
(1971) 11 MAD CK 0044

In the Madras High Court

Case No : Criminal Revision Case No. 599 of 1970 and Criminal Revision Petition No. 598 of 1970

D.K. Raju

APPELLANT

Vs

K.V. Desinga Raju and The State

RESPONDENT

Date of Decision : 08-11-1971

Acts Referred:

Companies Act, 1956 — Section 624, 629
Criminal Procedure Code, 1898 (CrPC) — Section 153(3)

Citation : (1971) 11 MAD CK 0044

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : A. Chenniah Thevar, for the Public Prosecutor for the State, B. Sriramulu, for the Appellant; K.G. Manickavasagam, for the Respondent

Judgement

Ramanujam, J.—The petitioner herein filed a complaint u/s 629 of the Indian Companies Act, 1956, before the lower court on August 25, 1969, against the respondent herein. The said complaint was taken on file by the lower court and an order dated October 20, 1969, was passed. That order consists of two portions. In the earlier portion of the order, it has given certain reasons as to what are the proper steps to be taken by the complainant. In the later portion he directed the complaint to be forwarded to the police for investigation u/s 156(3), Criminal Procedure Code. Though the complaint was forwarded to the police on October 20, 1969, the police had not taken any action. Subsequently, as nothing was done in the matter of investigation of the complaint filed by the petitioner for about a year, he filed another petition before the lower court in M. P. No. 7 of 1970 requesting the court to finally dispose of the complaint, filed earlier, in accordance with law. In that petition the court passed an order on 16th January, 1970, to the effect that the complaint in question has already been forwarded to the police for investigation u/s 156(3), Criminal Procedure Code, that it is for the police to register a case and investigate and take such further action in the matter, and that the court cannot proceed any further in the matter at that

stage. It is this order which is being challenged in this revision.

2. The learned counsel for the petitioner submits that the view taken by the court below is erroneous, as it has felt that there is no necessity for any report being sent by the police to the court u/s 156(3), Criminal Procedure Code, and that the complaint has to be investigated only by the police by registering a case. The learned counsel also contends that the forwarding of the complaint for investigation by the police u/s 156(3), Criminal Procedure Code, is itself wrong and that the view of the lower court that no report need be sent by the police as to the result of the investigation is equally wrong. The order dated January 16, 1970, passed by the lower court gives an impression that the complaint is a matter which has to be investigated by the police after registering a case. In my opinion, the view of the lower court that an offence u/s 629 of the Indian Companies Act is a matter which has to be investigated by the police after registering a case will be clearly erroneous. An offence u/s 629 of the Indian Companies Act is a non-cognizable offence as per Section 624 of the Indian Companies Act, and a non-cognizable offence cannot be a matter for investigation by the police u/s 156(3), Criminal Procedure Code. The lower court, of course, invokes Section 155(2), Criminal Procedure Code, for a non-cognizable offence. But, in this case, the Magistrate specifically forwards the complaint u/s 156(3), Criminal Procedure Code, to the police. Though the learned counsel for the respondent contends that the order forwarding a complaint u/s 156(3) of the Criminal Procedure Code could be treated as one passed u/s 155(2) of the Criminal Procedure Code. I am not inclined to treat the earlier order dated September 20, 1969, as one passed by the lower court u/s 155(2) of the Criminal Procedure Code, for the second order passed by the lower court on January 16, 1970, seems to suggest that the Magistrate treated the complaint as one entirely for the police to investigate, after registering a case. Even if the order forwarding the complaint u/s 156(3), Criminal Procedure Code, is treated as one passed u/s 155(2), Criminal Procedure Code, the lower court should have called for a report from the police as to what the result of the investigation was and passed final orders on the complaint filed before it. After seeing that the court has not passed any final orders on the complaint, the petitioner moved the court again in the said M.P. No. 7 of 1970 for disposing of the complaint in accordance with law. This request of the petitioner has been rejected on the ground that it is for the police to register a case and investigate. This reason of the court below cannot at all be sustained. When a statutory complaint u/s 629 of the Indian Companies Act is filed before the court, the court should dispose it of in accordance with law. The Magistrate cannot merely direct the police to register a case and investigate without himself passing any final order on the statutory complaint filed by the petitioner.

3. I, therefore, set aside the order of the court below and direct it to take the complaint on file and dispose of the same in accordance with law. As I am of the view that the order forwarding the complaint to the police u/s 156(3), Criminal Procedure Code, is illegal, the complaint has to be called back and disposed of

one way or the other.