



Crl.R.C.(MD)No.541 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 27.03.2025

Pronounced on : 04.06.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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P.Ganesan

... Petitioner

Vs.

- 1.Prabu Baskar
Sub-Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.
- 2.Nandagopal
S.P. Special Branch Police,
Valliyoor Police Station,
Tirunelveli District.
- 3.Gnanasigamani
Special Sub-Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.
- 4.Rajasekaran
Special Sub-Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.



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5.Selvadoss

Special Sub-Inspector of Police,
Valliyoor Police Station,
Tirunelveli District.

... Respondents

Prayer : This Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 24.07.2019 passed by the Judicial Magistrate, Valliyoor in Cr.M.P.No.6143 of 2017 and set aside the same.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.G.Aravindan

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.6143 of 2017 dated 24.07.2019 on the file of the Court of Judicial Magistrate, Valliyoor, in dismissing the complaint under Section 203 of the Code of Criminal Procedure.

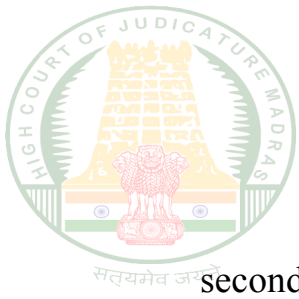
2. The case of the petitioner/complainant is that the petitioner is running a lorry service under the name and style of GBR Lorry Services, owning 6 lorries and he is an income tax assessee, that on 21.06.2017 at about 11.15 a.m., lorry bearing Registration No.TN-72-Q-9777 owned by the petitioner and driven by one Gopal had dashed against a Hero Honda



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Splender two wheeler and as a result of which, two persons travelling in the two wheeler sustained injuries, that the lorry driver parked the lorry there itself and ran away from that place, that the petitioner, who was in South Valliyoor at that time, received the information about the accident and immediately contacted the then Sub Inspector of Police, Valliyoor/first respondent herein and informed about the accident, that the petitioner and one Thennavan Panivalavan, who was available with him at that time, came to the occurrence spot at about 11.35 a.m., that the Sub Inspector of Police Prabu Baskar, S.P. Special Branch constable Nandagopal and three Special Sub Inspector of Police Gnanasigamani, Rajasekaran and Selvadoss/ respondents 1 to 5 herein were present at the occurrence place, that the second respondent had taken the petitioner to separate place and asked him to give Rs.1 lakh to close the accident case or else murder attempt case would be lodged against him, that when the petitioner replied that he was having necessary documents for the vehicle and his driver was having required license and questioned their demand for bribe, the second respondent had abused the petitioner in filthy language and slapped on his left cheek and kicked him and as a result of which, he fell down on the road, that when the petitioner was attempting to use his cell phone, the



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second respondent had snatched the same and switched off the phone, that the respondents 1, 4 and 5, who were nearby, have come to that place situated opposite to a puncture shop and attacked the petitioner with lathies, that when the petitioner attempted to run from that place, all the respondents encircled him and attacked him discriminately, that thereafter they had taken the petitioner in an auto to the Valliyoor Police Station and there he was directed to remove all his clothes and he was allowed to stand with briefs and handcuffed, that the respondents had again attacked the petitioner with iron rods, that the petitioner's son and brother-in-law came to the police station but they were not allowed to meet the petitioner, that subsequently the respondents have foisted a false complaint, as if, the petitioner had extorted Rs.100/- from one Ravi and fabricated an FIR in Crime No.173 of 2017 and took him to the Magistrate for remand, that the petitioner was threatened by the police not to disclose anything to the Magistrate or else they would encounter him, that the petitioner, after released on bail, has sent a complaint dated 24.07.2017 to the District Superintendent of Police, Tirunelveli, District Collector, Tirunelveli, Deputy Inspector General of Police, Tirunelveli Range and the Inspector General of Police, Madurai and also to the Human Rights Commission



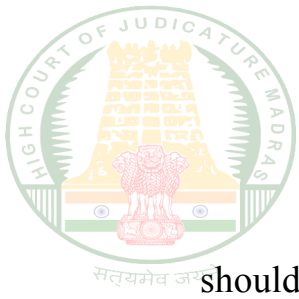
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requesting to take action against the police officials, that the respondents had committed the offences punishable under Sections 294(b), 323, 324, 341, 342, 506(2), 307, 166, 167, 193, 196 and 200 IPC and that since there was no action taken, the petitioner was forced to file a private complaint.

3. The learned Magistrate, upon receipt of the complaint filed under Section 200 Cr.P.C., has proceeded to conduct enquiry under Section 202 Cr.P.C. and recorded the statement of the petitioner and five other witnesses produced by the petitioner. The learned Magistrate, upon considering the complaint, statement of the witnesses and other materials, has passed the impugned order dated 24.07.2019 by holding that sufficient materials are not available to proceed further against the respondents, dismissed the complaint under Section 203 Cr.P.C. Challenging the said dismissal order, the present revision came to be filed.

4. The learned counsel appearing for the petitioner would submit that when a private complaint is filed under Section 200 Cr.P.C., the learned Magistrate is duty bound to conduct a preliminary enquiry and if the learned Magistrate is satisfied on the preliminary enquiry, cognizance



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should be taken on the complaint by issuing summons to the accused, that the learned Magistrate before issuing of process should record the evidence and consider the averments made in the complaint to find out as to whether an offence has been made out or not, that the learned Magistrate, despite the specific evidence given by the witnesses that the respondents have committed offences, dismissed the complaint in a mechanical fashion, that when the witnesses deposed corroborating the allegations levelled in the complaint, the learned Magistrate should have taken cognizance as the same made out a *prima facie* case against the respondents, that the learned Magistrate, by giving flimsy reasons, found fault with the evidence of the witnesses and discarded the same, that the learned Magistrate, without considering as to whether a *prima facie* case are made out or not, travelled beyond its jurisdiction and discussed elaborately, which is not required and that therefore, the impugned order is liable to be interfered with.

5. The learned counsel appearing for the respondents would submit that since the Valliyoor police has registered a case against the petitioner for extortion, the petitioner has filed the false complaint, as if, the



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respondents had demanded Rs.1 lakh for closing the accident case and when the same was refused, the respondents had attacked the petitioner, that the petitioner has only chosen to produce his friends and his relatives as witnesses, that the petitioner has not produced any iota of materials to show the alleged occurrence or his detention in the police station, that the learned Magistrate, considering the statement of the witnesses produced by the petitioner, has come to a decision that the petitioner has not shown any *prima facie* materials to proceed further and on that basis, dismissed the complaint and that therefore, there is nothing to interfere with the reasoned order passed by the learned Magistrate.

6. The learned counsel appearing for the petitioner would rely on a decision of this Court in ***S.Dhananjeyan Vs. R.Mohan*** reported in ***(2007) 1 MLJ (Crl) 170***, wherein, this Court has reiterated the legal position that at the initial investigation under Section 202 Cr.P.C., Magistrate has to apply his mind only to consider whether a *prima facie* case existed and it is not necessary to examine whether there was any truth in the allegation made in the complaint and the relevant passages are extracted hereunder:-

“8. In Rashmji Kumar (Smt) v. Mahesh Kumar Bhada (1997 Supreme Court Cases (Cri) 415) in the



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following lines:

"It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in State of Bihar V. Rajendra Agarwall (1996 (8) SCC 164) that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence, and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters."....

"In the case of dismissal of the complaint under Section 203 of Criminal Procedure Code, the person accused of the offence need not be given the right of audience in revision proceedings, challenging the dismissal order. (Somu alias Somasundaram and 3 others V. State and another (1985 L.W (Crl.)25) and



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Sivasankar V. Santhakumar (1991(1) MWN (Cr.) 265 Mad).

....

10. On a perusal of the order impugned, I find that the learned Magistrate has over-reached and misdirected himself. He has to find out the availability of sufficient materials to substantiate a prima facie case but discussed about the prospects of the case, which is not required under law. It has been repeatedly held by the Supreme Court and this Hon'ble Court that such an exercise is deprecated. The question at the initial stage was not whether there was any truth in the allegation made in the complaint but the question was whether on the basis of the allegations prima facie case and an offence is made out. The truth or otherwise of the allegation made in the complaint would be examined at the time of the trial."

7. The learned counsel appearing for the respondents would rely on a decision of the Hon'ble Supreme Court in ***Fiona Shrikhande Vs. State of Maharashtra and another*** reported in ***(2013) 14 SCC 44***, wherein, the Hon'ble Apex Court has held that the Magistrate before issue of process has to arrive at a *prima facie* satisfaction as to whether there are grounds for proceeding, by reading complaint as a whole, without adverting to



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defense of the accused, if any and without going into merits of the case and the relevant passage is extracted hereunder:-

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate



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has to decide the question purely from the point of view of the complaint, without at all advertent to any defence that the accused may have.”

8. In the case of ***N.S.Madhanagopal and another Vs. K.Lalitha*** reported in ***(2022) 17 SCC 818***, relied on by the learned counsel appearing for the respondents, the Hon'ble Supreme Court has specifically observed that issuance of process must be preceded by an application of judicial mind to the material before the Court to determine if there is ground for proceedings against the accused and the relevant passage is extracted hereunder:-

“Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material



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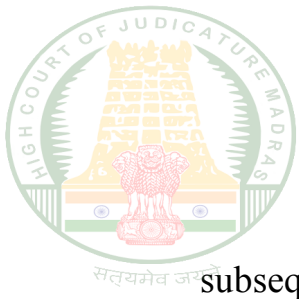


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particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.”

9. The Hon'ble Supreme Court has reaffirmed the settled legal position that at the stage of considering a complaint under Section 200 Cr.P.C., the Magistrate's role during the Section 202 Cr.P.C. inquiry is to determine if *prima facie* material exists to initiate proceedings. If the Magistrate finds insufficient material, the complaint can be dismissed under Section 203 Cr.P.C. Conversely, if *prima facie* material exists, the Magistrate can issue process under Section 204 Cr.P.C.

10. Now turning to the present case, the main contention of the petitioner is that since the respondents had demanded Rs.1 lakh as bribe to close the accident case, in which, the petitioner's lorry was involved and the same was refused, the respondents had abused, attacked the petitioner and caused criminal intimidation not only at the occurrence place but



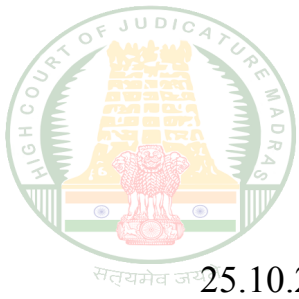
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subsequently at the police station and also foisted the false complaint, as if, the petitioner had extorted a sum of Rs.100/- from one Ravi.

11. It is evident from the records that the Valliyoor police registered Crime No.173 of 2017 on June 21, 2017, against the petitioner for the offences under Sections 341, 294(b), 387, and 506(2) IPC. The case stemmed from a complaint by Ravi, alleging that on June 21, 2017, at 8:00 a.m., the petitioner blocked his path on a two-wheeler, threatened him for money, and forcibly took Rs.100/- from his pocket by putting a knife to his neck.

12. It is not in dispute that the petitioner has filed a petition in Crl.O.P.(MD)No.11184 of 2017 seeking direction against the Inspectors of Police, Valliyoor and Panakudi police station and a writ petition in W.P. (MD)No.19919 of 2017 seeking a writ of mandamus directing the Secretary, Home Department, Secretariat, Chennai, the Director General of Police, Chennai and the Deputy Inspector General of Police, Tirunelveli District to conduct enquiry against the respondents for their act of foisting false cases against the petitioner based on his representation dated



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25.10.2017 and a learned Judge of this Court passed an interim order dated 30.10.2017 directing to appoint an Inspector of CBCID to investigate into the matter and the Inspector of CBCID appointed is directed to investigate into the complaint lodged against the petitioner in Crime No.173 of 2017 and file a report within a period of three months from the date of his appointment for further orders. This Court, while passing the interim order, has observed,

“4.Having regard to the nature of events and the facts and circumstances of the case, it is improbable that a business man like the petitioner will indulge in robbing a sum of Rs.100/- from a stranger. Prima facie this Court is satisfied that there must be some truth in the allegation made by the petitioner as against the police officials. In the circumstances indicated above, unless the representation of the petitioner and the complaint of the petitioner as against the police officials is enquired by an independent agency, truth will not come out. In the above circumstances, this Court direct the fourth respondent to appoint an Inspector of C.B.C.I.D. to investigate into the matter... ”

13. No doubt, as rightly contended by the learned counsel on both sides, after transfer to the CBCID, they have registered a fresh FIR in



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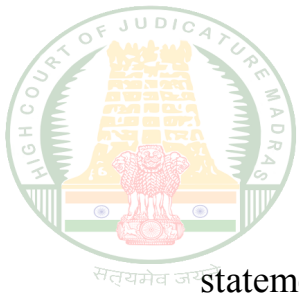
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Crime No.3 of 2018 on 14.05.2018 against the petitioner and after completing the investigation, they have filed a final report against the petitioner for the alleged offences under Sections 341, 294(b), 392 and 506(2) IPC and the case was taken on file in C.C.No.202 of 2021 and is pending on the file of the Court of the Judicial Magistrate No.1, Tirunelveli.

14. As rightly contended by the learned counsel appearing for the petitioner, though this Court directed the CBCID to conduct necessary enquiry in respect of the petitioner's representation as well as the complaint given by the petitioner as against the police officials, the CBCID police final report has not stated anything about the complaint as against the police officials.

15. The respondents have not disputed that the petitioner's vehicle met with an accident on 21.06.2017.

16. As contended by the learned counsel appearing for the petitioner, the petitioner reiterated his complaint allegations in his



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statement before the Magistrate Court. Furthermore, witnesses Thennavan Panivalavan, who accompanied the petitioner to the scene, Charles Besky, who runs a puncture shop at the scene, and Babu, who was working on concrete at the scene, corroborated the petitioner's version through their statements. Additionally, the petitioner's son, Bharathiraja, and brother-in-law, Nandakumar, testified about their visit to the police station and the events that transpired there, supporting the petitioner's claims.

17. The Magistrate's impugned order appears to be a final judgment, prematurely weighing witness statements and contradictions. Notably, the Magistrate emphasized certain contradictions, observed that the petitioner did not examine the lorry driver or the complainant in Crime No.173 of 2017, and concluded that insufficient material was produced, ultimately dismissing the complaint.

18. As rightly contended by the learned counsel appearing for the petitioner, the Court's expectation for the petitioner to examine complainant Ravi, who filed the complaint in Crime No.173 of 2017, seems unwarranted. Given the undisputed fact of the accident involving



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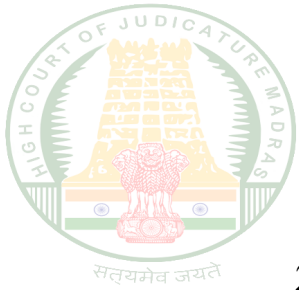
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the petitioner's vehicle, the necessity of the lorry driver's statement is also questionable.

19. Based on the complaint under Section 200 Cr.P.C. and the statements of five witnesses, this Court finds that the petitioner has established a *prima facie* case to proceed. While the petitioner may have exaggerated certain aspects, this alone does not warrant dismissing the entire complaint. Other aspects noted by the Magistrate are matters for trial and should not be considered at this stage.

20. Given the petitioner's contention that the respondents fabricated Crime No.173 of 2017 to deflect attention from their own wrongdoing, trying this case alongside C.C.No.202 of 2021 before the learned Judicial Magistrate No.1, Tirunelveli, is necessary to uncover the truth.

21. In view of the above, this Court concludes that the impugned order dismissing the complaint under Section 203 Cr.P.C. cannot be sustained and the same is liable to be set aside.



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22. In the result, the Criminal Revision Case stands allowed and the impugned order dated 24.07.2019 passed in Crl.M.P.No.6143 of 2017 by the learned Judicial Magistrate, Valliyoor, is hereby set aside. The learned Judicial Magistrate, Valliyoor is directed to take the case on file for the offences that are attracted and transfer the same to the file of the Court of the Judicial Magistrate No.1, Tirunelveli. On receipt of the records, the learned Judicial Magistrate No.1, Tirunelveli is directed to take the case on file and issue process to all the accused and to try the said case along with the case in C.C.No.202 of 2021 pending on the file of the said Court, simultaneously, in accordance with law. No costs.

04.06.2025

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

To

1. The Judicial Magistrate,
Valliyoor.
2. The Judicial Magistrate No.1,
Tirunelveli.



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K.MURALI SHANKAR,J.

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**Pre-Delivery Order made in
Crl.R.C.(MD)No.541 of 2019**

Dated : 04.06.2025