



Crl.R.C.(MD)No.289 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2025

Delivered on : 26.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.289 of 2025

P.Nagendran

: Petitioner

Vs.

1.Mayandi

2.Raja

3.Mariyammal

4.State through the Inspector of Police
Vilampatti Police Station,
Dindigul District.

: Respondents

PRAYER : Criminal Revision Petition filed under Sections 438 r/w 442 BNSS, to set aside the order passed by the learned Judicial Magistrate, Nilakkottai, Dindigul District in Cr.M.P.No.5929 of 2023, dated 05.09.2023, consequently, directing the fourth respondent to register the case against the respondents 1 to 3 on the complaint made by the petitioner on 05.01.2023.



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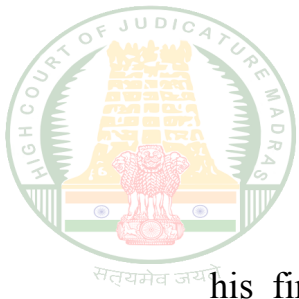
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For Petitioner : Mr.R.Sevugaraja
For Respondent : Mr.M.Pitchai Muthu, for R1 to R3.
: Mrs.M.Aasha,
Government Advocate (Criminal Side)
for R4.

ORDER

This Criminal Revision Petition is directed against the order passed in Crl.M.P.No.5929 of 2023, dated 05.09.2023 on the file of the Court of the Judicial Magistrate, Nilakottai, dismissing the petition filed under Section 156(3) of Cr.P.C.

2. The case of the petitioner/complainant is that he is a practising Advocate residing at Nilakkottai Taluk; that the land situated in S.No.33/2 to an extent of 0.2.00 Ares at Ramarajapuram Village, Nilakkottai Taluk is classified as Natham Government Poramboke land and patta came to be issued in favour of one Vellaichamy, S/o.Vellaiyathevar in patta No.405; that one Vellaichamy, S/o.Karuppusamy Thevar with sole intention to grab the said property entered into conspiracy and mortgaged the said property in the name of



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his first son Mayandi/first respondent herein, who was then aged 14 years with the Nilakkottai Taluk Co-operative House Building Society vide document No.1230/1988; that subsequently, by showing the same property as owned by the second son Raja/second respondent herein again mortgaged the said property with the said society vide document No.1225/1988; that they have encroached the said land and constructed a house unlawfully; that after the death of the said Vellaisamy, the respondents 1 and 2 with the help of false documents have executed a sale deed in respect portion of the said property in favour of third respondent/Mariyammal; that the second respondent while he was President of Ramarajapuram Panchayat by misusing his official position, entered into conspiracy with other accused and constructed a house unlawfully; that the petitioner, after collecting necessary documents, lodged a complaint on 05.01.2023 before the Vilampatti Police Station, but they have refused to receive the complaint; that the petitioner has then sent complaints to the Chief Minister Special Cell, District Superintendent of Police, Secretary, Co-operative Department and District Collector; that the Vilampatti Police has directed the parties to come for enquiry, but the respondents have not turned up and that



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therefore, he was constrained to file the present petition under Section 156(3) Cr.P.C, for registration for 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.5929 of 2023 and upon perusing the petition, petitioner's affidavit and on hearing the petitioner's side, has passed the impugned order dated 05.09.2023 by holding that the dispute is of civil in nature, dismissed the petition.

4. 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 *depreacted* 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



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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 :

"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



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

5. 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.



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6. It is pertinent to note that even according to the petitioner, the land in dispute is Government Poramboke land and the Vellaisamy, S/o.Karuppusamy Thevar had mortgaged the said property in the name of his sons in the year 1988 and after the death of the said Vellaisamy, his sons/respondents 1 and 2 had executed a sale deed in respect of the portion of the property to the third respondent and that the respondents had encroached the said land and constructed a house unlawfully.

7.The learned counsel for the private respondents would submit that the petitioner has earlier lodged a complaint before the Magistrate Court and the present petition is the second petition filed for the similar relief and that the petitioner, who is an advocate, by filing the false and frivolous complaint has been attempting to make unlawful gain.

8.The learned Government Advocate (Criminal Side) would submit that the complaint sent to the Chief Minister Cell was forwarded to the jurisdictional police and after necessary enquiry, the same was ordered to be closed.

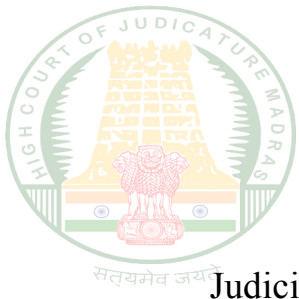


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9.As rightly observed by the learned Judicial Magistrate, neither the police nor the Magistrate Court can go into the land dispute and to ascertain who is owning and possessing the property. Considering the petitioner's affidavit and other materials produced, this Court has no hesitation to hold that the petitioner has only been attempting to transform a civil dispute into a criminal matter.

10. 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



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Judicial Magistrate refuses to exercise the power under Section 156(3) Cr.P.C. 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 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.

11.Considering the above, the decision of the learned Magistrate that the dispute is of civil in nature and the consequent dismissal of the petition filed under Section 156(3) Cr.P.C., cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.



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12.In the result, this Criminal Revision Case is dismissed.

26.03.2025

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

1.The Judicial Magistrate, Nilakkottai,
Dindigul District.

2.The Inspector of Police,
Vilampatti Police Station,
Dindigul District.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CrI.R.C.(MD)No.289 of 2025

Dated: 26.03.2025