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Crl.R.C.(MD) No.1300 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Delivered on : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1300 of 2024

Veerappan

: Petitioner

Vs.

1.Gurusamy

2.T.Petchimuthu

3.The Sub-Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.

: Respondents

Prayer : This Criminal Revision has been filed under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the order passed by the Judicial Magistrate Court, Rajapalayam in Crl.M.P.No.1443 of 2022, dated 03.06.2022.

For Petitioner : Mr.M.Jothi Basu

For Respondents : Mrs.M.Aasha,
Government Advocate (Criminal Side) for R3.

: Mrs.E.Subbiah @ Jeyavaradhan,
for R1 & R2



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ORDER

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The Criminal Revision Case is directed against the order passed in Crl.M.P.No.1443 of 2022, dated 03.06.2022, on the file of the Court of the Judicial Magistrate, Rajapalayam, dismissing the petition filed under Section 156(3) of the Code of Criminal Procedure.

2.The case of the prosecution is that the petitioner has been residing with his family at Kunnakudi Village at Rajapalayam; that the first respondent is residing at Sivakiri and the second respondent is a practising Advocate at Srivilliputhur; that the respondents 1 and 2 have assured to arrange a job to the petitioner's son as accountant in Tamil Nadu Electricity Board, Ambasamudram and received Rs.4,60,000/-; that the second respondent in order to show their *bonafide* has issued cheques drawn on HDFC Bank; that when the cheques were presented for collection, the same came to be returned for want of sufficient funds in the bank account of the second respondent; that the petitioner subsequently came to know that there is no such post or job in Ambasamudram TNEB; that the petitioner had demanded the respondents 1 and 2 to return the amount, but they were postponing or some pretext or other; that the petitioner has sent a complaint to the Dhalavaipuram Police Station on 04.09.2020 for which, CSR came to be issued; that the respondents 1 and 2 at the enquiry, had



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admitted the receipt of Rs.4,60,000/- and also gave a letter acknowledging the same; that the first respondent had agreed to pay Rs.60,000/- and whereas the second respondent by alleging that he has given that amount to one Balan residing at Sivakasi Housing Board, has agreed to pay Rs.50,000/- per month; that the respondents 1 and 2, despite their assurance have not paid any amount; that when the petitioner had again demanded the amount, the respondents 1 and 2 had abused him in filthy language and caused criminal intimidation; that since the complaint to the jurisdictional police was of no use, he sent a complaint to the Superintendent of Police, Virudhunagar District on 27.12.2021 and despite receipt of the same, there was no action and that therefore, the petitioner was constrained to file the above petition under Section 156(3) of Cr.P.C., for registration of the case and for investigation.

3. The learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C., on file in Cr.M.P.No.1443 of 2022, upon perusing the petition and on hearing the petitioner's side, has passed the impugned order, dated 03.06.2022 by holding that the dispute is of civil in nature, dismissed the petition.

4.It is not in dispute that the petitioner has filed a petition in Crl.O.P(MD)No.13417 of 2022, challenging the impugned order, dated

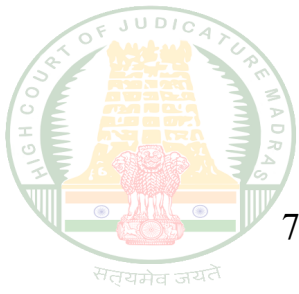


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03.06.2022, invoking Section 482 of Cr.P.C., and this Court by observing that the petitioner has a remedy to file a revision before the competent Court, dismissed the petition with liberty to workout his remedy in the manner known to law. Thereafter, challenging the impugned order, the present revision came to be filed.

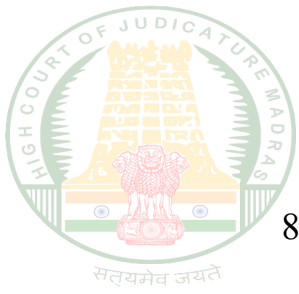
5.It is not in dispute that when the matter was referred to mediation earlier, the respondents had given Rs.80,000/- to the petitioner.

6. The second respondent has filed counter affidavit for himself and on behalf of the first respondent denying the receipt of Rs.4,60,000/- assuring to secure a Government job for the petitioner's son; that the respondents have paid Rs.80,000/- only for the reason that the second respondent was a practising advocate and the above case would affect his career; that the learned Magistrate has rightly observed that securing Government job by giving bribe by itself is a crime and that the learned Magistrate by observing that no one has witnessed the payment of money nor the second respondent had received money directly and that the place of incident was not mentioned, rightly dismissed the petition and that the complaint does not disclose any cognizable offence and as such, the dismissal of the petition filed under Section 156(3) of Cr.P.C., cannot be found fault with.



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7.The third respondent has filed a status report stating that the petitioner has lodged a complaint before the Superintendent of Police on 13.06.2021 alleging that the first respondent had committed job racketing of Rs.4,60,000/- promising to secure a job in Electricity Board for the petitioner's son; that the said complaint came to be forwarded to the third respondent and CSR.No.418 of 2021, dated 12.10.2021 was issued and the case was taken for investigation by the then Sub-Inspector of Police; that the first respondent appeared and gave statement that the petitioner requested to secure a job for his son through the second respondent and paid R.4,60,000/- out of which, Rs.4,00,000/- was paid to the second respondent and the remaining amount of Rs.60,000/- was taken by the first respondent himself; that the first respondent has given a statement that he would return the amount on or before 15.01.2022; that the second respondent also appeared and gave a statement that Rs.4,00,000/- was given to him by the petitioner for securing job was in turn given to one Ramesh S/o.Balan, that the said Ramesh having failed to secure the job and also dragged without returning the money; that the said Ramesh also appeared for enquiry and gave a statement that he would pay Rs.4,00,000/- in monthly installments; that the learned Magistrate has rightly dismissed the petition filed under Section 156(3) of Cr.P.C., and that in the mediation proceedings, the second respondent has paid Rs.30,000/- through Bank account of the petitioner's son and another sum of Rs.50,000/- as cash.



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8.The learned Magistrate, by observing that securing job by giving money by itself is illegal; that the petitioner has not mentioned about the persons, who had witnessed the payment of money; that the second respondent has not received any amount directly; that the petitioner has not mentioned the place of occurrence where he was threatened and the words allegedly used to abuse him and that since the dispute referred by the petitioner is of civil in nature, dismissed the petition.

9.No doubt, as rightly observed by the learned trial Judge paying money to secure a job is a crime. It is settled law that an illegal contract is not enforceable in law, but the legality of the contract does not affect the jurisdiction of the criminal Court to try the offence and the fact that the complainant was a party to the illegal transaction does not disentitle him from maintaining a complaint. Despite the illegal transaction, if the complainant has materials to prove the allegations, the Court might still consider the complaint on merits.

10.Considering the above, this Court is of the view that while the illegality of paying money for a job may be a factor, it is unlikely to be the sole reason for dismissing the complaint and the Court would likely consider the entire context and evidence on the merits of the case, before making a decision.



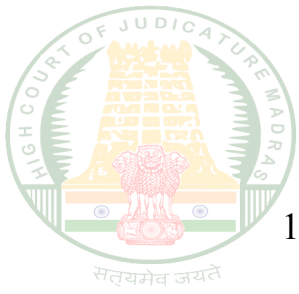
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11. In the case on hand, as already pointed out, the petitioner has alleged that the respondents 1 and 2 have received Rs.4,60,000/- for securing a job to the petitioner's son.

12. According to the petitioner, the second respondent has issued cheques drawn on HDFC Bank. It is the specific case of the petitioner that at the police enquiry, the respondents 1 and 2 had admitted the receipt of amount and gave an undertaking to repay the amount. It is pertinent to note that during mediation proceedings, the respondents 1 and 2 have paid Rs.80,000/- to the petitioner and the reason now assigned by the second respondent that he paid the amount taking into account his carrier as a practising advocate, is very hard to believe.

13. As rightly contended by the learned counsel for the petitioner, in the present stage, the Court is not expected to go into the merits and demerits of the case and is duty bound to consider whether the complaint discloses any cognizable offence and in case of any such disclosure, the Magistrate has to direct the concerned police to register the case and proceed with investigation and if the Magistrate is doubtful whether the complaint discloses any cognizable offence or not, he can very well direct the concerned Police to conduct a preliminary enquiry and register an FIR, if enquiry disclose any commission of cognizable offence.



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14. As rightly contended by the learned counsel for the petitioner, the present petition filed under Section 156(3) of Cr.P.C., discloses cognizable offence and as such, the impugned order dismissing the petition on the ground that the dispute is of civil in nature cannot be sustained and is liable to be set aside.

15. In the result, the Criminal Revision is allowed and the impugned order, dated 03.06.2022 in Crl.M.P.No.1443 of 2022, on the file of the learned Judicial Magistrate, Rajapalayam, is set aside. The learned Judicial Magistrate, Rajapalayam, is directed to forward the petition filed under Section 156(3) Cr.P.C., to the jurisdictional Police and on receipt of the same, the jurisdictional police is directed to register a case and proceed with investigation and file the final report as expeditiously as possible.

09.04.2025

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

- 1.The Judicial Magistrate Court, Rajapalayam.
- 2.The Sub-Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.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
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