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CrI.R.C.(MD) No.1414 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2025

Delivered on : 19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.1414 of 2024

Sellasamy Pandian @ Selvakumar

: Petitioner

Vs.

1.State rep.by the Inspector of Police,
Sivagiri, Tenkasi District.

2.P.MM.Pandian

3.PMVS.V.Pandian

4.P.Venkatesan

5.P.Arunahalam

6.A.Muthulakshmi

7.A.Kaliraj

8.Muthupandi

9.T.Thangaraj

10.The Sub Registrar (in charge)
Sub Registrar Office,
Sivakasi, Tenkasi District.

: Respondents



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Prayer : This Criminal Revision has been filed under Section 438 r/w 442 of BNSS., to call for the records relating to the order passed in Crl.MP.No.2085 of 2024 dated 28.11.2024 on the file of the learned District Munsif Cum Judicial Magistrate Sivagiri, Tenkasi District and set aside the same.

For Petitioner : Mr.Chamundi Bose,

For Respondent : Mrs.M.Aasha,
Government Advocate (Criminal Side)
for R1 & R10.

: Mr.A.Muruga Boopathi Maharaja,
for R2 to R4.

: Mr.T.M.Lankaram, for R5 to R9.

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.2085 of 2024, dated 28.11.2024 on the file of the learned District Munsif Cum Judicial Magistrate Sivagiri, Tenkasi District, dismissing the petition filed under Section 156(3) of Code of Criminal Procedure.

2. The case of the petitioner is that the property and buildings situated in S.No.620/1 and 619/27, which admeasures 45 cents in Sivagiri Village (part-II) Tenkasi District, originally belonged to the petitioner's grandmother Kulanthai Rani @ Sivagnana Natchiar; that the petitioner's grandmother died intestate on 10.11.1977 and her grandfather Ponnusamy Pandian also died



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intestate on 25.06.1991; that patta for the said property in dispute stands in the name of the petitioner's grandfather in patta No. 3311; that after the death of the petitioner's grandparents, the property came to be owned by their legal heirs/petitioner's mother Vijayarani @ Palanimuthu Veerammal Natchiar, Gomathi Gurumuthu Natchiar @ Kalaivani, P.M.M.M.I.Pandian, P.M.V.S.V.Pandian, P.Venkatesan and Snehavalli Muthu Meenatchi @ Devi; that the petitioner's mother died on 03.07.2020 leaving behind three sons, three daughters including the petitioner; that since they were not in a position to enjoy the property jointly, the petitioner started to take necessary steps for partitioning the properties in February 2024; that the said P.M.M.M.I.Pandian, P.M.V.S.V.Pandian, P.Venkatesan, with sole intention not to give any share, had executed fraudulent sale deeds in favour of one Arunachalam, who was residing nearby the property in dispute; that the petitioner sent a petition on 16.04.2024 to the Sub Registrar Office, Sivagiri not to register any documents of alienation and other encumbrance in respect of the property in dispute; that despite the objections from the petitioner and his sisters, the Sub Registrar permitted to register the fraudulent sale deeds, vide document Nos.838/2024, 839/2024 and 840/2024 without verifying the death and legal heirs certificate of Late.Ponnusamy Pandian; that when the petitioner was verifying the encumbrance on 23.05.2024, he came to know that they have created fraudulent settlement deeds vide document



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No.514/2013, 515/2013 and 516/2013 and on that basis, they have executed fraudulent sale deeds in favour of said Arunachalam, his daughter Muthulakshmi and son Kaliraj; that the said P.M.M.I.Pandian, P.M.V.S.V.Pandian and P.Venkatesan with an intention to grab the property of other sharers and in collusion with the neighbor Arunachalam, his son and daughter. had fraudulently created sale deeds and thereby caused loss to the petitioner and other sharers; that the petitioner sent complaint to the District Superintendent of Police, Tenkasi on 30.05.2024, but directed them to approach the competent Court to redress their grievance and that the petitioner with no other option has filed the present petition under Section 156 (3) of Cr.P.C., before the jurisdictional Magistrate Court seeking direction to register a case and proceed with the investigation; that the learned Magistrate, without considering the factual aspects of the case in proper perspective, dismissed the petition filed under Section 156(3) of Cr.P.C., vide order, dated 28.11.2024 and that therefore, the petitioner was constrained to prefer the present revision.

3.The learned Judicial Magistrate, Sivagiri, Tenkasi, taking the petition filed under Section 156(3) Cr.P.C., on file in CrI.M.P.No.2085 of 2024, called for a report from the concerned Police and upon perusing the petition and petitioner's affidavit and the reports submitted by the police and on hearing



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the petitioner's side, has passed the impugned order, dated 28.11.2024 by holding that there existed property dispute between the parties and that the same has to be decided in the civil suit pending between the parties, dismissed the petition.

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 though criminal prosecution should be deprecated and discouraged. In G.



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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 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."



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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.As already pointed out, in pursuance of the directions of the learned Magistrate, the Sub-Inspector of Police, Sivagiri Police Station, submitted a report, wherein it has been stated that after the death of the petitioner's grandfather Poonusamy Pandian, the property came to be owned by his legal heirs including the petitioner's mother; that the said P.M.M.I.Pandian, P.M.V.S.V.Pandian and P.Venkatesan have entered into settlement deeds in the year 2013 and the petitioner's mother has subscribed her signatures therein; that subsequently they have executed sale deeds in favour of Arunachalam, S/o.Paramasivam; that the Office of Sub Registrar has informed that as per powers vested with them and as per the Circular of Registration Department, they have considered the petition given by the petitioner and since they were not satisfied with the objections raised, rejected the objection petition and proceeded to register the documents; that the petitioner has already filed a civil suit in O.S.No.163 of 2024 against the private respondents and the same



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is pending for trial and that therefore, there was no scope for registering the case.

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7. The petitioner has filed objections to the police report stating that they have given a biased report in order to protect some persons; that the police, without conducting proper enquiry, has submitted the report; that in the police report, they have admitted that the petitioner's mother was also having share in the property in dispute and that therefore, the report submitted by the police cannot be taken into account.

8.The learned counsel appearing for the private respondents would submit that the property was already partitioned; that the petitioner's mother has signed in the settlement deed executed in the year 2013; that the petitioner has already filed a suit in O.S.No.163 of 2024 and obtained temporary injunction directing the defendants not to put up any construction in the property in dispute; that the petitioner has been attempting to convert the partition dispute as a criminal dispute and that therefore, the learned Magistrate has rightly dismissed the petition.

9. Even according to the petitioner, the property came to be owned by the petitioner's mother and other legal heirs of the deceased grandparents of



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the petitioner. The petitioner himself has alleged that he came to know about the execution of three settlement deed and on the basis of which, three sale deeds came to be executed by P.M.M.I.Pandian, P.M.V.S.V.Pandian and P.Venkatesan.

10.It is pertinent to note that as per police report, the petitioner's mother was a party to the settlement deeds and she had subscribed her signatures therein. As rightly contended by the learned counsel for the private respondents and the learned Government Advocate (Criminal Side), the petitioner has already filed a civil suit challenging the documents and also obtained interim orders restraining the private respondents from putting up constructions in the property and that when the suit is pending before the competent civil Court, the above petition has been filed raising very same allegations.

11. 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 merits



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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., 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.

12.Considering the facts and circumstances of the case and taking note of the petitioner's affidavit and the report submitted by the police, this Court has no hesitation to hold that the petitioner has been attempting to give civil



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dispute a criminal color 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.

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

19.03.2025

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

- 1.The District Munsif Cum Judicial Magistrate Sivagiri,
Tenkasi District.
- 2.The Inspector of Police,
Sivagiri, Tenkasi District.
- 3.The Sub Registrar (in charge)
Sub Registrar Office,
Sivakasi, Tenkasi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
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