



Crl.R.C.(MD)Nos.82 to 84 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2025

Pronounced on : 07.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)Nos.82, 83 and 84 of 2025

S.Sankar

... Petitioner in all
the petitions

Vs.

D.Ashok Kannan

... Respondent in
Crl.RC(MD)Nos.
82 and 84 of 2025

1.Usha

2.D.Ashok Kannan

... Respondents in
Crl.RC(MD)No.
83 of 2025

Common Prayer : These Criminal Revision Petitions filed under Sections 438 r/w 442 B.N.S.S., to call for the records relating to the order passed in Crl.M.P.Nos.8882, 8883 and 8884 of 2024 dated 24.05.2024 on the file of Judicial Magistrate Court No.III, Tirunelveli and set aside the same by allowing these revision petitions.



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(in all the petitions)

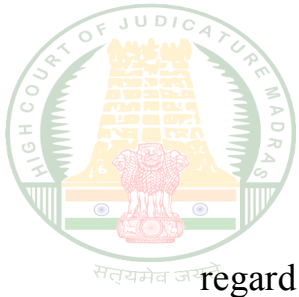
For Petitioner : Mr.P.Pethu Rajesh

For Respondent(s) : Mr.P.P.Alwin Balan

COMMON ORDER

These Criminal Revisions are directed against the common order passed in Crl.M.P.Nos.8882, 8883 and 8884 of 2024 dated 24.05.2024 on the file of the Court of the Judicial Magistrate No.III, Tirunelveli, dismissing the petitions filed under Section 156(3) of the Code of Criminal Procedure.

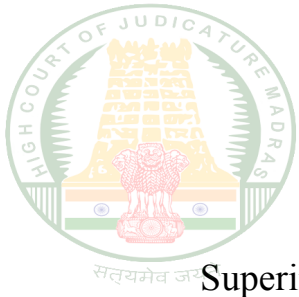
2. The case of the petitioner is that the petitioner is the Manager of Nangooram Namma Veedu complex and he has filed the above petitions with the authorization given by the owner of the property one Rajasekar, that the said Rajasekar developed Nangooram Namma Veedu scheme along with entertainment facilities in the buildings, by name, Kondattam in the plot Nos.34, 35, 36, 53, 54 and 56, that the said Rajasekar has approached the Real Estate Regulatory Authority (RERA) Court with



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regard to the residents' committee, in which, one Ashok Kannan is the Secretary of that committee and the Real Estate Regulatory Authority (RERA) Court has given a finding that the property belongs to the said Rajasekar and inspite of the said order, the said Ashok Kannan being the Secretary, in order to secure the plot in an unlawful manner, opened the lock by using some other key to the kitchen available in the Kondattam building, that the said Rajasekar lodged a complaint with Sivanthipatti Police and they have given CSR in CSR No.79 of 2024, that the said Ashok Kannan trespassed into the premises of the committee hall on 14.04.2024 and damaged CCTV appliances and also sent a letter threatening to vacate the CCTV appliances, that the said Ashok Kannan has also dumped waste and dust in the empty plots belonging to the said Rajasekar, that one Usha at the instigation of the said Ashok Kannan had unlocked the kitchen and put up another lock, that the residents have no rights to utilize the Kondattam building without getting permission of the said Rajasekar, that they are entitled to use that building without committing any damages and that too on the permission granted by its owner and that though the complaint came to be lodged with Sivanthipatti Police, there was no action and hence, complaint was sent to the District



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Superintendent of Police, Tirunelveli on 03.04.2024 and since there was no action, the petitioner was constrained to file three petitions under Section 156(3) Cr.P.C. before the jurisdictional Magistrate.

3. The petitioner has filed two petitions under Section 156(3) Cr.P.C. against the said Ashok Kannan and one petition against the said Usha and Ashok Kannan.

4. The learned Judicial Magistrate, taking the petitions filed under Section 156(3) Cr.P.C. on file in Crl.M.P.Nos.8882, 8883 and 8884 of 2024 and upon perusing the petitions and the petitioner's affidavit and on hearing the petitioner's sides, has passed the impugned common order dated 24.05.2024 by holding that the dispute is of civil in nature and dismissed the petitions.

5. 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 *deprecated* the practice



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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 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



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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 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."

6. 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



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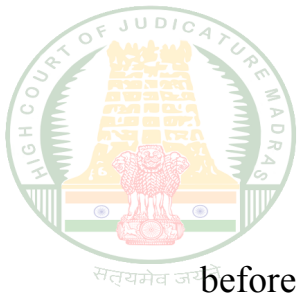
get quicker relief is an abuse of process of law which must be discouraged.

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Bearing the above legal position on mind, let us consider the case on hand.

7. The learned counsel appearing for the petitioner would submit that there are absolutely no material to substantiate that the dispute is purely a civil in nature, that the Real Estate Regulatory Authority (RERA) is a quasi-judicial body and not a civil Court, that since the said Rajasekar has approached the Real Estate Regulatory Authority (RERA) Court and obtained orders, the learned Magistrate has himself termed the dispute as civil in nature, that the proposed accused have illegally opened the lock and used another lock for locking the room and thereby, they have illegally taking possession of the property, that they have also caused damages to the CCTV appliances and that the learned Magistrate, without considering the above aspects in proper perspective, by simply observing that the dispute is of civil in nature, dismissed the petitions.

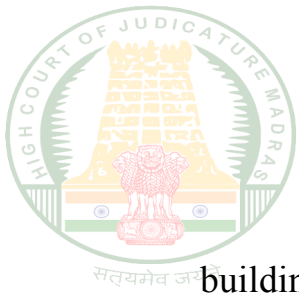
8. The learned counsel appearing for the respondent(s) would submit that M/s.Nangooram Namma Veedu House Owners' Welfare Association represented by its Secretary Ashok Kannan filed a petition



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before the Tamil Nadu Real Estate Regulatory Authority (TNREAT), Chennai against M/s.Nangooram Builders Private Limited Nangooram Namma Veedu Township represented by its Managing Director Rajasekar and the said Rajasekar, seeking direction to register the on-going project comprised in Survey Nos.104, 103, 94 and 95 at Muthur Village, Palayamkottai Taluk, Tirunelveli District, under Section 3 of the Real Estate (Regulation and Development) Act, 2016 and direction to complete the project and register a document with the Sub Registrar conveying the right to use of the common properties of Kondattam building consisting of plot numbers 34,35, 54, 53, 36 and 55 in their favour by paying necessary stamp duty and registration fees and also direction to the owner to pay maintenance charges for all the unsold plots in the name of the said Rajasekar and that the Real Estate Regulatory Authority (RERA) Court has passed an order dated 16.12.2022, wherein, M/s.Nangooram Builders Private Limited and its owner (Rajasekar) were directed to help in the formation of the association and complete the transfer of administration to the association within 90 days from the date of the said order, that M/s.Nangooram Builders Private Limited and its owner (Rajasekar) shall hand over the common areas which includes the road, Kondattam



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building, in accordance with Section 17(1) of the Real Estate Regulatory Authority (RERA) Act and that they were also restrained from conveying any part of the land i.e., 5.36 acres contained in the project in any way to any third party. He would further submit that M/s.Nangooram Builders Private Limited and its owner (Rajasekar) have challenged the order passed by the Real Estate Regulatory Authority (RERA) Court before the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and during the pendency of the same, both the parties have entered into compromise and on that basis, the appeal was ordered to be disposed of in terms of the compromise.

9. The terms of compromise are extracted hereunder for better appreciation:-

“2. The Appellants herein are agreeable and give their consent to alienate and transfer the 'Kondattam Building' as described in the "Schedule Property" to any third party with the consent of the Respondent Association. However, it is made clear that such alienation or conveyance of the 'Kondattam Building' to a third party will not in any manner prevent or restrain the members of the Respondent Association from using the facilities



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available in the 'Kondattam building', of course on cost sharing basis and on nominal cost as may be determined by the "Managing Committee" of the building. The Appellants confirm that the common areas in the said 'lay-out' are already handed over to the concerned local body as a condition precedent to get the layout approval and therefore it will also bind the successors and legal representatives of the parties herein.

3. The Appellants in so far as he is the owners of 'Kondattam Building' and Respondent agrees to jointly constitute a Managing Committee to maintain and administer the activities and facilities of the said 'Kondattam Building'. The said Managing Committee will have the responsibility of administrating the maintenance of the 'Kondattam Building', which includes, facilities in the 'Kondattam Building', subscription to mess, medical facility, security, and the annual maintenance contracts for the equipment etc., approving the Annual Budget, establishing, and collecting monthly assessments and arranging for the management in an efficient manner. The Appellants have agreed to co-operate from the Managing Committee and the same will be done before 1st December 2023. The accrued expenses including taxes shall be paid by the Appellant till formation of the 'Managing Committee'.



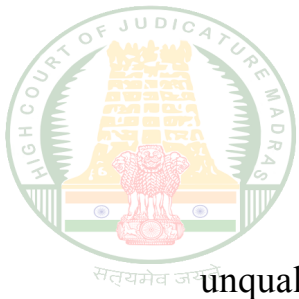
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10. As rightly contended by the learned counsel appearing for the respondent(s) and as rightly observed by the learned Magistrate, the above dispute, by no stretch of imagination, can be considered as criminal in nature but on the other hand, the petitioner has been attempting to give a civil dispute a criminal color.

11. The learned counsel appearing for the respondent(s) would submit that owner Rajasekar, without compliance with the terms of the compromise, has attempted to level false and frivolous allegations against the office bearer of the association and that too without any iota of materials to substantiate the same.

12. 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

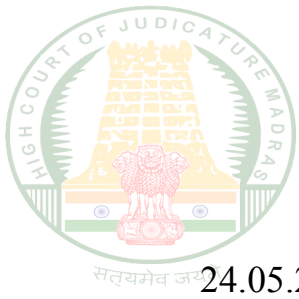


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unqualified right to demand a police investigation in all circumstances and moreover, it is not mandatory on the part of the Judicial Magistrate to refer the complaint to the concerned police for registration of the case. But it is pertinent to note 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. 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.

13. Considering the above, the impugned common order dated



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24.05.2024 dismissing the petitions filed under Section 156(3) Cr.P.C. by the learned Magistrate cannot be found fault with. Consequently, this Court concludes that the revisions are devoid of merit and the same are liable to be dismissed.

14. In the result, these Criminal Revision Cases stand dismissed. No costs.

07.03.2025

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

To

1. The Judicial Magistrate No.III,
Tirunelveli.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Common Order made in
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Dated : 07.03.2025