



CrI.O.P.No.13116 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON : 21.07.2022

DELIVERED ON : 28.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.13116 of 2022
and CrI.M.P.No.7090 of 2022

K.L.Prabakar

.. Petitioner

Vs.

1. State rep. by

The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Chennai - 600 019.

2. C.Rajesh

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in Crime No.3121 of 2021 on the file of the first respondent police and to quash the same.

For Petitioner : Mr.M.Mohammed Riyaz
for Mr.G.Ramar

For Respondent 1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For Respondent 2 : Mr.S.Ravichandran



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ORDER

WEB COPY This petition has been filed seeking to quash the F.I.R. filed against the petitioner for the offence punishable under Sections 457 and 380 of IPC in Crime No.3121 of 2021, on the file of the first respondent police.

2. The crux of the allegation in the FIR is that the second respondent / first informant is an Advocate and an office bearer of Thiruvotriyur Bar Association. According to him, he is in possession of around 2852 sq.ft. of land belonging to Kaligambal Temple and he has kept his household utensils there. It is further stated that on 14.07.2021, he came to know that some persons entered his premises and removed his articles and also torn the banners, immediately, he gave a complaint to the police and as no action has been taken, he filed a petition under Section 156(3) of Cr.P.C. before the learned Judicial Magistrate, Thiruvotriyur and pursuant to the direction given in the said petition, a FIR has been registered against the petitioner for offence punishable under Sections 457 and 380 of IPC.

3. The learned counsel appearing for the petitioner seeks to quash the said FIR and would submit that filing of the FIR is calculated and motivated only in order to grab the property, which is under the control and possession



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of the petitioner's mother. It is his contention that the petitioner's mother has

WEB COPY purchased the superstructure measuring an extent of 2852 sq.ft. from one S.Baby W/o Subramaniam, by way of a registered Sale deed dated 28.04.1980, registered as Document No.872/1980, in the office of the Sub Registrar, Thiruvotriyur. He further submitted that water tax and property tax stands in the name of the petitioner's mother and she is regularly paying the taxes to the authorities. Electricity service connection also stood in the name of the petitioner's mother. The petitioner's mother has let out the premises in the year 2008 to one Mr.Karthick for doing business and he has vacated the premises on 12.07.2021. Due to lock-down, the said tenant defaulted in payment of electricity charges for two years and due to which the electricity service connection was disconnected.

4. The learned counsel further submitted that on 14.07.2021, at about 6.00 p.m. he came to know through neighbours that persons wearing black and white dress entered into the petitioner's premises and tried to lock open the premises in order to take possession. When the petitioner rushed to the spot, he was threatened by the Advocates. The petitioner lodged a complaint and the police enquired the petitioner and the second respondent. The petitioner was requested not to press the complaint against the second respondent who is an Advocate and the said complaint was closed.



WEB COPY 5. The learned counsel for the petitioner further submitted that, when the petitioner made an application for restoration of the electricity service connection on 05.08.2021, he received a SMS from the Electricity Department that his application is put on hold for verification with the EB officials, as already another person by name Mrs.Lakshmi, the wife of the second respondent herein, has applied for electricity service connection for the very same premises belonging to the petitioner's mother and therefore the EB officials have withheld both the applications. Thereafter only the petitioner came to know that the second respondent has created some residential certificate and produced the same before the EB officials in order to grab the property.

6. The learned counsel for the petitioner further submitted that thereafter, the second respondent filed an application under Section 156(3) of Cr.P.C. and without following the guidelines of the Hon'ble Apex Court in *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others* reported in *(2015) 6 SCC 287* the learned Judicial Magistrate passed a mechanical order and based on that a FIR has been registered against the petitioner. Hence, he would contend that the entire FIR is an abuse of



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process of law and it is only to grab the land of the petitioner. He has also brought to the notice of the Court that the sale deed is in favour of the petitioner's mother, property tax receipts and electricity receipts in the name of the petitioner's mother. It is his contention that the complaint given by the second respondent is calculated and motivated only to grab the land of the petitioner.

7. The learned counsel further submitted that the application filed under Section 156(3) of Cr.P.C. was also allowed mechanically by the learned Judicial Magistrate, Thiruvottiyur, where the second respondent was as member of the Bar and also an Office Bearer of the Bar Association, Thiruvottiyur. Hence, the learned counsel appearing for the petitioner contended that all these aspects clearly shows that it is a classic case of abuse of process of law by setting the criminal law in motion to grab the land of someone by a powerful section of the Society.

8. Initially notice was sent to the second respondent, which was returned as "addressee left", thereafter, notice was directed to be served at Thiruvottiyur Bar Association and thereafter only the second respondent appeared through his counsel Mr.S.Ravichandran.



9. It is the contention of the learned counsel appearing for the second

WEB COPY respondent/defacto complainant herein that the defacto complainant is in possession of the land belonging to the Temple and he has taken the property on lease from the Temple. Therefore, only the Temple authorities are competent to say who is in possession of the above property. He further submitted that the FIR has been registered properly and denied all the allegations of abuse of process of law. It is his contention that he is in legal possession by way of lease and therefore seeks to dismiss this quash petition.

10. The learned Additional Public Prosecutor appearing for the first respondent police would submit that police registered the FIR since there was a direction under Section 156(3) of Cr.P.C. by the learned Judicial Magistrate, Thiruvottiyur and submitted that he is leaving the matter to the Court.

11. Heard the learned counsel on either side and also perused the materials available on record.

12. Normally while exercising power under Section 482 of Cr.P.C., if there is a prima facie allegation and it discloses a cognizable offence, the



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Courts will not interfere with the F.I.R. but at the same time, the materials

produced before this Court prima facie indicate that the F.I.R. is nothing but motivated and filed for some other purpose or maliciously instituted with an ulterior motive, the Court can very well interfere with such F.I.R. The impugned F.I.R. has been filed on the basic of the order passed by the learned Judicial Magistrate, Thiruvottiyur and the order of the learned Judicial Magistrate dated 15.09.2021, passed in C.M.P.No.2722 of 2021 is as follows:

*"Heard, Perused, Order pronounced,
Offences contained in the petition is cognizable.
Hence this Court hereby directed to Station House
Officer 118 Thiruvottiyur Police Station to
register a FIR on the petition filed by petitioner
before the respond police on 14.07.2021 on or
before one month from this order date."*

13. Normally, when a petition is filed under Section 156(3) of Cr.P.C. the learned Judicial Magistrate will seek a report and direct the investigating officer to investigate and file a report. Be that as it may, the affidavit filed before the learned Judicial Magistrate is bereft of details. According to the second respondent, the land in question was under his control and he was



peacefully maintaining it from the year 2016 as per the oral orders passed by the Temple authorities. However, there is no whisper whatsoever in his affidavit about the so called lease as projected before this Court.

14. The sale deed dated 28.04.1980, filed in the typed set of papers by the petitioner, indicates that the superstructure has been sold with leasehold right in favour of the petitioner's mother. It is a registered sale deed, the property tax receipts filed in the typed set of papers is also in the name of the petitioner's mother Mrs.L.Gandhimathi, even in the year 2018. The encumbrance certificate also reflects the entry of the sale deed in the name of the petitioner's mother. The electricity service charges has also been paid by the petitioner's mother. From the records, it can be seen that in the year 2008, the premises was let out to one Mr.Karthick for doing business and he constructed a shed and was doing steel business and thereafter the said Karthick has also vacated the premises and handed over possession to the petitioner's mother. In the additional typed set of papers filed before this Court by the petitioner, it is clearly shown that before the name-board of Karthick Steel some posters have been affixed. The second respondent / defacto complainant is stated to have obtained a residential certificate in the name of his wife to show that he is in possession from 23.07.2016. It is only



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a computer generated certificate and no other evidence has been placed by

WEB COPY the second respondent to show that he was in possession from 2016. If

really the second respondent is in possession of the property, there is no need to keep household vessels in the premises. This also clearly create some doubt his claim. It also probabalise the petitioner's case that the same has been created only for the purpose of taking forceful possession and judicial process has been misused. As could be seen from the typed set of papers, several complaints have also been given against the second respondent in the Anti Land Grabbing Cell, Thiruvottiyur by the petitioner, but no action has been taken by the police authorities.

15. It is relevant to refer the judgment of the Hon'ble Supreme Court in *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others* reported in (2015) 6 SCC 287, the Hon'ble Supreme Court has held that the remedy available under Section 156(3) Cr.P.C. is not of routine nature. Exercise of power thereunder requires application of judicial mind. The learned Magistrate exercising said power must remain vigilant with regard to nature of allegations made in the application and not to issue directions without proper application of mind. In an appropriate case, learned Magistrate can verify the truth and veracity of allegations made, having



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regard to nature thereof and the power under Section 156(3) of Cr.P.C.

WEB COPY cannot be invoked by a litigant at his own whim to harass others. It can be invoked only by a principled and really aggrieved citizen approaching the Court with clean hands. Prior application under Section 154(1) of Cr.P.C. and Section 154(3) of Cr.P.C. have to be in existence while filing a petition under Section 156(3) of Cr.P.C. and these aspects should be clearly spelt out in the application under Section 156(3) of Cr.P.C. and necessary documents to that effect has to be filed.

16. The complaint filed by the first respondent under Section 156(3) of Cr.P.C. does not even whisper about the steps taken under Section 154(3) of the Cr.P.C. The learned Magistrate has simply allowed the application without making any enquiry and even the veracity of the allegations are not verified with the documents. The documents filed on the side of the petitioner clearly shows that he is in possession of the property and only during COVID period the tenant has vacated the premises, which has been taken advantage of by the second respondent by filing a complaint under Section 156(3) of Cr.P.C. and mechanically an order has also been passed by the learned Judicial Magistrate, Thiruvottiyur. The petitioner has also sent a complaint to the Superintendent of Police, Anti Land Grabbing Cell. He also



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sought details as to on what basis the residential certificate has been issued,

WEB COPY however no reply has been given by the authorities.

17. All the above facts clearly probabalise the contention of the petitioner that F.I.R. is nothing but an abuse of process of law. Further, the account summary in respect of the electricity service meter also shows that it is in the name of the petitioner's mother all along. Such view of the matter, the learned Judicial Magistrate, Thiruvottiyur without applying his mind has mechanically passed the order without even verifying the veracity of the complaint. The second respondent as a member of the very same Bar and also an Official Bearer of the Bar Association, Thiruvottiyur, obtained the order. The learned Judicial Magistrate, Thiruvottiyur has mechanically passed the said order which suffers from non-application of mind. Further, the said order directing the first respondent police to register F.I.R. against the petitioner is contrary to the law laid down by the Hon'ble Supreme Court in *Priyanka Srivastava case* (cited supra).

18. In the case of *State of Haryana and Others vs. Bhajan Lal and Others* reported in *1992 SUPP (1) Supreme Court Cases – 335*, the Hon'ble Supreme Court has set out the following guidelines for quashing the



complaint:

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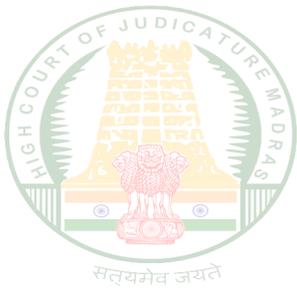
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(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.



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(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Considering the above judgments, the Court finds that the FIR is motivated and a mala fide one.



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19. Such view of the matter, this Court holds that the complaint in

WEB Crime No.3121 of 2021 on the file of the first respondent police, is nothing

but an abuse of process of law and the same is liable to be quashed and

accordingly quashed. The Criminal Original Petition is allowed.

Consequently, the connected miscellaneous petition is closed.

28.07.2022

Index : Yes / No

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To

1. The Judicial Magistrate,
Thiruvottiyur.
2. The Inspector of Police,
H-8, Thiruvotriyur Police Station,
Chennai - 600 019.
3. The Public Prosecutor,
Madras High Court.



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N.SATHISH KUMAR, J.

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PRE DELIVERY ORDER in
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and CrI.M.P.No.7090 of 2022

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