of 2023 dated 27.11.2023 on the file Judicial Magistrate, Tirunelveli and direct the Court to monitor the investigation in Crime No.3 of 2022 on the file respondent police.



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For Petitioner : Mr.L.Infant Dinesh

For Respondents : Mr.B.Nambiselvan,
Additional Public Prosecutor for R1

: Mr.R.Shanmugasundaram,
Senior Counsel for Mr.R.Anand for R2

ORDER

The petitioner herein has filed this Criminal Revision Case as against the order passed in Crl.M.P.No.29743 of 2023 dated 27.11.2023 on the file Judicial Magistrate, Tirunelveli and direct the Court to monitor the investigation in Crime No.3 of 2022 on the file of the respondent police.

2.The respondent police registered the case in Crime No.3 of 2022, against the petitioner herein and other accused for the alleged offence under sections 147, 341, 294(b), 323 and 427 of IPC. The petitioner has filed this petition before this Court to set aside the order passed in Cr.M.P.No.29743 of 2023, on the file of Judicial Magistrate No.I, Thirunelveli, and consequently, transfer the investigation and to monitor the investigation.



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3. The petitioner and the complainant, namely, the petitioner in Cr.M.P.No. 4841 of 2024, namely, Senthil Rajan, are family members, and both are partners of the partnership firm, namely, V.V.Minerals. Some dispute arose between them. There are number of litigations pending against them and many litigations have already been disposed of. In one litigation, the Honourable Mrs.Justice Vimala was appointed as “caretaker” of the said company's properties with the assistance two advocates. The two advocates inspected the premises on 23.04.2021.

4. On that day, Senthil Rajan's family members visited the premises which the advocates measured and took the photograph of the items sealed by the Government, and, there was some scuffle. In the scuffle, the petitioner and other accused were said to have assaulted the camera man and also they damaged his properties, thereby, they committed offence under the various provisions of IPC. Hence, they lodged a complaint before Uvari police station, but FIR was not registered there was no action on the complaint and hence, they filed the Cr.M.P.No.1849 of 2021, under Section 156(3) of Cr.P.C., before the Judicial Magistrate cum District Munsif, Ramanathapuram and the learned trial Judge



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directed to conduct enquiry following the dictum of the “***Lalitha Kumari***” case and submit a report. Thereafter, FIR was registered in Crime No.3 of 2022 and subsequently, Senthil Rajan filed a writ petition before this court, to transfer the investigation to the CBCID. This court allowed the writ petition and transferred the investigation to the CBCID. CBCID registered the case in the Crime No.3 of 2022, and thereafter, conducted investigation, and filed the final report before Judicial Magistrate No. 1, Tirunelveli, for the alleged offences punishable under Sections 147, 341, 294(b), 323 and 427 of IPC. Subsequently, the same was taken on file, in PRC No.05 of 2024 and at this stage, the petitioner filed the Cr.M.P.No.29743 of 2023, seeking the following prayer:

It is humbly prayed that this Hon'ble Court may be pleased to monitor the investigation in Crime No.3 of 2022, on the file of the respondent police.

4.1.On 27.11.2023, the same was dismissed by the Learned trial Judge, after passing the following order.

Petition Heard. This petitioner is a Accused in the petition mentioned case in Crime No.3 of 2022. This petitioner filed this petition to monitor this case. On perusal of the petition, this petitioner has no loco standy to file this petition at this stage of the investigation. Hence, this petition is dismissed.



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Challenging the same, the petitioner filed this revision before this court.

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5. The learned Counsel for the Petitioner made the following submissions:

The dismissal of the petition, on the grounds that the accused has no locus standy in filing the petition is not maintainable, in view of the judgment of the Hon'bel Supreme Court, reported in **2019 (17) SCC 1** and **2012 (3) SCC 126**. The learned Counsel further submitted that in the case where the rival complaint of the petitioner is pending, the petitioner has right to file the petition to monitor the investigation. In the said circumstances, the dismissal order suffers from apparent illegalities.

6. The Senior Counsel, Thiru.Shanmugasundaram, representing Mr. R.Anand, appearing for the “Senthil Rajan”/2nd respondent, made the following submissions:

6.1.The FIR was registered against the accused. He was arrayed as accused No.1. In the said circumstances, after transferring the investigation as per order of this court, the investigating officer filed the final report before the Court below. The investigation was completed. After completion of the investigation, transfer of investigation at the instance of the accused is not maintainable. He



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also specifically raised the question of maintainability of the prayer of the accused and he placed strong reliance on the judgment of the Hon'ble Three Judge's Bench of the Supreme Court reported in **2018 10 SCC 753**. The learned Senior Counsel further submitted that the petitioner has not come up with clean hands and has suppressed the material facts. The petitioner lodged a complaint before the Jurisdictional police station and there was no action and therefore, he preferred the petition under Section 156(3) of Cr.P.C before the learned Judicial Magistrate, and the same was dismissed. The same has not been challenged and when he has suppressed the fact, revision also is to be dismissed for the suppression of material facts. Therefore, the learned Senior Counsel seeks for dismissal of this petition.

7. The learned Additional Public Prosecutor, on instructions, reiterated the submission of the learned Senior Counsel and he specifically stated that the case was in the PRC stage, and hence, the petition is not maintainable.

8. This Court considered the rival submissions made on either side and perused the materials available on records and also all the material furnished by both parties.



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9. Admittedly, the petitioner was arrayed as accused in the Crime No.3 of 2022, on the file of respondent Police. He and other accused are facing the allegation that they caused damage to the properties, and assaulted and caused injuries and abused and thereby, offences under IPC and the offence under the Tamil Nadu Public Property Damages Act were slapped. They made counter-allegation against the private respondent herein. In the said complaint, there was no action, and hence, he filed a petition under Section 156 Cr.P.C, before the learned Jurisdictional Judicial Magistrate and the same was dismissed. Subsequently, without challenging the same, and filing this petition without disclosing the dismissal order amounts to suppression of material fact. As on date, there is no complaint pending either before the police authority or before the learned Judicial Magistrate. Therefore, the prayer of the petitioner to transfer the investigation deserves to be rejected.

10. Without pendency of any complaint, and his prayer to monitor the investigation is not legally permissible.

11. The petitioner is an accused in Crime No.3 of 2022 on the file of the first respondent Police. The second respondent is the complainant in the said



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case. The first respondent police completed the investigation and filed final report and the same was taken on file in P.R.C.No.5 of 2024. the petitioner's counter complaint has already dismissed. As on date, neither complaint nor any proceedings under Section 156(3) Cr.P.C., pending. Therefore, as rightly argued by the learned Senior Counsel on behalf of the second respondent, he is the accused and he has no *locus standi* to seek the remedy to transfer the investigation that too after the completion of the investigation and filing of the final report. The reliance placed by the learned Counsel on **2019 (17) SCC 1** is not applicable to facts of this case and same is confined to facts of that case, in which, the case was pending without any finding and adjudication was pending on the petition filed under Section 156 of Cr.P.C., before the concerned jurisdictional Court. Hence, the Hon'ble Supreme Court, taking the special circumstances, directed the investigating agency to consider the same. But here in this case, the petition was already dismissed, and hence, there was no further adjudication.

12.Per contra, the learned Senior Counsel rightly relied the judgment of the Hon'ble Three Judges Bench of the Supreme Court reported in **2018 (10) SCC 753**. In the said judgment earlier Three-judges Bench also has been



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followed. The Hon'ble Supreme Court repeatedly held the accused has no right to file the transfer of investigation or monitoring the investigation. Hence, apart from that, the petitioner suppressed the material fact ie., in all fairness, he should have fairly disclosed the dismissal of his complaint under Section 156(3) of Cr.P.C to take action against the private respondent herein. But he has not disclosed the same. On the date of filing this petition, neither the petitioner's complaint nor any FIR is registered on the basis of the complaint given by the petitioner is pending to transfer the same to the CBCID and conduct the further investigation along with the P.R.C.No.5 of 2024. Therefore, this petition is misconceived one. In the above circumstances, this Court finds no merit in the revision.

13.Accordingly, this Criminal Revision Case stands dismissed by confirming the order passed by the learned Judicial Magistrate, Tirunelveli in Crl.M.P.No.29743 of 2023 dated 27.11.2023.

02.08.2024

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



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To

1. The Judicial Magistrate,
Tirunelveli.
2. The Inspector of Police,
CBCID, Organized Crime Unit,
Tirunelveli District
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.

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Pre-delivery Order made in
Crl.RC(MD). No.1385 of 2023

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