

Crl.R.C.(MD)No.415 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.03.2025

Delivered on : 09.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.415 of 2022

Vettuperumal

... Petitioner

Vs.

1.Hari Balakrishnan

2.Chermanadan

3.P.Murugesan

4.Vasanthi,
Sub-Registrar,
Surandai Registrar Office,
Tenkasi District.

... Respondents

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order in Cr.M.P. No.4964 of 2021, dated 21.12.2021 on the file of the Judicial Magistrate Court, Alangulam, Tenkasi District and set aside the same.

For Petitioner : Mr.Vimal Pandian,
for M/s.Lajapathi Roy Associates.

For Respondents : Mr.H.Arumugam



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ORDER

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The Criminal Revision is directed against the order passed in Cr.M.P.No.4964 of 2021, dated 21.12.2021 on the file of the Judicial Magistrate Court, Alangulam, Tenkasi District, dismissing the petition filed under Section 156(3) of Cr.P.C.

2. The case of the petitioner/complainant is that the property measuring 40 cents in S.No.563/8, patta No.1470 of Kulasekaramangalam Village belongs to the petitioner's father Vetrivel Nadar; that the accused 1 to 4 entered into conspiracy and as per the advice of the fifth respondent, they have created a bogus document as if the first accused sold the property in favour of the second accused and got the document registered; that the accused 3 and 4 had subscribed signatures in the said document as attesting witnesses; that the petitioner came to know about the fabrication of false document only after the respondents have entered into the land in dispute; that the petitioner came to know that the document No.5039/2020 came to be created fraudulently showing that the property situated in S.No.563/8, but they have referred the previous title deed as document No.1105/1986, wherein the property situated in S.No.563/6 of Kulasekaramangalam Village was



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shown; that the respondents have created forged sale deed as if the property was situated in S.No.563/8 falsely and that therefore, the petitioner had committed the offence under Sections 109, 465, 467, 468 of IPC.

3. It is the further case of the petitioner that though the complaint came to be lodged before the Surandai Police Station directly, there was no action and hence, the petitioner was constrained to send complaint through registered post on 04.01.2021 to the Inspector of Police, Surandai Police Station and to the District Superintendent of Police, Tenkasi; that the Land Grabbing Cell directed the petitioner to redress his grievance before the competent Court and that therefore, the petitioner was constrained to file the above petition under Section 156(3) of Cr.P.C.

4.The learned Magistrate, taking the petition filed under Section 156(3) of Cr.P.C., on file in Cr.M.P.No.4964 of 2021 and upon perusing the petition, petitioner's affidavit and on hearing the petitioner's side, has passed the impugned order, dated 21.12.2021, dismissing the petition.



5. 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 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 :



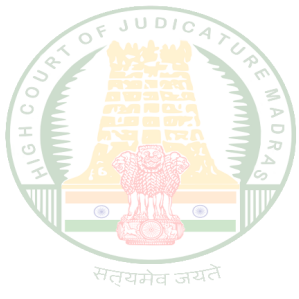
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"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a 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."

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



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discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

6. 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.

7. The petitioner has added the Sub-Registrar, Surandai SRO as fourth respondent alleging that only as per the advice of the fourth respondent, document came to be created fraudulently and the same got registered. As rightly observed by the learned Magistrate, the petitioner has not obtained any prior sanction for prosecuting or for filing the petition under Section 156(3) of Cr.P.C., against the fourth respondent. The learned Magistrate has rightly relied on the judgment of Hon'ble Supreme Court in ***Anil Kumar and others vs M.K Aiyappa & another*** reported in ***2013 (10) SCC 705***, wherein, it was held that once it is noticed that there was no prior sanction, a Magistrate cannot order an



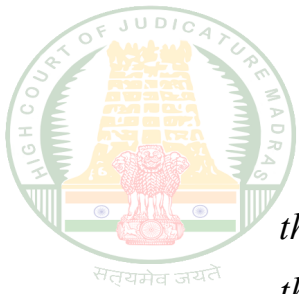
investigation against a public servant while invoking powers under
Section 156(3) of the Cr.P.C.

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8. As rightly contended by the learned counsel for the respondents a sanction for prosecution is a pre-condition for ordering an investigation under Section 156(3) of Cr.P.C against a public servant, including a Sub-Registrar, even at the pre-cognizance stage. Hence, the decision of the learned Magistrate that the complaint is defective cannot be found fault with.

9.The learned counsel for the petitioner as well as the learned counsel for the respondents would submit that the first respondent has filed a writ petition in W.P.(MD)No.4846 of 2022, seeking a writ of Certiorari, to call for the order of the District Registrar, Tenkasi, dated 14.02.2022 and quash the same and the learned Single Judge of this Court has observed as follows :

“2.One Sermanathan executed sale deed dated 01.12.2020 in favour of the writ petitioner purporting to convey two items of property. Sermanathan claims to have inherited the said property from his father Annamalai Nadar who purchased the same vide sale deed dated 07.08.1986. The



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third respondent lodged complaint before the first respondent that even though Survey No.563/8 is not mentioned in Annamalai Nadar's sale deed, it is finding place in the sale deed executed in favour of the writ petitioner by Sermanathan. Finding merit in the said contention, the first respondent passed the impugned order labelling the document as fraudulent. It is seen that the writ petitioner had already filed O.S.No.118 of 2022 on the file of the Sub Court, Sankarankovil seeking the relief of declaration and permanent injunction. Thus, the civil Court is seized of the matter. Hence the impugned order will abide by the outcome of the civil suit.

3. It is stated by the learned counsel appearing for the third respondent that the impugned order had already been entered in the encumbrance register. That will remain and the rights of the parties will have to be established before the jurisdictional civil Court independently.

4. I am of the view that prosecution need not have been directed. This part of the impugned order alone is set aside."

10.It is not in dispute that the suit in O.S.No.118 of 2022, claiming the reliefs of declaration and permanent injunction, is pending on the file of the Sub Court, Sankarankovil.



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11.The learned counsel appearing for the petitioner would submit that since their petition under Section 156(3) Cr.P.C., discloses the commission of cognizable offence, the Judicial Magistrate is duty bound to forward the complaint to the concerned police for registering an FIR and that he has no power or jurisdiction to dismiss the same by himself. 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 156(3) Cr.P.C.

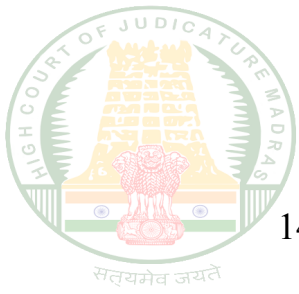
12.It is settled law that the Judicial Magistrate, while exercising power under Section 156(3) Cr.P.C., cannot act as a post office and is duty bound to consider the nature of the accusation or the offences alleged and to decide about the course of action to be taken and it cannot be said that the order of Judicial Magistrate refusing to direct the police



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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.

13. Considering the petitioner's affidavit and other materials available, this Court has no hesitation to hold that the petitioner has been attempting to give civil dispute a criminal color. The learned Magistrate has rightly held that there was no scope for proceeding further and for issuance of direction to register the case and as such, 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.



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14. Even though the District Registrar has given a finding that the document executed by the second respondent in favour of the first respondent is fraudulent, this Court has specifically observed that the said finding will abide by the out come of the civil suit and that the parties will have to establish their rights before the jurisdictional civil Court.

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

29.04.2025

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

- 1.The Judicial Magistrate Court,
Alangulam, Tenkasi District.
- 2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CrI.R.C.(MD)No.415 of 2022

Dated: 29.04.2025