

Crl.R.C.(MD).No.296 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 7.03.2025

PRONOUNCED ON :26.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.296 of 2025

Muthusami

... Revision Petitioner / Petitioner

Vs.

- 1.Gurusamy (Retd., DSP)
- 2.Immanuel
- 3.Aarthi
- 4.Mohandas
- 5.Angammal
- 6.Anitha
- 7.Daughter of 1st Accused
- 8.Military Ganesan
- 9.Tamilselvi

: Respondents 1 to 9/Accused 1 to 9

- 10.State represented by
The Deputy Superintendent of Police,
Puliyangudi Sub Division,
Puliyangudi.

: Respondent No.10/Complainant



Crl.R.C.(MD).No.296 of 2025

PRAYER: Criminal Revision Petition has been filed under Section 438 r/w 442 of BNSS, 2023 and Section 397 r/w 401 Cr.P.C., to call for the records from the lower Court in Cr.M.P.No.2350 of 2024, dated 19.10.2024, on the file of the learned Judicial Magistrate Court, Sivagiri, Tenkasi District and set aside the same.

For Petitioner : Mr.C.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondents : Mr.B.Thanga Aravindh
Government Advocate(Crl.Side)
for R.10

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 2350 of 2024, dated 19.10.2024, on the file of the Court of the Judicial Magistrate, Sivagiri.

2. The case of the petitioner is that the first respondent is a retired Deputy Superintendent of Police and the respondents 2 to 9 are his family members, that the first respondent approached the petitioner in 2020 promising that he will arrange for a job in Thoothukudi Port for the petitioner's daughter and demanded a sum of Rs.5,00,000/- and the petitioner believing the words of the first



Crl.R.C.(MD).No.296 of 2025

WEB COPY

respondent, gave the said amount to the first respondent, that the first respondent had also requested the petitioner to refer his relatives for the post of Constable, Sub Inspector of Police and Inspector of Police, as there are vacancies in the police department and he will make arrangements for the job, that the petitioner believing the words of the first respondent, informed the same to his relatives, that the petitioner's relative namely Murugesan has given a sum of Rs.6,00,000/- for the post of Sub Inspector of Police and other relatives namely Palanivel, Rahul, Seenivasan and Guruvaiya have given a sum of Rs.3,00,000/- each totally a sum of Rs.23,00,000/- to the first respondent and the same came to be received at the petitioner's house, that the first respondent's sons and daughter-in-laws were very much present at the time of receiving the amount and the eighth respondent has also received a sum of Rs.1,10,000/- from the petitioner, that since the respondents did not make any arrangements for the job as promised by them, the petitioner and his relatives enquired about the nature of the job, that the first respondent had taken all the persons to Chennai alleging that the job order came to be received and made them to stay for a week and thereafter informed that he could not get the job at that time, directed them to return to their places, that subsequently the first respondent had taken them to Trivandrum and issued order copy and directed them to proceed to the ground, where the



Crl.R.C.(MD).No.296 of 2025

WEB COPY

selection was going on and left that place, that the petitioner and his relatives subsequently came to know that the order given by the first respondent are fake orders, that when the petitioner and his relatives had demanded for return of amount, they have been postponing the same on some pretext or other, that subsequently the first respondent informed that the entire amount was locked in the post office and he was in need of Rs.2,00,000/- to get the entire amount and believing the words, the petitioner and his relatives have given Rs.2,00,000/- and at that time, the first respondent executed a document and also a promissory note promising to return the amount within a week, that when the petitioner and his relatives had approached the respondents again, all the accused had abused them in filthy language using caste name and caused criminal intimidation, that they have sent a complaint to the District Superintendent of Police on 26.08.2024 and since there was no action, the petitioner was constrained to file the above application under Section 175(3) BNSS for registration of the case and for investigation.

3. The learned Judicial Magistrate, taking the petition filed under Section 175(3) BNSS on file in Crl.M.P.No.2350 of 2024 and upon perusing the petitioner's petition, affidavit and other materials, has passed the impugned order



Crl.R.C.(MD).No.296 of 2025

dated 19.10.2024, by holding that the petition cannot blindly be forwarded for the purpose of registration of F.I.R., passed the impugned order directing to treat the petition as a private complaint under Section 200 Cr.P.C., and adjourned the matter for recording of sworn statement of the complainant and his witnesses. Aggrieved by the impugned order treating the petition filed under Section 175(3) BNSS as private complaint under Section 200 Cr.P.C., the present revision came to be filed.

4. The learned Counsel for the petitioner would submit that the learned Magistrate is duty bound to see whether any cognizable offence is made out, that the entire reading of the petition would reveal the commission of offence punishable under Sections 318, 351(3) BNSS and Section 3(1)(s) of SC/ST (POA) Act, that the petitioner has specifically alleged that it is a clear case of cheating and amount involved is Rs.23,00,000/- and for recovery of the said amount, the registration of F.I.R., and custodial interrogation is very much necessary, that though the petitioner has sent a complaint to the Superintendent of Police, since the first respondent is a retired Deputy Superintendent of Police, the Superintendent of Police supporting the first respondent, has not taken any action, which is very much against law, that the learned Magistrate failed to



Crl.R.C.(MD).No.296 of 2025

consider that it is very difficult to produce the witnesses in these type of offences, as the occurrence took place in the house of the petitioner and the affected parties only would know the fact and that the learned Judicial Magistrate without considering the above aspects in proper perspective has passed the impugned order in a mechanical manner.

5. The learned Counsel for the petitioner would rely on the judgment of the Hon'ble Supreme Court in ***Mona Panwar Vs. High Court of Judicature of Allahabad through its Registrar and others*** reported in ***(2011)3 SCC 496***. In the said decision case, the third respondent filed a petition under Section 156(3) Cr.P.C., complaining about the rape committed on her by her father-in-law, that the learned Magistrate, after the receipt of the report from the concerned police, has passed an order directing that the application submitted under Section 156(3) of the Code be registered as complaint and further ordered the Registry to present the file before her for recording the statement of the complainant under Section 200 Cr.P.C., and aggrieved by the said order, the third respondent/complainant filed a petition before the High Court of Allahabad and sought for quashing of the order passed by the learned Magistrate and that the High Court, while setting aside the order of the Magistrate, has passed serious

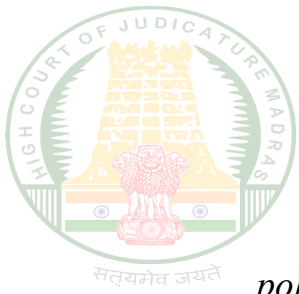


Crl.R.C.(MD).No.296 of 2025

WEB COPY

remarks against the Judicial Magistrate. When the learned Magistrate has filed a criminal appeal to expunge the remarks made by the learned Single Judge of the Allahabad High Court, the Hon'ble Supreme Court, while setting aside the order of the High Court making remarks against the learned Magistrate, has specifically observed that if the Magistrate finds that the allegations in the complaint discloses of cognizable offence and forwarding of the complaint to the police for investigation under section 156(3) Cr.P.C., will not be conducive to justice, she will be justified in adopting the course suggested in [Section 200](#) of the Code and the relevant paragraphs are extracted hereunder:

“18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by [Section 156\(3\)](#) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in [Section 200](#) and proceed further with the matter as provided by [Section 202](#) of the Code. An order made under sub-section (3) of [Section 156](#) of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under [Section 156\(1\)](#). Such an investigation embraces the entire continuous process which begins with the collection of evidence under [Section 156](#) and ends with the final report either under [Section 169](#) or submission of charge sheet under [Section 173](#) of the Code. A Magistrate can under [Section 190](#) of the Code before taking cognizance ask for investigation by the



Crl.R.C.(MD).No.296 of 2025

WEB COPY

police under [Section 156\(3\)](#) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under [Section 202](#) of the Code.

19. The phrase "taking cognizance of" means cognizance of offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under [Section 190\(1\)\(b\)](#) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under [Section 200](#) and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under [Section 156\(3\)](#) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence.

20. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of complainant and his witnesses as mentioned in [Section 200](#) of the Code is to ascertain



Crl.R.C.(MD).No.296 of 2025

WEB COPY

whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

21. From the order dated August 1, 2009, passed by the appellant, it is evident that the appellant had called for report from the concerned police station and considered the said report wherein it was inter alia mentioned that no case was registered on the basis of the application made by the respondent No. 3. The respondent No. 3 at the time of filing complaint before the appellant had filed her own affidavit, carbon copy of the application sent by her to the Senior Superintendent of Police, Saharanpur with its postal registration and photocopy of the medical certificate. Under the circumstances the appellant had exercised judicial discretion available to a Magistrate and directed that the application, which was submitted by the respondent No. 3 under [Section 156\(3\)](#) of the Code, be registered as complaint and directed the Registry to present the said complaint before her on August 28, 2009 for recording the statement of the respondent No.3 under [Section 200](#) of the Code.

22. The judicial discretion exercised by the appellant was in consonance with the scheme postulated by the Code. There is no material on the record to indicate that the judicial discretion exercised by the appellant was either arbitrary or perverse. There



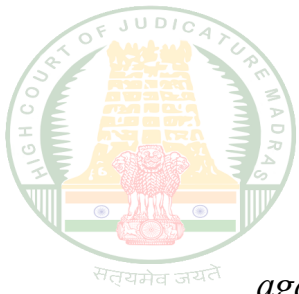
Crl.R.C.(MD).No.296 of 2025

WEB COPY

was no occasion for the learned Single Judge of High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The appellant was the responsible judicial officer on the spot and after assessing the material placed before him he had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no occasion to interfere with the discretion exercised judiciously in terms of the provisions of Code.

23. Normally, an order under [Section 200](#) of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under [Section 200](#) of the Code would be directed by the Magistrate only when a case is found to be serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under [Section 156\(3\)](#) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in [Section 200](#) of the Code.

24. Here, in this case the respondent No. 3 had averred in the application submitted before the appellant that the Officer-in-charge of the Nakur Police Station had refused to register her complaint



Crl.R.C.(MD).No.296 of 2025

WEB COPY

*against her father-in-law regarding alleged rape committed on her and that no action was taken by the Senior Superintendent of Police though necessary facts were brought to his notice. Under the circumstances, the judicial discretion exercised by the appellant, to proceed under **Section 200** of the Code in the light of principles of law **laid down by** the Allahabad High Court in various reported decisions could not have been faulted with nor the appellant could have been subjected to severe criticism as was done by the learned Single Judge. There was no occasion for the learned Single Judge to observe that the appellant, a Judicial Magistrate, had done the gravest injustice to the victim or that though the appellant is a lady Magistrate, yet she did not think about the outcome of ravishing the chastity of daughter-in-law by her father-in-law or the seriousness of the crime committed by the accused and the reason assigned by the learned Magistrate in not directing the police to register the FIR indicated total non-application of mind by the appellant and that the order dated August 1, 2009, passed by the appellant, was a blemish on the justice system.”*

6. The aforementioned decision supports the course of action taken by the learned Judicial Magistrate. However, in the present case, the petitioner alleges that the first respondent, a retired Deputy Superintendent of Police, has influenced the District Superintendent of Police's inaction. The petitioner specifically claims to have paid Rs. 23,00,000 to the first respondent, who



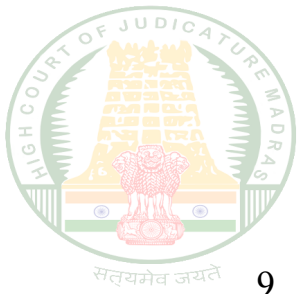
Crl.R.C.(MD).No.296 of 2025

WEB COPY

subsequently executed a debt deed and promissory note upon demand for repayment. Furthermore, the petitioner's case involves allegations that the first respondent took job aspirants to Chennai, where they stayed in a hotel for a week, and then took them to Trivandrum, where fake order copies were issued.

7. Given the facts and circumstances, especially the first respondent's background as a retired police official, the learned Magistrate's decision to proceed under Section 200 Cr.P.C. is well-founded. The petitioner's claim that gathering evidence for such offenses is challenging is unfounded.

8. As rightly pointed out by the learned Government Advocate (Crl. Side), the petitioner can present evidence to substantiate the allegations made in the petition filed under Section 175(3) BNSS. Notably, in the aforementioned decision, even in a rape case, the learned Magistrate treated the petition filed under Section 175(3) BNSS as a complaint under Section 200 Cr.P.C., and this approach was upheld by the Hon'ble Supreme Court.



Crl.R.C.(MD).No.296 of 2025

WEB COPY

9. The learned Counsel for the petitioner would submit that since the petition filed under Section 175(3) BNSS discloses the commission of cognizable offence, the Judicial Magistrate is duty bound to forward the complaint to the concerned police for registering the F.I.R., and that he has no power or jurisdiction to treat the petition filed under Section 175(3) BNSS as a complaint under Section 200 Cr.P.C., more particularly when the complainant is not in a position to adduce evidence. The above contention is absolutely devoid of merits, as the complainant does not have an unqualified right to demand 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. It is settled law that the Judicial Magistrate while considering the petition filed under Section 175(3) BNSS cannot act as a post office and is duty bound to consider the nature of the accusation of the offences alleged and to decide about the course of action to be taken. As held by the Hon'ble Supreme Court, in the present case also, the discretion exercised by the learned Judicial Magistrate in treating the petition filed under Section 175(3) BNSS as the complaint under Section 200 Cr.P.C., is in consonance with the scheme postulates by the Code and the petitioner has not shown any material to indicate that the judicial discretion exercised by the Judicial Magistrate is



Crl.R.C.(MD).No.296 of 2025

arbitrary. Considering the above, the impugned order cannot be found fault with.

Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

10. In the result, the Criminal Revision Case is dismissed.

26.03.2025

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

SSL

To

1. The Judicial Magistrate Court, Sivagiri, Tenkasi District.
2. The Deputy Superintendent of Police,
Puliyangudi Sub Division,
Puliyangudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.296 of 2025

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in

Crl.R.C.(MD)No.296 of 2025

26.03.2025