

# V.Hariharan vs State Of Tamil Nadu Rep.By on 1 October, 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.02.2025

Delivered on : 21.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.1007 of 2024

V.Hariharan

Vs.

1.State of Tamil Nadu rep.by  
the Inspector of Police,  
Central Crime Branch,  
Madurai.

2.Ganeshram Raja

3.Akshathram Rajee

Prayer : This Criminal Revision Petition filed under Sections 438 r/  
of BNSS, to call for the records relating to the impugned order pass  
the learned Judicial Magistrate No.I, Madurai in Cr.M.P.No.3949 of 2  
dated 01.10.2024 and set aside the same.

For Petitioner : Mr.B.Saravanan, Senior Counsel  
for Mr.RM.Arun Swamnathan.

For Respondents : Mr.B.Thanga Aravindh,  
Government Advocate (Criminal Side) for R

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ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.3949 of 2024, dated 01.10.2024, on the file of the the learned Judicial Magistrate No.I, Madurai, dismissing the petition

filed under Section 175(3) of BNSS.

2. The case of the petitioner/Manager of Desiganathar Textiles Private Limited, Dindigul is that the respondents 2 and 3 approached the petitioner's company in May 2024 to supply raw materials to produce Yarn as they are involved in providing raw materials from Adithya Birla Groups; that the petitioner's company believing the words of the respondents 2 and 3 and the reputation of Adithya Birla Groups has accepted the proposal; that the respondents 2 and 3 had issued a pre-invoice copy on 03.06.2024 to the petitioner for a sum of Rs.23,67,750/-; that the petitioner company had transferred the said amount from their HDFC Bank account to the Bank account of the accused persons at Koodal Nagar Branch on 06.06.2024; that the said transferred amount was withdrawn by the respondents 2 and 3 on <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am ) 10.06.2024 and they made a promise that the consignment will reach the petitioner's company between 16.06.2024 and 18.06.2024; that since the consignment did not reach the petitioner's company, they contacted the respondents 2 and 3 and at that time, they demanded further sum of Rs.13,00,000/- as the shipment would be possible only if an order is being placed for entire container; that the petitioner's company paid the demanded amount of Rs.13,00,000/- on 18.07.2024 based on the second pre-invoice, dated 11.07.2024; that since there was no response, subsequently, the petitioner had visited the respondents 2 and 3 on 30.07.2024 along with his employee Meyyappan; that since both were threatened, they have come back; that the petitioner again visited them on 13.08.2024 along with their company share holder Usha Rani and at that time also both were threatened that they would kill both of them if they visited again and seek return of money or goods; that the petitioner was forced to lodge a complaint to the first respondent on 13.08.2024, but the respondents 2 and 3 have influenced the police officials and that therefore, with no other option, the petitioner was constrained to file an application under Section 175(3) of BNSS before the jurisdictional Magistrate Court. <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am )

3. It is the further case of the petitioner that the learned Magistrate without considering the factual aspects in proper perspective and by observing that it is a civil dispute, dismissed the petition and that therefore, the petitioner is constrained to file the present revision.

4.The learned Magistrate, taking the petition filed under Section 175(3) of BNSS on file in Crl.M.P.No.3949 of 2024 and upon perusing the petitioner's affidavit and the petition and after hearing the petitioner's side, has passed the impugned order, dated 01.10.2024, by holding that the dispute is of commercial in nature, dismissed the petition.

5. 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 <https://www.mhc.tn.gov.in/judis> ( Uploaded on:

17/03/2025 10:58:48 am ) 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 :

"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 <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am ) 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."

6. 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. <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am )

7.As rightly contended by the learned Government Advocate (Criminal Side, it is pertinent to note that the petitioner's company has paid the amount in pursuance of the alleged pre-invoice issued by the respondents 2 and 3. Moreover, even in the petition the petitioner has stated that they have believed the alleged promise given by the respondents 2 and 3 and reputation of Adithya Birla Groups and they have accepted the proposal allegedly made by the respondents 2 and 3.

8.As rightly pointed out by the learned Government Advocate (Criminal Side), the petitioner has specifically referred about the purchase order, dated 03.06.2024 made by them and in pursuance of the same, proforma invoice came to be issued. As already pointed out, the petitioner has lodged the

complaint mainly for non-supply of the alleged consignment, despite payments made and the alleged threatenings caused by the respondents 2 and 3.

9.As rightly observed by the learned Magistrate that there existed commercial transactions between the parties and there arose disputes between them.

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10.The learned counsel for the petitioner would mainly contend that since the complaint lodged with the police, which came to be reiterated in the petition filed under Section 175(3) of BNSS discloses the commission of cognizable offence, more particularly, the offence of cheating, the learned Judicial Magistrate was duty bound to forward the complaint to the concerned Police for registering an FIR and for investigation and that the learned Magistrate has absolutely no power or jurisdiction to dismiss the petition by himself.

11.It is settled law that the complainant does not have an unqualified right to demand a police investigation in all circumstances and it is also not mandatory for the learned Magistrate to refer the complaint to the concerned Police for registration of the case.

12.The Hon'ble Apex Court in catena of decisions has reiterated the point that the Magistrate is not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police. Hence, the above contention of the learned counsel for the petitioner is absolutely devoid of merits. <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am )

13.It is pertinent to mention 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., while exercising the power under Section 175(3) BNSS. The Magistrate is duty bound to consider the nature of accusation or the offences alleged and to decide about the course of action to be taken and it cannot be stated that the order of the Judicial Magistrate refusing to direct the police to register an FIR or to conduct investigation, 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 223 of BNSS and there is absolutely no bar or prohibition for filing the private complaint on the ground that the petition filed under Section 175(3) of BNSS was dismissed by the Magistrate.

14.Considering the above, the impugned order dismissing the petition filed under Section 175(3) of BNSS, cannot be found fault with. Consequently, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed. <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am )

15. In the result, this Criminal Revision Case is dismissed.

21.02.2025 NCC :Yes/No Index :Yes/No Internet :Yes/No das To

1.The Judicial Magistrate No.I, Madurai.

2.The Inspector of Police, Central Crime Branch, Madurai.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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das Pre-delivery order made in Dated : 21.02.2025 <https://www.mhc.tn.gov.in/judis> ( Uploaded on: 17/03/2025 10:58:48 am )