

# Mohammed Ali Jinnah vs Raja on 14 February, 2025

Crl.R.C. (MD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2025

Pronounced on : 14.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C. (MD) No.164 of 2025

Mohammed Ali Jinnah

Vs.

1.Raja

2.Lakshmi

3.State of Tamil Nadu  
rep.by the Inspector of Police,  
Kottampatti Police Station,  
Madurai.

Prayer : This Criminal Revision Petition filed under Sections 438 r/  
B.N.S.S., to call for the records relating to the order passed by th  
Judicial Magistrate, Melur in Cr.M.P.No.4063 of 2024, dated 27.12.20  
and set aside the same.

For Petitioner : Mr.S.M.A.Jinnah,

For Respondents : Ms.M.Aasha,  
Government Advocate (Crl. Side)  
for R3.

1/11

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Crl.R.C. (MD)N

ORDER

The Criminal Revision is directed against the order passed in Cr.M.P.No.4063 of 2024, dated 27.12.2024 on the file of the learned Judicial Magistrate, Melur, dismissing the petition filed under Section 175(3) of BNSS 2023.

2. The case of the petitioner is that he is a physically challenged person; that the first respondent offered to sell the land of 50 cents in ChinnaKottampatti Bypass belonging to his wife/second respondent and the petitioner agreed to purchase the same; that they have fixed the sale consideration at Rs.46,00,000/- and in pursuance of the same, the petitioner and the second respondent have entered into an agreement, dated 16.02.2022; that the petitioner has paid the advance amount of Rs.10,00,000/- and he had spent Rs.5,00,000/-for backfilling the deep land using sand; that the petitioner availed loan and private debts in order to settle the remaining consideration amount; that the petitioner had deposited the balance sale price of Rs.36,00,000/- on 23.03.2024 in Tamil Nadu Mercantile Bank as directed by the respondents 1 and 2; that the petitioner had paid the registration charges of Rs.30,000/- and only at that <https://www.mhc.tn.gov.in/judis> time, he came to know that the said land has already been attached by the order of Arbitration Tribunal, Madurai in the case filed by the Sriram Transport Finance Company Limited; that the respondents had then falsely promised that they will utilize the sale consideration to release the land from the attachment and entered into another agreement, dated 24.03.2023; that the petitioner subsequently came to know that the respondents 1 and 2 with ulterior fraudulent and dishonest motive to deceive the petitioner, sold the said land to one Sridevi; that when the petitioner approached the respondents in their office near Kottampatti Main Road, the respondents 1 and 2 abused the petitioner by using filthy language and attempted to attack him and also caused criminal intimidation; that the petitioner has then lodged a complaint before the third respondent and CSR came to be issued in C.S.R.No.404 of 2023; that though the respondents 1 and 2 had given a statement to return the amount of Rs.15,00,000/-, but not complied with their promise; that the petitioner's complaint to the Superintendent of Police, Madurai, is also of no avail and that therefore, the petitioner was constrained to file the present petition under Section 175(3) of BNSS for direction to the respondent to register an FIR and for conducting the investigation. <https://www.mhc.tn.gov.in/judis>

3. The learned Judicial Magistrate, taking the petition filed under Section 175(3) of BNSS in Cr.M.P.No.4063 of 2024 and upon perusing the petition and on hearing the petitioner's side has passed the impugned order, dated 27.12.2024, by holding that the dispute is of civil in nature, dismissed the petition.

4.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 <https://www.mhc.tn.gov.in/judis> 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 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 <https://www.mhc.tn.gov.in/judis> 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."

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. As already pointed out, the petitioner has laid the above petition alleging that the respondents have failed to execute the sale deed in pursuance of the sale agreement entered into between the parties, but on the other hand, they have sold the land to a third party and thereby cheated the petitioner.

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7. The learned Magistrate in the impugned order has observed that the petitioner has not produced any document to show that the property subject matter of sale agreement came to be attached already. No doubt, the petitioner has produced the copy of the order of Sale Arbitrator, dated 07.01.2023 in the proceedings initiated by M/s.Shriram Transport Finance Company Limited, wherein property admeasures 1.02 acres, four items of properties (in 2 schedule) situated in Kottampatti Village, Madurai North came to be attached. The sale agreement is with respect to 50 cents of land situated in three survey numbers of Kottampatti Village of Melur Taluk, Madurai District. According to the petitioner, the property was sold to one Sridevi and though two sale agreements came to be entered, the respondents have failed to execute the sale deed and thereby cheated.

8. It is not the case of the petitioner that he has approached the competent Civil Court to get the relief of specific performance or to get the refund of the advance amount. As rightly observed by the learned Magistrate, even assuming that there was breach of contract, the remedy of the petitioner is to approach the competent Civil Court. <https://www.mhc.tn.gov.in/judis>

9. As rightly contended by the learned Government Advocate (Criminal Side), non execution of sale deeds or non refund of advance amount, by no stretch of imagination, can be taken as dispute of criminal nature.

10. The learned counsel appearing for the petitioner would submit that since their petition under Section 175(3) BNSS., 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 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 175(3) BNSS. It is <https://www.mhc.tn.gov.in/judis> settled law that the Judicial Magistrate, while exercising power under Section 156(3) Cr.P.C., (Section 175(3) BNSS) 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 223 BNSS., and there is absolutely no bar or prohibition for filing a private complaint on the ground that the petition filed under Section 175(3) BNSS., was dismissed by the Magistrate.

11. Considering the above, this Court has no hesitation to hold that the petitioner has been attempting to give the civil dispute a criminal color and as such, the impugned order, dismissing the petition filed under Section 175(3) of BNSS by the learned Magistrate cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

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

14.02.2025 NCC :yes/No Index :yes/No Internet:yes/No das To

1. The Judicial Magistrate, Melur.

2. The Inspector of Police, Kottampatti Police Station, Madurai.

3.The Inspector of Police, Subramaniyapuram Police Station, Madurai. .

<https://www.mhc.tn.gov.in/judis> K.MURALI SHANKAR,J.

das Pre-Delivery Order made in Dated : 14.02.2025 <https://www.mhc.tn.gov.in/judis>