



Crl.R.C.(MD)No.317 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 14.03.2025

Pronounced on : 28.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.317 of 2025

Abdul Kalam Azath

... Petitioner

Vs.

1.Thangapandiyan

2.Gowrisankar

3.Mugesh

4.Killivalavan

5.Kalaiselvi

6.State of Tamilnadu represented by
The Inspector of Police,
Poothalur Police Station,
Thanjavur District.

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for records pertaining to the order dated 21.01.2025 made



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in Crl.M.P.No.5 of 2025 on the file of the learned Judicial Magistrate, Thiruvaiyaru and set aside the same consequently direct the sixth respondent to register FIR as against the respondents 1 to 5 herein by allowing this criminal revision petition.

For Petitioner : Mr.A.Arul Jenifer

For R6 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.5 of 2025 dated 21.01.2025 on the file of the Court of the Judicial Magistrate, Thiruvaiyaru, dismissing the petition filed under Section 175(3) B.N.S.S.

2. The case of the petitioner is that 4.14½ acres of land at Kovilpathu Village, Boothalur Taluk were originally purchased by the petitioner in the names of one Bharakath Nisha and Kalifullah but the actual possession and enjoyment is with the petitioner, that the petitioner has filed two suits in O.S.Nos.216 of 2013 and 221 of 2013 for reconveyance of sale deed in the name of the petitioner and are pending on the file of the District Munsif Court, Thiruvaiyaru, that the petitioner has



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been granted injunction in the above suit against the said persons, that the said Bharakath Nisha and Kalifullah have taken the original document filed before the Court and made use of the same as previous document and executed sale deed in favour of the fifth respondent, that the petitioner has preferred a complaint and on that basis, FIR came to be registered in Crime No.529 of 2024 on the file of the Thiruvaiyaru Police Station and the case is pending, that when the petitioner on 20.10.2024 at about 07.00 a.m., was doing pre-cultivation work, at the instigation of the fifth respondent, the first respondent-husband of the fifth respondent and their sons respondents 2 and 3 and their henchman fourth respondent along with 100 persons came in 3 Tata Ace vehicle and waylaid the petitioner with deadly weapons, abused him in filthy language and threatened him to leave the land or else he would be killed, that the petitioner apprehending danger to his life left that place, that the petitioner has then sent a complaint to Boothalur Police Station on 20.10.2024 and though CSR came to be registered, there was no further action, that the Boothalur Police, without conducting enquiry, has sent a message, as if, the complaint was closed and that the petitioner has then sent a complaint to the District Superintendent of Police on 10.12.2024 and since there was no



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action, the petitioner was constrained to file the above petition under Section 175(3) B.N.S.S.

3. The learned Judicial Magistrate, taking the petition filed under Section 175(3) B.N.S.S. on file in Crl.M.P.No.5 of 2025 and upon considering the petition and the petitioner's affidavit and other records and on hearing the petitioner's side, has passed the impugned order dated 21.01.2025 by holding that the dispute is of civil in nature, dismissed the petition.

4. 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 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



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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 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."



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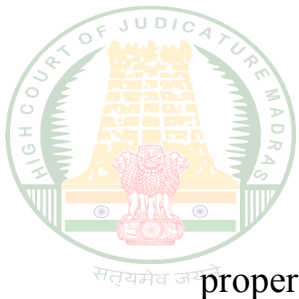


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While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his 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.”

5. 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 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.

6. In the case on hand, as already pointed out, even according to the petitioner, the property in dispute originally stood in the names of Bharakath Nisha and Kalifullah but according to him, he purchased the



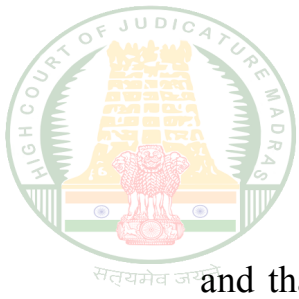
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property in their names and that subsequently, he filed two suits in O.S.Nos.216 of 2013 and 221 of 2013 for reconveyance and the same are pending on the file of the District Munsif Court, Thiruvaiyaru. It is the further case of the petitioner that the said Bharakath Nisha and Kalifullah have taken the original document from the custody of the Court and utilized as a previous title deed sold the property to the fifth respondent and that on the basis of the complaint lodged by the petitioner, the case came to be registered and is pending. Now the present contention of the petitioner is that the purchaser and her men had restrained the petitioner from entering into his land, abused him and caused criminal intimidation.

7. As rightly contended by the learned Government Advocate (Criminal Side), though the petitioner alleged that he was attacked, he has not shown any *prima facie* materials.

8. The learned counsel appearing for the petitioner would submit that since his petition under Section 175(3) B.N.S.S. discloses the commission of cognizable offence, the Judicial Magistrate is duty bound to forward the complaint to the concerned police for registering an FIR

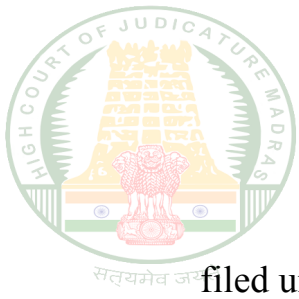


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and that he has no power or jurisdiction to dismiss the same by himself.

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The above contention of the learned counsel appearing for the petitioner is absolutely devoid of merit as the complainant does not have an unqualified right to demand a police investigation in all circumstances and moreover, it is not mandatory on the part of the Judicial Magistrate to refer the complaint to the concerned police for registration of the case. But it is pertinent to note that it is always open to the petitioner to file a private complaint and proceed to prosecute the accused even if the Judicial Magistrate refuses to exercise the power under Section 175(3) B.N.S.S. It is settled law that the Judicial Magistrate, while exercising power under Section 175(3) B.N.S.S., 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 223 B.N.S.S., and there is absolutely no bar or prohibition for filing a private complaint on the ground that the petition



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filed under Section 175(3) B.N.S.S., was dismissed by the Magistrate.

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9. Considering the petitioner's affidavit, this Court has no hesitation to hold that the petitioner has been attempting to giving civil dispute a criminal color and as such, the impugned order dismissing the petition filed under Section 175(3) B.N.S.S. 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.

10. In the result, this Criminal Revision Case stands dismissed. No costs.

28.03.2025

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

To

1. The Judicial Magistrate,
Thiruvaiyaru.
2. The Inspector of Police,
Poothalur Police Station,
Thanjavur District.
3. 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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Dated : 28.03.2025