



CRL OP(MD), No.9605 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 21.11.2025

PRESENT

THE HON'BLE MRS JUSTICE S.SRIMATHY

**CRL OP(MD)No.9605 of 2023
and CRL MP(MD).Nos.7718 & 7719 of 2023**

G.Kumar

... Petitioner/ Accused

Vs

1. The State of Tamil Nadu

Represented by The Inspector of Police,
CCB Police Station,
Thiruchirappalli District.
(Crime No.16 of 2020)

2. Karthikeyan

... Respondents/Complainants

For Petitioner : Mr.KPS. Palanivel Rajan
Senior counsel
For Mr. K.C.Maniyarasu

For R1 : Mr.A.S.Abul Kalaam Azad
Government Advocate (Crl.Side)

For R2 : No appearance

PRAYER :- This Criminal Original Petition has been filed under Section
482 of Cr.P.C., to call for the records pertaining to the charge sheet in



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C.C.No.1143 of 2022 on the file of the Judicial Magistrate-1, Thiruchirappalli for offences charged under Sections 406 and 420 of IPC and quash the same as illegal as against the petitioner alone.

ORDER: The Court made the following order:-

This Criminal Original Petition has been filed to call for the records in C.C.No.1143 of 2022 on the file of the learned Judicial Magistrate -1, Thiruchirappalli and the quash the same.

2. The prosecution case is that the petitioner was engaged in the business of selling used cars, approached the defacto complainant and induced him to invest money in the petitioner's company. Relying on the representations made by the petitioner, the defacto complainant obtained loans from various money lenders and invested the same. However, the petitioner failed to furnish proper accounts to the defacto complainant. Upon jointly auditing the company accounts, it was revealed that the petitioner had cheated the defacto complainant. Subsequently when the defacto complainant demanded repayment, the petitioner promised to return the money in January 2019, but failed to do so. Thereafter, the



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defacto complainant took possession of three vehicles from the custody of the petitioner. With the intervention of the President of the Car Association, the matter was mediated, and the petitioner was directed to repay a sum of Rs.26,50,000/- to the defacto complainant. In the meantime, the petitioner executed a promissory note in favour of the defacto complainant, undertaking to repay the amount within two months. Even after the expiry of the stipulated period, the petitioner failed to repay the amount. Consequently, the defacto complainant lodged a complaint before the Commissioner on 15.07.2019. Pursuant to a summons dated 11.12.2020, both parties appeared before the first respondent police on 14.12.2020. As no action was taken thereafter, the defacto complainant filed a petition under Sections 200 and 156(3) of the Code of Criminal Procedure before the Judicial Magistrate II, Tiruchirappalli. Based on the direction of the learned Magistrate, the first respondent police registered FIR No.16 of 2020. Upon completion of the investigation, a final report was filed before the Judicial Magistrate-I, Tiruchirappalli, and the case was taken on file as C.C. No.1143 of 2022.



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3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and has not committed any offence as alleged by the prosecution. It was further submitted that the defacto complainant had stolen three vehicles from the custody of the petitioner. The petitioner had already filed a suit in O.S. No. 540 of 2019 against the defacto complainant before the Principal District Munsif Court, Tiruchirappalli, but the defacto complainant failed to appear before the Trial Court. In the meantime, the present case was registered belatedly. Hence, prayed to allow the quash petition.

4. The learned Government Advocate (Crl.Side) submitted that the investigation has been completed and the charge sheet has also been filed in C.C.No.1143 of 2022 on the file of the Judicial Magistrate I, Thiruchirappalli. He further submitted that the witnesses were examined.

5. The primary contention of the petitioner is that the defacto complainant had not filed any affidavit while preferring the complaint before the Judicial Magistrate II, Trichy and the petition under section 156(3) was mechanically ordered by the Judicial Magistrate Court and



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the prosecution has mechanically registered the FIR.

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6. It is seen that the defacto complainant had preferred complainant to the Commissioner of Police and both the petitioner and the defacto complainant had appeared before the respondent police, since no action was taken the petitioner had filed a petition under sections 200 and 156(3) of Cr.P.C. before Judicial Magistrate, II Trichy in Cr.M.P.No.352 of 2020 and there was a direction to file FIR. Hence the FIR was registered and charge sheet was filed in C.C.No.1143 of 2022. The contention of the petitioner is that the petitioner has not filed any sworn affidavit before the Judicial Magistrate II, Trichy, hence the complaint cannot be entertained and the petitioner had relied on the judgment rendered by the Hon'ble Supreme Court in ***Babu Venkatesh – J.Gavai and Others V. State of Karnataka & Another in Crl. Appeal 252 of 2022 reported in (2022) 5 SCC 639. The Court had relied on (2015) 6 SCC 287 in Priyanka Srivastava & Another V. State of U.P. & Others in Crl. Appeal No.781 of 2012.*** The relevant paragraph from Babu Venkatesh judgment is extracted hereunder:

23. Further we find that, the present appeals deserve to be allowed on another ground.



24. After analyzing the law as to how the power under Section 156 (3) of Cr.P.C. has to be exercised, this court in the case of Priyanka Srivastava and Another v. State of Uttar Pradesh and Others [\(2015\) 6 SCC 287 \[LQ/SC/2015/424\]](#) has observed thus:

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC 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.

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 \[LQ/SC/2013/1244\]\]](#) : (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.”

25. This court has clearly held that, a stage has come where applications under Section 156 (3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

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

27. This court has further held that, prior to the filing of a petition under Section 156 (3) of the Cr.P.C., there have to be applications under Section 154 (1) and 154 (3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

28. In the present case, we find that the learned Magistrate while passing the order under Section 156 (3) of the Cr.P.C., has totally failed to consider the law laid down by this court.

29. From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156 (3) of the Cr.P.C. The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of Priyanka Srivastava v. State of U.P. (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint.



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30. We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.”

In the present case, the Judicial Magistrate had mechanically directed to register the case and had not directed the defacto complainant to file a sworn affidavit. In the absence of sworn affidavit, the learned Magistrate cannot mechanically direct to register the complaint under section 156(3). Hence, following the judgments of the Hon’ble Supreme Court in the case of Babu Venkatesh and Priyanka Srivastava, the charge sheet is liable to be quashed on this contention.

7. Apart from the above, even if the entire allegation in the complaint is taken as true, the same would not constitute any offence. Since there is business transaction between the petitioner and the defacto complainant, especially buying and selling vehicles and the defacto complainant had invested in the said business. In the said transaction it is alleged the defacto complainant had taken three cars from the petitioner (according to petitioner it is theft), hence the petitioner had preferred



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complaint against the defacto complaint in the 2019, there was compromise between the parties, subsequently the petitioner had preferred civil suit in O.S.No.540 of 2019 on the file of Principal District Munsif Court, Trichy and the defacto remained exparte, thereafter the Court had passed exparte judgment. It is thereafter the defacto complainant had preferred the present complaint to avoid the exparte judgment. It is stated that the defacto complainant had filed set aside petition and the suit is taken for trial. The above narration would clearly indicate that there is business transaction between parties, hence the said sections may not be attracted and the C.C.No.1143 of 2022 is liable to be quashed.

8. The parties are at liberty to contest the suit pending in O.S.No. 540 of 2019 on the file of Principal District Munsif Court, Trichy and any observation stated supra is only for deciding the quash petition. Hence parties are at liberty to raise all available grounds for them.



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9. For the reasons stated supra, the C.C.No.1143 of 2022 is quashed. No costs. Consequently, all the Miscellaneous Petitions are closed.

(S S Y J)

21.11.2025

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To

1. The learned Judicial Magistrate No.1,
Thiruchirappalli.
2. The Inspector of Police,
CCB Police Station,
Thiruchirappalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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S.SRIMATHY,J.

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**ORDER
IN
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