

Crl.R.C.(MD)No.169 of 2025

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Reserved on : 07.02.2025

Pronounced on : 14.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.169 of 2025

Mohammed Yasin

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Inspector of Police,
K.Pudur Police Station,
Madurai.

3.Thangapandiyan

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the impugned order dated 21.06.2024 passed in Crl.M.P.No.1282 of 2023 on the file of the Judicial Magistrate No.VI, Madurai.



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For Petitioner : Mr.S.Ramsundarvijayraj
For R1 & R2 : Mrs.M.Aasha
Government Advocate (Crl. Side)
For R3 : Mr.S.Malaikani

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.1282 of 2023 dated 21.06.2024 on the file of the Judicial Magistrate Court No.VI, Madurai, dismissing the petition filed under Section 156(3) of the Code of Criminal Procedure.

2. The case of the petitioner is that the petitioner obtained a loan of Rs.2,53,000/- by pledging 140 grams of gold jewelry from Kosamattam Finance Limited, K.Pudur, Madurai on 04.10.2018 and 23.11.2018 with jewelry receipt Nos.12309 and 12711 respectively, that since there was a Corona disaster period, the petitioner could not pay the interest and principal amount on the said jewelry, that the third respondent, without giving any intimation or notice, sold the jewels by conducting an auction on 29.10.2020, that though the petitioner visited several times in person to



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the third respondent Company, they have informed that the jewelry was auctioned by mistake and they would return the appropriate jewelry or other related jewelry, that when the petitioner went to the Branch Manager again to ask for jewels, the Branch Manager called his Branch staff and abused in filthy language and caused criminal intimidation, that the petitioner preferred a complaint before the second respondent, for which, CSR came to be registered in CSR No.588 of 2021, that though the petitioner sent a complaint to the first respondent and also to the second respondent again, there was no action and that therefore the petitioner was constrained to file a petition under Section 156(3) Cr.P.C. before the jurisdictional Magistrate for necessary directions to register an FIR and for investigation.

3. It is evident from the records that the learned Judicial Magistrate, taking the petition filed under Section 156(3) Cr.P.C. on file in Crl.M.P.No.1282 of 2023 and upon perusing the petition and affidavit and on hearing the petitioner's side, has passed the impugned order dated 21.06.2024 by holding that the dispute is of civil in nature, dismissed the petition.



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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 *deprecated* 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 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 :



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"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 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



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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.

6. The main complaint of the petitioner is that without sending any intimation or notice, the third respondent sold his jewelry in the auction conducted and that therefore they have cheated the petitioner.

7. The learned counsel appearing for the petitioner would submit that during the enquiry before the Police, the third respondent has shown fabricated notice and acknowledgement slip sent by the third respondent, as if, the petitioner's mother Ayesha had signed it but her mother does not know how to read and write.

8. The learned counsel appearing for the third respondent would submit that the petitioner had obtained two loans on 04.10.2018 and



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23.11.2018 agreeing to repay the same within nine months time, that the petitioner has not chosen to pay any interest nor any amount towards principal, that the third respondent has then sent a notice, which came to be received by the petitioner's mother and that since there was no response, as per the terms and conditions, auction was conducted and jewels were sold therein.

9. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would submit that after receipt of the complaint from the petitioner, CSR came to be registered in CSR No.588 of 2021 and after enquiry, they have come to know that the petitioner, despite receipt of notice, has not responded and that since he has failed to pay interest or principal, jewels were sold in the auction.

10. The learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would further submit that the third respondent has filed two criminal original petitions in Crl.O.P.(MD)Nos.13808 of 2021 for direction to the Inspector of Police not to interfere into the civil dispute between the Kosamattam Finance Company and Mohamed Yasin



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(petitioner herein) and petition in Crl.O.P.(MD)No.14540 of 2021 seeking orders to call for the entire records connected with summons in CSR No. 588 of 2021 pending on the file of the respondent police and to quash the same and that this Court, considering the submission made by the learned Additional Public Prosecutor that on the complaint given by the defacto complainant (petitioner herein), petition enquiry was conducted and the same was closed, made it clear that since the complaint has been closed, the respondent police shall not call the Kosamattam Finance Limited in the guise of enquiry and harass them and closed the petitions.

11. As rightly contended by the learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent, even assuming that notice or intimation was not given to the petitioner, his remedy is to sue for damages against the third respondent, if so advised.

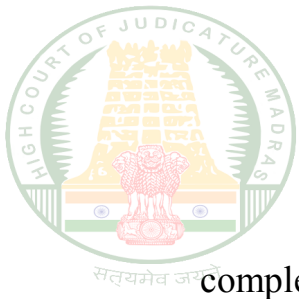
12. As rightly observed by the learned Magistrate, the above dispute, by no stretch of imagination, can be taken as dispute of criminal nature.



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13. 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 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.,



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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.

14. Considering the above, 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.

15. In the result, this Criminal Revision Petition is dismissed. No costs.

14.02.2025

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



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To

1. The Judicial Magistrate No.VI,
Madurai.
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The Inspector of Police,
K.Pudur Police Station,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
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Dated : 14.02.2025