

Crl.R.C.(MD).No.1396 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2025

PRONOUNCED ON : 16.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1396 of 2024

R.Muthulakshmi

... Petitioner/Complainant

Vs.

1.S.P.Sudhan Nayakraj

2.M.Arunraj

.... Respondents 1 and 2/Accused

3.State of Tamil Nadu,

represented by the Inspector of Police,

Srivilliputtur Town Police Station,

Srivilliputtur,

Virudhunagar District.

... Respondent No.3/Defendant No.3

PRAYER: Criminal Revision Petition has been filed under Section 438 r/w 442 of BNSS, 2023, to call for the records relating to the order dated 30.10.2024, passed by the learned Judicial Magistrate Court No.II, Srivilliputhur in Crl.M.P.No.1411 of 2024 and set aside the same.



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For Petitioner : Mr.C.Susikumar

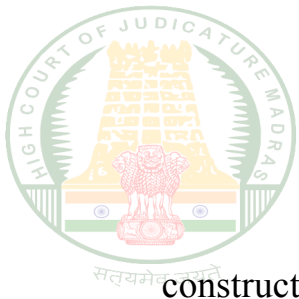
For Respondents : Mr.M.Prabhakaran
for R.1 and R.2

:Mrs.M.Aasha
Government Advocate (Crl.Side)
for R.3

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 1411 of 2024, dated 30.10.2024, on the file of the Judicial Magistrate Court No.II, Srivilliputtur, dismissing the petition filed under Section 156(3) Cr.P.C.

2. The case of the petitioner is that the petitioner had engaged the respondents 1 and 2 who are the proprietors of M/s Olive Green Construction at Coimbatore for construction of commercial building in her land situated at Gopuram Street, Srivilliputtur, that both parties have entered into the construction agreement on 15.05.2023 wherein the petitioner had paid Rs.4,00,000/- as advance amount, that the respondents 1 and 2 had also made arrangement for constructions, that in the meanwhile there arose some disputes between the petitioner and her adjacent land owner due to which the petitioner and her husband approached the respondents 1 and 2 for cancellation of the

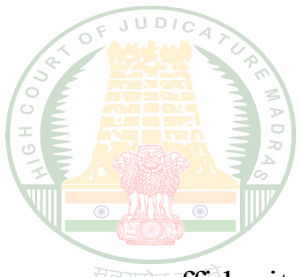


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construction agreement, that the respondents 1 and 2 had agreed to return the advance amount, that though they have paid Rs.50,000/- through cheque on 02.02.2024, agreed to pay the balance amount in two instalments within 01.04.2024, that though the petitioner had demanded the return of balance amount, the respondents 1 and 2 had been postponing the same on some pretext or the other, that when the petitioner had demanded the amount on 15.03.2024, that they have informed that the advance amount was used and also sent a tax invoice dated 09.02.2024, that the petitioner has then come to know that the respondents 1 and 2 had cheated several peoples in a similar fashion, that the petitioner lodged a complaint before the third respondent on 23.04.2024 and since there was no action, the petitioner sent complaint through registered post to the third respondent on 27.03.2024 and as there was no action, she was forced to send a complaint to the District Superintendent of Police, Virudhunagar on 23.07.2024 and that since the same was also of no use, she was constrained to file a petition under Section 156(3) Cr.P.C., before the jurisdictional Magistrate Court for registration of F.I.R., and for investigation.

3. The learned Magistrate, taking the petition filed under Section 156(3) Cr.P.C., on file in Crl.M.P.No.1411 of 2024 and upon perusing the petitioner's

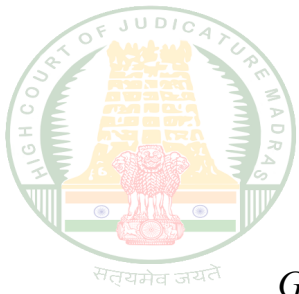


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affidavit, petition and other records, has passed the impugned order dated 30.10.2024, by holding that the dispute is of civil in nature, dismissed the petition.

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 through criminal prosecution should be deprecated and discouraged. In



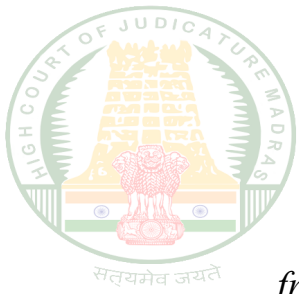
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G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"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 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 contention of the petitioner is that herself and the respondents 1 and 2 had entered into the agreement whereunder the respondents 1 and 2 had agreed to put up constructions in the land owned by the petitioner and received the advance amount of Rs.4,00,000/-, that subsequently some disputes had arisen between the petitioner and her adjacent land owner and hence, the petitioner had decided to cancel the construction agreement and accordingly, the agreement was cancelled and that though the respondents 1 and 2 had repaid Rs.50,000/-, despite repeated requests, they have not chosen to pay the balance amount.

7. As rightly contended by the learned Government Advocate(Crl.Side), the agreement came to be cancelled only at the instance of the petitioner and



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even according to them, the respondents had paid Rs.50,000/- and according to the respondents 1 and 2, they had already spent the advance amount for which they had sent the tax invoice. The learned Government Advocate (Crl.Side) would submit that the petitioner has alleged that the tax invoice is a forged and fabricated document, but that cannot be gone into by the police authorities.

8. As rightly observed by the learned Magistrate, there existed disputes with regard to the contract entered into between the parties and the course open to the petitioner is to approach the competent civil Court for getting the advance amount, but the petitioner, by lodging the complaint has been attempting to give the civil dispute a criminal colour.

9. 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



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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.

10. Considering the petitioner's affidavit and other records available, this Court has no hesitation to hold that the petitioner is trying to cloak the civil



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dispute with criminality and as such, the impugned order dismissing the petition filed under Section 156(3) Cr.P.C, by the learned Judicial 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.

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

16.04.2025

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

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To

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



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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