



**CrL.R.C.(MD)No.1152 of 2023**

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

**DATED : 21.07.2025**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**CrL.R.C.(MD)No.1152 of 2023**

1.Deepan Subakar  
2.Mahalakshmi

... Petitioners

-VS-

1.The State Through,  
The Sub Inspector of Police,  
Gandamanur Police Station,  
In Crime No.31 of 2020

2.Pandiyan

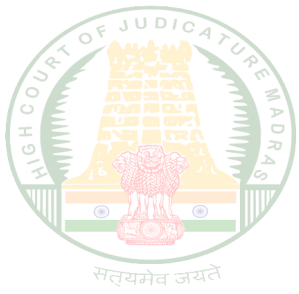
... Respondents

**PRAYER :** Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the order passed by the learned Judicial Magistrate, Aundipatti, in CrL.M.P.No.1641 of 2021 in C.C.No.397 of 2023 dated 01.07.2023, set aside the same.

|                                |                                                    |
|--------------------------------|----------------------------------------------------|
| For Petitioners                | : Mr.Karuppasamy Pandian<br>For Mr.R.Jenifar Bibin |
| For 1 <sup>st</sup> Respondent | : Mr.M.Sakthi Kumar,<br>Government Advocate        |
| For 2 <sup>nd</sup> Respondent | : Mr.G.Thalaimutharasu                             |

**ORDER**

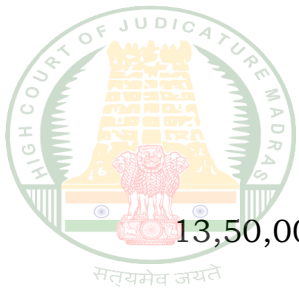
Challenging the order passed by the learned Judicial Magistrate, Aundipatti, in CrL.M.P.No.1641 of 2021 dated 01.07.2023, this Criminal Revision Case is filed by the petitioners.



**CrL.R.C.(MD)No.1152 of 2023**

**Factual Matrix of the Case:-**

2.The accused in C.C.No.397 of 2023 are the revision petitioners and the defacto complainant is the second respondent. On 03.03.2020, upon receipt of the tapal pertaining to CrL.M.P.No.673 of 2020 on the file of the learned Judicial Magistrate Court, Andipatti, the first respondent police registered Crime No.31 of 2020 for offences under Sections 294(b), 406, 420 and 506(i) of the Indian Penal Code against one Deepan Subakar and his wife, Maha Lakshmi, on the complaint of V.?Pandian. The crux of the defacto complainant's case is that he was working as a Checking Inspector in TNSTC, Theni Branch, when the first accused, his paternal uncle's son, namely, Deepan Shankar and the second accused, namely , Mahalakshmi, who is employed as a Teacher in Perappanayakkanpatti School, approached him in 2013, explained their financial constraints and promised to repay any loan promptly after the sale of their land at Kodaikanal within two to three months. Relying on this assurance, the defacto complainant arranged a total of Rs.13,50,000/- by borrowing Rs. 2,00,000/- from one Muthuraja, Tuticorin, Rs.2,00,000/- from Vanaja, Ambasamudram, Rs.2,00,000/- from Kaja Bhai, Vathalakundu, Rs. 2,00,000/- from Solai, Kanavaipatti, Rs.1,00,000/- from Puthupatti Senthil and Rs.50,000/- from driver Dharma, Vathalakundu sold his wife's two sovereigns of gold chain and sold a portion of his land to Jaganathan Kannivadi for Rs.1,90,000/-. He then handed over the entire Rs.



13,50,000/- to the accused at his home.

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3. Contrary to their promise, the accused did not repay the amount.

On 23.10.2016, the defacto complainant lodged a complaint with the first respondent police and on 27.10.2016, following inquiry, C.S.R.No.257 of 2016 was issued. On that day, the first accused admitted in writing that he had received the sum and would return it within one month. When he failed to do so, the defacto complainant lodged another complaint with the Superintendent of Police. During the subsequent enquiry, the accused served an illegal notice through his lawyer on 03.02.2017 containing false information and suppressing the earlier admission of debt at 1<sup>st</sup> respondent Police Station on 27.10.2016. As a result, the defacto complainant filed yet another complaint before the first respondent police, resulting in C.S.R.No.239 of 2017. At the inquiry, both accused again assured that they would return the money after selling their property at Kodaikanal. When the defacto complainant went to their house to demand repayment, they lodged a false complaint against him at Devadanapatti Police Station, and FIR in Crime No.25 of 2017 dated 03.02.2017 was registered against him.

4. On 12.10.2019, the defacto complainant forwarded a fresh complaint to the first respondent police and due to inaction, sent an application to the Superintendent of Police on 11.11.2019, which was



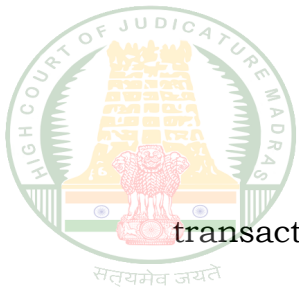
**CrL.R.C.(MD)No.1152 of 2023**

acknowledged on the same date. Thereafter, having received no action by the police, the defacto complainant filed Criminal M.P.No.673 of 2020 on the file of the learned Judicial Magistrate, Andipatti, under Section 156(3) Cr.P.C. Consequently, Crime No.31 of 2020 was registered by the first respondent police on 03.03.2020.

5.After investigation, the police filed a final report on 13.03.2021, before the learned Judicial Magistrate, Andipatti, deleting the offences under Sections 294(b) and 506(i) IPC and also deleting the second accused. A refer charge notice was issued to the defacto complainant, who filed a protest petition objecting to the deletions and to the exclusion of the second accused in Criminal M.P.No.1641 of 2021, and gave his sworn statement under Section 200 Cr.P.C. The learned Judicial Magistrate, relying on the protest petition and sworn statement, took cognizance against both A1 and A2 for offences under Sections 294(b), 420, 406 and 506(i) of IPC, holding that *prima facie* materials existed. Challenging that cognizance order, this Criminal Revision Case is filed.

**Submissions:-**

6.The learned counsel appearing for the petitioners (accused) submits that the cognizance order was improperly based solely on the protest petition against the second accused. The FIR in Crime No.31 of 2020 was registered after a delay of seven years from the alleged



**CrL.R.C.(MD)No.1152 of 2023**

transaction in the year 2013. The ingredients of offences under Sections 294(b), 406 and 506(i) of IPC were not made out and the second accused was rightly deleted by the police. Reliance solely on the defacto complainant's sworn statement without reference to the closure report and Section 161 statements was impermissible. The cognizance order is an abuse of process and harassing.

7.The learned counsel appearing for the second respondent contends that the sworn statement and Section 161 of Cr.P.C. statement of the defacto complainant warranted cognizance against both the accused. *Prima facie* case is made out.

8.The learned Government Advocate (Criminal) submits that after deletion of certain sections, the protest petition warranted independent judicial consideration and that the case is adjourned to July 2025.

9.Heard the learned counsel on either side and carefully perused the materials on record.

**Point for Determination:-**

Whether the cognizance order made by the learned Judicial Magistrate on the protest petition is liable to be set aside.



**Discussion:-**

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10.The original complaint by the defacto complainant alleged offences under Sections 294(b), 406, 420 , 506(i) of IPC against the petitioners. After investigation, the police deleted Sections 294(b) and 506(i) of IPC and the second accused and filed the final report charging only the first accused under Sections 406 and 420 of IPC. On the protest petition (Criminal M.P.No.1641 of 2021), the learned Magistrate took cognizance under Sections 294(b), 406, 420 and 506(i) of IPC against both accused, by a brief, non-speaking order. When a protest petition is filed against a closure report, the Court may (i) accept the closure report; (ii) order further investigation; or (iii) reject the closure report, take cognizance and issue process. In rejecting the closure report, the learned Magistrate must apply his mind to both the closure report and the materials on record, including police statements. A mere recital of the protest petition without discussing the closure report renders the order non-speaking and unlawful.

11.This Court in a similar case in ***Narayanamma and others vs Chikka Venkateshaiah***<sup>1</sup> dated 13.09.2019, has held as follows:-

*“20.It is clear from the above judgments that if the learned Magistrate wants to convert the Protest Petition into a Private Complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the Closure Report filed by the Police and the Statements recorded by the Police during the course of investigation. This exercise*

<sup>1</sup> 2019 (3) MWN (Cr.) 438



**CrL.R.C.(MD)No.1152 of 2023**

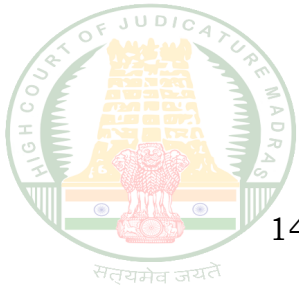
*has not been done by the Court below, while converting the Protest  
Petition into a Private Complaint and taking cognizance of the same.”*

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12.Fully fortified by the above judgment, I am of the considered view that the impugned order taking cognizance do not reflect the application of mind of the Court below, in considering the closure report, which is already available before the Court and that of the Protest Petition. There is absolutely no reference to the closure report in the order taking cognizance and the reasons for which cognizance has been taken negating the closure report.

**Conclusion and Order:-**

13.For the reasons above, the impugned cognizance order dated 07.07.2023, is set aside. The matter is remitted to the learned Judicial Magistrate, Andipatti, to reconsider Criminal M.P.No.1641 of 2021. The learned Magistrate shall, after examining the closure report, all statements recorded during investigation and the protest petition, pass a detailed speaking order on one of the three permissible courses acceptance of the closure report, direction for further investigation, or taking cognizance and issuing process.



**CrL.R.C.(MD)No.1152 of 2023**

14.The Criminal Revision Case is allowed accordingly. No Costs.

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**21.07.2025**

NCC :Yes/No  
Index :Yes/No  
Internet : Yes  
Mrn

To

- 1.The Judicial Magistrate, Aundipatti.
- 2.The Sub Inspector of Police,  
Gandamanur Police Station
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**CrI.R.C.(MD)No.1152 of 2023**

**L.VICTORIA GOWRI, J.**

Mrn

**CrI.R.C.(MD)No.1152 of 2023**

**21.07.2025**