



Crl.R.C.(MD)No.240 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.02.2025

Delivered on : 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.240 of 2025

C.Palanisamy

: Petitioner

Vs.

1.P.K.Vadamalaiyan

2.V.Annadurai

3.P.Annamalai

4.P.Kennedy

5.P.Madhiprakasam

6.Ira.Azhagar Raja

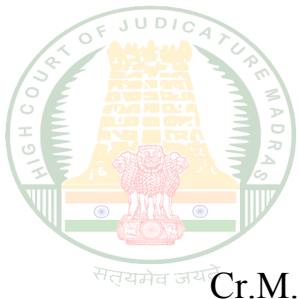
7.A.Sankareswaram

8.T.Madhimani

9.State rep.by the Sub Inspector of Police,
North Police Station, Rajapalayam.

: Respondents

PRAYER : Criminal Revision Petition filed under Section 438 of BNSS,
to call for the records pertaining to the order, dated 28.12.2023 in



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Cr.M.P.No.10319 of 2013 on the file of the learned Judicial Magistrate, Rajapalayam and set aside the same.

For Petitioner : Mr.A.Jayaramachandran

For Respondents : Mrs.M.Aasha,
Government Advocate (Criminal Side)
for R1.

: Mr.M.Jothi Basu,
for R2, R3, R5, R6 and R8.

ORDER

This Criminal Revision is directed against the order passed in CrI.M.P.No.10319 of 2023, dated 28.12.2023 on the file of the Court of the Judicial Magistrate, Rajapalayam, dismissing the petition filed under Section 156(3) of Code of Criminal Procedure.

2. The case of the petitioner is that he was doing a scrap business at the shop owned by Rajapalayam Nadar Uravinmurai as a tenant; that on 10.08.2015 at about 08.00 am, the respondents 1 to 3 and few others broke open the door of the shop and had stolen Rs.50,000/- and also dumped sand and stone in front of the shop whereby preventing the access; that the petitioner lodged a complaint to the 9th respondent, but

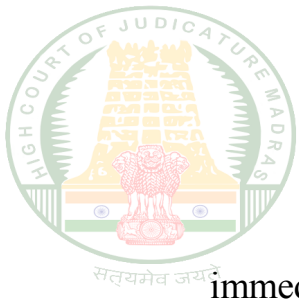


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there was no action; that on 15.08.2015 at about 09.00 am when the petitioner went to open his shop, he found that the respondents 1 to 3 and others trespassed into the shop and taking away the iron scrap weighing about 50 tones worth about Rs.15,00,000/- in a tractor; that when the petitioner questioned the same, the above persons abused him in filthy language, assaulted him with iron rod and caused criminal intimidation; that the petitioner has then lodged a complaint, but the same was refused to be received by the 9th respondent and that the petitioner has then sent the complaints to the 9th respondent and other officials through registered post.

3.It is the further case of the petitioner that on 01.11.2023 at about 04.00 pm, the petitioner came to know that the respondents 1 to 7 had taken away the iron scrap belonging to the petitioner from the campus owned by the Nadar Uravin Murai at cotton Market; that they have taken the scrap in a Taurus lorry and entered into the old iron scrap shop owned by the eighth respondent behind Balu Metals at Malayadipatti; that the 8th respondent, after knowing that the iron scrap were stolen property, had purchased and received the property; that the petitioner had



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immediately lodged a complaint on 07.11.2023 and since there was no action, he lodged complaints before the Deputy Superintendent of Police, District Superintendent of Police and Inspector General, South Zone through registered post and that since there was no action, he was constrained to file the petition under Section 156(3) of Cr.P.C.

4. It is evident from the records that the petitioner has lodged two complaints earlier, one for the occurrence held on 10.08.2015 and the other on 15.08.2015. The petitioner has filed a petition in Crl.O.P(MD)No.18437 of 2015, seeking direction to initiate appropriate action based on his complaint, this Court vide order, dated 25.09.2015, issued directions to look into the complaint and in pursuance of the same, the 9th respondent police registered an FIR in Crime No.533 of 2015, dated 12.09.2015 for the occurrence alleged to have been held on 15.08.2025 and after investigation filed a final report as 'mistake of fact', dated 09.11.2015. Challenging the closure report, the petitioner has preferred a revision in Crl.RC(M)No.441 of 2018 and this Court, after coming to know that the 9th respondent police has not filed the final report within the time stipulated by this Court, directed the 9th respondent



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to take up the investigation of complaint, dated 10.08.2015 and complete the same and file a final report within a period of three months before the concerned Magistrate. In pursuance of the said direction, the 9th respondent, registered FIR in Crime No.540 of 2018 and after completing the investigation, filed the final report, dated 15.11.2018 as 'mistake of fact'.

5. According to the petitioner, challenging the said final report, the petitioner has already filed a protest petition in Cr.M.P.No.6285 of 2019 and the same is pending on the file of the jurisdictional Magistrate Court.

6. It is evident from the records that since the police has filed the final report in respect of the occurrence held on 15.08.2015 as 'mistake of fact', the petitioner filed a private complaint and the learned Magistrate has taken cognizance of the case in C.C.No.438 of 2016 and framed charges against 11 accused for the offence under Sections 147, 294(b), 506(i) and 379 of IPC.



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7. As rightly pointed out by the learned counsel appearing for some of the private respondents, private complaint was filed only with respect to the occurrence alleged to have been held on 15.08.2015 and the concerned Court has framed a specific charge for allegedly stealing iron scrap worth about Rs.15 lakhs under Section 379 of IPC and that the accused are facing trial before the jurisdictional Court.

8. It is also not in dispute that the petitioner has already filed a suit claiming permanent injunction restraining the Uraving Murai and office bearers not to evict him except due process of law and the same is pending. As rightly contented by the learned counsel for the private respondents, the petitioner in continuation of the alleged occurrence held on 15.08.2015 has presently alleged that the accused 1 to 7 had removed the iron scrap, which was kept in the property owned by Uravin Murai at Cotton Market and taken to the place belonging to the 8th respondent and the 8th respondent has purchased the iron scrap knowing that the same were stolen property.



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9. At this juncture, 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



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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.”

10. 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.

11. As rightly contended by the learned counsel for the private respondents, since the criminal case is already pending against the respondents 1 to 7 for the offence under Section 379 of IPC for allegedly stealing the iron scrap, the present contention that they have again stolen the iron scrap and sold the same to the 8th respondent cannot be sustained. As already pointed out, the petitioner has been attempting to rope the private respondents again for the alleged theft of iron scraps and as rightly observed by the learned Magistrate, the complaint does not disclose any cognizable offence. As rightly observed by the learned



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Magistrate, there existed landlord and tenant dispute between the Uravin murai and the petitioner and the civil suit is pending.

12.The learned counsel for the petitioner would submit that the learned Judicial Magistrate is duty bound to forward the petition filed under Section 156(3) of Cr.P.C to the concerned Police for registering 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.

13. 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.



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14.The learned counsel for the respondents would submit that the petitioner has not filed any affidavit in support of the petition filed under Section 156(3) of Cr.P.C and the Hon'ble Supreme Court in the case of ***Priyanka Srivastava and another vs State Of Uttar Pradesh and others*** reported in 2015 (3) MWN (CRI) 171 (SC) has specifically held that the petition filed under Section 156(3) of Cr.P.C., must accompany an affidavit duly sworn by the applicant and that the present petition under Section 156(3) of Cr.P.C., was not supported by any affidavit and that therefore, the impugned order dismissing the petition filed under Section 156(3) Cr.P.C, by the learned Magistrate cannot be found fault with.

15. Considering the above submission, this Court directed the Registry to call for the records in Cr.M.P.No.10319 of 2023 from the concerned Court. It is evident from the records received from the concerned Court that the petitioner has filed an affidavit in support of the petition and as such, the above contention, which is devoid of merits, is liable to be rejected.



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16. In view of the above, the impugned order dismissing the petition filed under Section 156(3) of Cr.P.C., cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

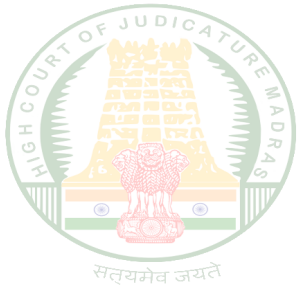
18. In the result, this Criminal Revision Petition is dismissed.

19.03.2025

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

To

- 1.The Judicial Magistrate, Rajapalayam.
- 2.The Sub Inspector of Police,
North Police Station, Rajapalayam.
- 3.The Additional Public Prosecutor,
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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Dated: 19.03.2025