



*CrI.R.C.(MD)No.546 of 2019*

**WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 26.03.2025

Delivered on : 13.06.2025

**CORAM**

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

CrI.R.C.(MD)No.546 of 2019

A.Sakthivel

... Petitioner

**Vs.**

The Sub-Inspector of Police,  
Eriyodu Police Station,  
Dindigul District.

... Respondent

**PRAYER :** Criminal Revision Petition filed under Section 397(i) r/w 401 of Cr.P.C., to call for the records pertaining to the order in Cr.M.P.No.2271 of 2019, dated 19.06.2019 on the file of the learned Additional District Munsif cum Judicial Magistrate, Vedasanthoor and set aside the same and consequently, direct the second respondent herein to register a case based on the petitioner's complaint, dated 18.01.2019.

For Petitioner : Mr.A.K.Amaravel Pandian

For Respondent : Mr.B.Thanga Aravindh,  
Government Advocate (Criminal Side).



*Crl.R.C.(MD)No.546 of 2019*

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## **ORDER**

The Criminal Revision is directed against the order passed in Cr.M.P.No.2271 of 2019, dated 19.06.2019 on the file of the learned Additional District Munsif cum Judicial Magistrate, Vedasanthoor, dismissing the complaint under Section 203 of the Code of Criminal Procedure.

2.The case of the petitioner/complainant is that the petitioner is owning 3.98 acres of land in S.No.663/3C of R.Kombai Village, Pernaickkanpatti, Vedasandhoor Taluk; that the sons of deceased Raj, namely P.R.Subramanian, P.R.Selvam and P.R.Baskaran of Puliyampatti, Vaduhampatti village, without any document had obtained joint patta in respect of the land in S.No.663/3C in their father's name; that the petitioner, after coming to know about the same, has filed a writ petition in W.P(MD)No.18219 of 2015 before this Court to quash the proceedings of Vedasandhoor Tahsildhar, dated 18.04.2015 and the same was pending; that the petitioner had fenced his land nine years back and has been in possession and enjoyment of his property; that while so, on 17.01.2019 at about 11.00 pm., the said sons of Raju came to the petitioner's land and started to



*Crl.R.C.(MD)/No.546 of 2019*

WEB COPY

remove fencing; that when the same was questioned by the petitioner and his brother Thangaraj, the accused had trespassed into the land, abused them in filthy language, attacked them and caused criminal intimidation; that they had caused damages to the tune of Rs.5,000/- to the fencing; that the petitioner sent a complaint on 18.01.2019 to the Eriyodu police, but CSR.No.27 of 2019 came to be issued on 07.02.2019; that since there was no action, the petitioner was forced to send a complaint to the District Superintendent of Police on 20.03.2019; that the said accused had committed the offence punishable under Sections 147, 148, 294(b), 323, 379 (NP), 427, 447 and 506(i) IPC and that since the police has not taken any action, the petitioner was constrained to file the above complaint under Section 156(3) of Cr.P.C.

3.The learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C., as a complaint under Section 200 of Cr.P.C., and proceeded to conduct enquiry under Section 202 Cr.P.C. The learned Magistrate recorded the sworn statement of the petitioner/complainant and since the complainant has not produced any other witness, upon perusing the petitioner's complaint, sworn statement and other materials produced, has passed the impugned order, dated 19.06.2019, holding that the dispute is of



*Crl.R.C.(MD)No.546 of 2019*

WEB COPY

civil in nature and that there was no *prima facie* case made out, dismissed the complaint under Section 203 of Cr.P.C.

4.The learned counsel appearing for the petitioner would submit that the learned Magistrate failed to take note of the fact that there was a theft of fencing; that the learned Magistrate erred in observing that the complaint was a out come of civil dispute; that the learned Magistrate cannot conduct roving enquiry and ought to have sent the complaint to the respondent police for investigation and for filing of the report; that the learned Magistrate erred in usurping the powers and functions of the police proceeded with the complaint and dismissed the same and that therefore, the impugned order, which is legally unsustainable, is liable to be set aside.

5.The first respondent Inspector of Police, Eriyodu Police Station, has filed the counter affidavit stating that on the basis of the complaint given by the petitioner, CSR came to be registered in C.S.R.No.27 of 2019 on 07.02.2019; that there was a civil case pending between the parties and hence, in the CSR receipt itself, it has been mentioned as civil dispute; that the petitioner has not given any particulars about the alleged occurrence nor



*Crl.R.C.(MD)No.546 of 2019*

any evidence to show that he has fenced the disputed property; that the learned Magistrate, considering the complaint and sworn statement, has rightly held that there existed civil dispute between the parties and there is nothing to proceed further and that therefore, the petition is liable to be dismissed.

6. During the final hearing, the petitioner's learned counsel would submit that this Court allowed the writ petition in W.P(MD)No.18219 of 2015 vide order dated 18.12.2019, thereby quashing the proceedings of the Vedasandhur Tahsildhar dated 18.04.2015.

7. As the learned Government Advocate (Criminal Side) rightly pointed out, this Court's order in the writ petition specifically noted that disputes over title to specific portions of the property in Survey No.663/3B, 3C, or 3A can only be resolved by a competent civil court, given the need for adjudication of disputed facts based on oral and documentary evidence. While quashing the Tahsildhar's order, this Court clarified that either party could approach the civil court to establish their title to the specific portion claimed. The civil court, when entertaining the suit, was directed to dispose of it without being influenced by any observations made in the writ petition.



*Crl.R.C.(MD)No.546 of 2019*

WEB COPY

8. As the learned Magistrate rightly observed, based on the materials on record, it is evident that a civil dispute existed between the parties. As rightly contended by the learned Government Advocate (Criminal Side), without evidence of possession, the allegations of trespass and related offences cannot be considered.

9. It is not the case of the petitioner that along with three persons referred in the complaint, some other persons had accompanied them. As rightly observed by the learned Magistrate, since the petitioner himself has alleged that the said three persons came to the property at the time of alleged occurrence, there is no *prima facie* case to proceed further for offence under Sections 147 and 148 of IPC and moreover, as rightly observed by the learned Magistrate, the petitioner either in the compliant or in the sworn statement has whispered about the abused language allegedly used by the respondents.

10. The learned counsel appearing for the petitioner would mainly submit that the learned Magistrate has committed an error in treating the

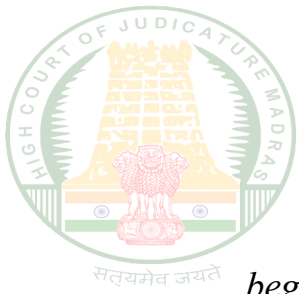


*Crl.R.C.(MD)No.546 of 2019*

petition filed under Section 156(3) of Cr.P.C., as a complaint under Section 200 of Cr.P.C., and thereby usurped the powers and functions of the police authorities. The learned counsel for the petitioner would rely on the decision of Hon'ble Supreme Court in ***Anju Chaudhar Vs. State of Uttar Pradesh and anoher*** reported in (2013) 6 SCC 384 and the relevant passages are extracted hereunder :

*“Power of the Magistrate under Section 156(3)*

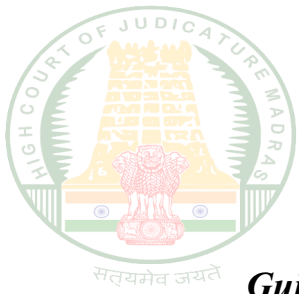
*35. Investigation into commission of a crime can be commenced by two different modes. First, where the police officer registers an FIR in relation to commission of a cognizable offence and commences investigation in terms of Chapter XII of the Code, the other is when a Magistrate competent to take cognizance in terms of Section 190 may order an investigation into commission of a crime as per the provisions of that Chapter XIV. Section 156 primarily deals with the powers of a police office to investigate a cognizable case. While dealing with the application or passing an order under Section 156(3), the Magistrate does not take cognizance of an offence. When the Magistrate had applied his mind only for order an investigation under Section 156(3) of the Code or issued a warrant for the said purpose, he is not said to have taken cognizance. It is an order in the nature of a preemptory reminder or intimation to the police to exercise its primary duty and power of investigation in terms of Section 151 of the Code. Such an investigation embraces the continuity of the process which*



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*begins with collection of evidence under Section 156 and ends with the final report either under Section 159 or submission of chargesheet under Section 173 of the Code.*

*37. Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156(3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of the Magistrate under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code. These cases would fall in different class. This view was also taken by a Bench of this Court in the case of **Rameshbhai Pandurao Hedau v. State of***



**Crl.R.C.(MD)No.546 of 2019**

WEB COPY

**Gujarat [(2010) 4 SCC 185]**. The distinction between these two powers had also been finally stated in the judgment of this Court in the case of **Srinivas Gundluri & Ors. v. SEPCO Electric Power Construction Corporation & Ors. [(2010) 8 SCC 206]** where the Court stated that to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation. But where it takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code.”

11. The learned counsel for the petitioner would also rely on the decisions of Hon'ble Supreme Court in the case of **Pradeep Nirankarnath Sharma Vs. State of Gujarat and others** passed in SLP.(Crl) No.3154 of 2024, dated 17.03.2025 and the case of **Sindhu Janak Nagargoje Vs. State of Maharashtra and others** reported in 2024 (1) Crimes 45 and in both the decisions, the Hon'ble Apex Court has referred the decision of Constitution Bench in the case of **Lalita Kumari Vs. State of Uttar Pradesh and others** reported in **(2014) 2 SCC 1** and in both the decisions some of the conclusions arrived at by the Hon'ble Supreme Court in **Lalita Kumari's** case came to be referred.



Crl.R.C.(MD)No.546 of 2019

WEB COPY

12. In **Pradeep Nirankarnath Sharma's** case, the Hon'ble Supreme Court after referring the Lalita Kumari's case has observed as follows :

*“12. The scope of a preliminary inquiry, as clarified in the said judgment, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. The decision in Lalita Kumari (supra) does not create an absolute rule that a preliminary inquiry must be conducted in every case before the registration of an FIR. Rather, it reaffirms the settled principle that the police authorities are obligated to register an FIR when the information received prima facie discloses a cognizable offence.”*

13. In **Sindhu Janak Nagargoje's** case, the Hon'ble Supreme Court reiterated summary of law stated in **Lalita Kumari's** case and are reproduced hereunder :

*“ 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*



**Crl.R.C.(MD)No.546 of 2019**

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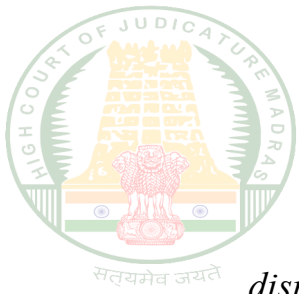
*120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

*120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

*120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

*120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

*120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial*



**Crl.R.C.(MD)No.546 of 2019**

WEB COPY

*disputes/ family disputes (b) Commercial offences (c) Medical negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

*The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”*

14. As already pointed out, the main contention of the petitioner is that when a petition is filed under Section 156(3) Cr.P.C., the learned Magistrate must determine whether a *prima facie* case is made out without delving into the merits and the learned Magistrate is obligated to forward the complaint to the Police under Section 156(3) of Cr.P.C, but the learned Magistrate in the case on hand, without considering the settled legal position, proceeded under Section 200 Cr.P.C., and dismissed the complaint.

15. At this juncture, it is necessary to refer the following passages in the decision reported in ***AIR Online 2021 Madras 969*** in ***P.Pitchiyappan Vs. Karpagam and others*** and the relevant passages are extracted hereunder :

*“ 8.No doubt, if the petition is filed under Section 156(3) Cr.P.C, the learned Magistrate has to apply his mind to know whether the allegations in the complaint prima facie make out a*



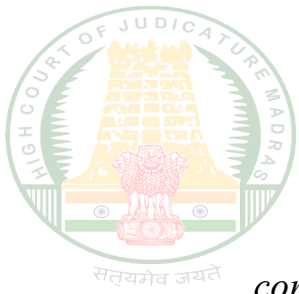
**Crl.R.C.(MD)No.546 of 2019**

WEB COPY

*case and the Magistrate should not mechanically pass order directing the Police to investigate the case. In case, if the allegations constitute a cognizable offence, then, the Magistrate is duty bound to forward the complaint to the concerned Police for registering the FIR and for further investigation.*

*9.It is pertinent to mention that it is not mandatory on the part of the Magistrate to send the complaint to the concerned Police to register and investigate the case, if the said petition does not reveal any prima facie case to proceed further.*

*10.It is settled law that when a complaint is filed before the Court of competent jurisdiction, the Magistrate will have two options and as per the first option, he can take the complaint on file under Section 200 Cr.P.C by examining the complainant and witnesses, if any and he can pass orders either to dismiss the same under Section 203 Cr.P.C or to issue process under Section 204 Cr.P.C. As per the second option, if the complaint discloses any cognizable offence, he can refer the matter for investigation under Section 156(3) Cr.P.C to find out the truth of the allegations. But if a petition is filed under Section 156(3) Cr.P.C, the Magistrate can either forward the said petition to the Police for investigation or treat the said petition as a private complaint under Section 200 Cr.P.C. In cases of civil nature and in the cases, where the police do not entertain the complaint, the persons with vested interest and with some oblique motive, rushes to the criminal Court and files a petition under Section 156(3) Cr.P.C, making some allegations to*



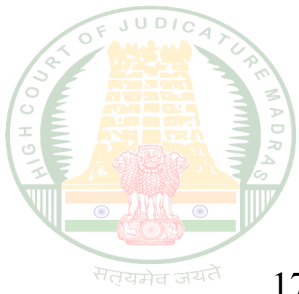
*Crl.R.C.(MD)No.546 of 2019*

WEB COPY

*constitute the cognizable offence and wants an order or direction to the Police for registering the FIR and for investigation and more petitions under Section 156(3) are being filed in all the Magistrate Courts and are attempting to achieve the desired results through the orders for registration of FIR and investigation.*

*11.In such a scenario, the Magistrates are duty bound to see as to whether the averments in the petition would constitute cognizable offences and the same is supported by any materials. More importantly, mere allegation about the commission of the offence without any material in support thereof would not justify the order for investigation under Section 156(3) Cr.P.C.”*

16.In the case on hand, considering the complaint averments, the learned Magistrate has decided to treat the petition filed under Section 156(3) Cr.P.C., as complaint under Section 200 Cr.P.C., and recorded the sworn statement of the petitioner/complainant and directed the petitioner to produce the other evidence. Since the petitioner has not produced any other evidence, the learned Magistrate considering the materials available on record has come to a decision that the petitioner has not shown any prima facie case to proceed further, dismissed the complaint under Section 203 Cr.P.C.



*Crl.R.C.(MD)/No.546 of 2019*

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17. Considering the legal position above referred, the course of action adopted by the learned Magistrate is perfectly in order and the same cannot be found fault with. Consequently, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.

18. In the result, the Criminal Revision Case is dismissed.

**13.06.2025**

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

1. The Additional District Munsif cum  
Judicial Magistrate, Vedasanthoor.

2. The Sub-Inspector of Police,  
Eriyodu Police Station,  
Dindigul District.

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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*Crl.R.C.(MD)No.546 of 2019*

**K.MURALI SHANKAR,J.**

DAS

Pre-delivery order made in  
Crl.R.C.(MD)No.546 of 2019

13.06.2025