



Crl.R.C.(MD)No.1186 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2025

Delivered on : 14.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1186 of 2023

Mariappan

... Petitioner

Vs.

1.State through
The Sub-Inspector of Police,
Mamsapuram Police Station,
Mamsapuram, Srivilliputhur Taluk,
Virudhunagar District.

2.Sakthivel

3.Murugan

4.Alagarsamy

5.Ravishankar

6.Muthusamy

7.Aasarikannan

... Respondents

PRAYER : Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C., to call for the entire records connected with the order passed in Cr.M.P.No.7553 of 2023, dated 01.09.2023 on the file of the learned Judicial Magistrate No.II, Srivilliputhur and set aside the same as illegal in accordance with law.



WEB COPY



CrI.R.C.(MD)No.1186 of 2023

For Petitioner : Mr.C.Ezhilarasu,
For Respondents : Mrs.M.Aasha,
Government Advocate (Criminal Side)
for R1.
: Mr.P.Aathimoolapandian, for R2 to R7.

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.7553 of 2023, dated 01.09.2023, on the file of the learned Judicial Magistrate No.II, Srivilliputhur, dismissing the petition filed under Section 156(3) of Cr.P.C.

2. The case of the petitioner is that the petitioner started functioning as president of Mamsapuram East Street Aasari Uravinmurai from 29.09.2022; that there existed a contract between East Street Aasari Uravinmurai and East Street Thevar Uravinmurai from 1999; that three shops have to be rented out for maintaining Vinayagar Temple at East Street and after meeting out maintenance, remaining amount has to be divided between the two Uravainmurai; that previously, the respondents 1 and 2 were maintaining the accounts of the Mamsapuram East Street Aasari Uravin Murai; that they have failed to handover the account notes, bills and accounts, receipt books to the petitioner; that they have also not handed over



Crl.R.C.(MD)No.1186 of 2023

the remaining amount available with them; that the petitioner came to know that both of them had misappropriated the amount belonging to the Uravinmurai; that the petitioner lodged a complaint on 10.07.2023 before the Mamsapuram Police Station; that the respondents 1 and 2 along with other respondents have threatened that no amount would be paid to him and if he raises any issue, he would be killed; that the petitioner has again lodged an oral complaint and since there was no action, he sent a complaint to the District Superintendent of Police on 19.07.2023 and that as there was no action, he was constrained to file the petition under Section 156(3) Cr.P.C.

3.The learned Judicial Magistrate, taking the petition filed under Section 156(3) of Cr.P.C on file in Cr.M.P.No.7553 of 2023 and upon perusing the petition, petitioner's affidavit and on hearing the petitioner's side, has passed the impugned order dated 01.09.2023, by holding that the dispute is of civil in nature, dismissed the petition.

4.The learned counsel for the private respondents would submit that the petitioner was never selected as the president of East Street Aasari Uravin Murai; that the petitioner while proclaiming himself as President had been attempting to interfere with the affairs of the uravinmurai; that the fifth



Crl.R.C.(MD)No.1186 of 2023

respondent being the President of Mamsapuram East Street Aasari Uravin Murai, has already filed the suit against the petitioner and one Balasubramanian, claiming permanent injunction restraining them from interfering with the poojas in the suit temple; that the petitioner with false and frivolous averments, has lodged a complaint; that the respondent police has rightly not taken any action and therefore, the petitioner, by converting the civil case into a criminal case, has filed the above petition under Section 156(3) of Cr.P.C., and that the learned Magistrate has rightly held that there existed civil dispute between the parties and dismissed the petition.

5.The learned Government Advocate (Criminal Side) would submit that on the basis of the complaint given by the petitioner, CSR came to be registered and after enquiry, coming to know that there existed temple dispute between the parties, the complaint came to be closed.

6.The main contention of the petitioner is that though he was selected as president of Aasari Uravin Murai, the respondents 1 and 2 have failed to handover the documents and accounts of their uravin murai nor handed over any amount and that they have misappropriated the amount belonging to their uravin murai.



Crl.R.C.(MD)No.1186 of 2023

WEB COPY

7. As rightly observed by the learned Magistrate, without receiving the documents and the accounts, it is not known as to how the petitioner has come to know that the respondents 2 and 3 have misappropriated the amount. Even assuming that the petitioner was elected as president and in case of refusal of earlier management to submit the records, he has to approach the competent Court for getting the records and documents. Here the private respondents have specifically disputed that the petitioner was selected as president of their uravin murai and according to them, the fifth respondent is the president and he has already filed a suit against the petitioner and another.

8.As rightly observed by the learned Magistrate, the dispute canvassed by the petitioner is civil in nature. At this juncture, 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 *deprecated* the practice of attempting to settle the civil disputes by applying pressure through criminal prosecution and the relevant passage is extracted hereunder:



WEB COPY



Crl.R.C.(MD)No.1186 of 2023

*“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 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 through 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



WEB COPY



Crl.R.C.(MD)No.1186 of 2023

exercised to prevent abuse of the process of 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."

9. 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.

10.The learned Magistrate has specifically observed that though the petitioner has alleged that he was threatened by the private respondents, he



has not elaborated anything further. As rightly observed by the learned Magistrate, non submission of the records and accounts, by no stretch of imagination, can be taken as dispute of criminal in nature.

11. The learned counsel appearing for the petitioner would submit that since their petition filed under Section 156(3) Cr.P.C., discloses the commission of cognizable offence, the learned 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 merits 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 Judicial Magistrate refuses to exercise the power under Section 156(3) Cr.P.C.

12. 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



Crl.R.C.(MD)No.1186 of 2023

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.

13. Considering the above, this Court has no hesitation to hold that the petitioner has been attempting to give the civil dispute a criminal colour and as such, the impugned order dismissing the petition filed under Section 156(3) Cr.P.C. by the learned Magistrate cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

14. In the result, this Criminal Revision Petition is dismissed.

14.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das



WEB COPY



Crl.R.C.(MD)No.1186 of 2023

K.MURALI SHANKAR,J.

das

To

- 1.The Judicial Magistrate No.II, Srivilliputhur.
- 2.The Sub-Inspector of Police,
Mamsapuram Police Station,
Mamsapuram, Srivilliputhur Taluk,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Crl.R.C.(MD)No.1186 of 2023

Dated: 14.03.2025