

# C.Kayalvizhi vs R.Sugumar on 23 February, 2022

**Author: G.K.Ilanthiraiyan**

**Bench: G.K.Ilanthiraiyan**

Crl.R.C(MD)No.875

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2022

Pronounced on : 23.02.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.875 of 2021

C.Kayalvizhi,  
W/o.M.Sureshraj,  
Assistant Commissioner (Commercial Tax),  
Working as Assistant Commissioner/  
Personal Assistant to  
Joint Commissioner (Commercial Tax),  
Trichy. ... Revision Petitioner/3rd Respondent

Vs.

1.R.Sugumar,  
S/o.R.L.Rengachari,  
55, West Rani Street,  
Trichy – 620 008. .... 1st Respondent/Complainant

2.M.Lakshmi,  
W/o.Late.Muthiaya Nadar,  
Nos.214, 215, Aruna Metals,  
Big Bazaar Street,  
Trichy – 620 008.

3.Saravanan Sattaiyappan,  
Assistant Commissioner (Commercial Tax),  
Commercial Tax Office Campus,  
No.1, Brough Road, Erode – 638 001.

4.R.Shanmuganathan,  
Additional Department Member,  
STAT, City Civil Court Building,  
High Court,

Chennai – 600 104.

... Respondents 2 to 4/  
Respondents 1, 2 and 4

<https://www.mhc.tn.gov.in/judis>  
1/10

CrL

5.State represented by,  
The Inspector of Police,  
Fort Crime Police,  
Tiruchirappalli.

... 5th Respondent

(R – 5 impleaded vide order, dated 23.02.2022  
made in CrL.M.P(MD)No.11740 of 2021)

PRAYER: Criminal Revision Case filed under Section 397 read with  
Section 401 of the Code of Criminal Procedure, to call for the  
records in Cr.M.P.No.4345 of 2021 on the file of the learned Judicial  
Magistrate No.1, Tiruchirappalli and set aside the same insofar as  
against the petitioner/third respondent.

For Petitioner	: Ms.Kanimozhi Mathi
For R – 1	: Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Assoc
For R – 2	: Mr.S.Vinayak
For R – 3	: Mr.R.Aravindhan
For R – 5	: Mr.R.M.Anbunithi Additional Public P

#### ORDER

This Criminal Revision Case is filed challenging the order passed in Cr.M.P.No.4345 of 2021, dated 07.08.2021 on the file of the learned Judicial Magistrate No.1, Tiruchirappalli, thereby directed the fifth respondent to register the F.I.R as against A.1 to A.3 and investigate the case and file final report. <https://www.mhc.tn.gov.in/judis>

2. The petitioner is arraigned as A.3. The first respondent lodged a complaint alleging that he and his brothers are the landlords in shop Nos.213, 214 and 215, Big Bazaar Street, Trichirappalli and they inherited shop No.213 through their father's Will and acquired shop Nos.214 and 215 by way of purchase. The first respondent and his brothers were entered into a rental agreement in respect of

shop in Door No.213, Big Bazaar Street, Trichirappalli, with one Muthiah Nadar husband of the first accused/second respondent for five years from 09.06.1994 to 08.06.1999. Thereafter, the first respondent/complainant and his brothers were entered into another agreement with one Lakshmi, wife of Muthiah Nadar in respect of shops in Door Nos.214 and 215 of ground floor for a period of five years from 23.10.1996 to 22.10.2001. She started the business in the name and style of M/s.Aruna Metals occupying Door Nos.213, 214 and 215, since 1997. The first accused's husband sub-let the shop No.213 to his wife, namely Lakshmi. In that regard, the first respondent filed R.C.O.P before the Rent Controller/III Additional District Munsif, Tiruchirappalli, relating to shop No.213 as R.C.O.P.No.219 of 2001 as against the first accused's husband and in relation to shop Nos.214 and 215, he has filed another R.C.O.P.No.193 of 2001 <https://www.mhc.tn.gov.in/judis> against the said Lakshmi-A.1 In order to ascertain the statement in the counter-affidavit of Muthaiah Nadar that he has sub-let in respect of shop No.213 to his wife Lakshmi, the son of the complainant has filed an application under the Right to Information Act on 12.07.2014 before the Commercial Tax Officer of the Gandhi Market Circle regarding TIN No.33903380968 of M/s.Aruna Metals. As per the information, dated 18.08.2014, it discloses that the above Tin was issued to Lakshmi-A.1 for the shop in Door No.213 on 12.01.1997. He also filed another application under the Right to Information Act on 02.01.2015, for which, by reply dated 22.01.2015, replied with regard to shop Nos.214 and 215 that since the dealer objected to give documents to the Information Officer, as the Rent Control Original Petition is pending and the same was informed to the son of the first respondent that it could not be given. As against the said reply, an appeal filed before the Tamil Nadu Information Commission. The State Information Commission directed the third respondent herein to furnish information. Thereafter, the son of the defacto complainant was given reply, dated 12.11.2015. Further alleged that by reply dated 07.12.2016, one of the Right to Information Petition, dated 07.11.2016, was denied on the ground that there was stay in W.P.No.37685 of 2015. Thereafter, the second respondent filed appeal before the Tamil <https://www.mhc.tn.gov.in/judis> Nadu Information Commission and it was ordered to furnish the information. In order to comply with the order, dated 26.07.2018, by reply dated 28.08.2018, the petitioner herein had furnished a rental agreement dated 01.01.1997 for shop Nos.213, 214 and 215. On receipt of the said agreement, dated 01.01.1997, the first respondent alleged that the said agreement is a forged one and that apart, from the rental agreement, dated 23.10.1996 executed between the second respondent and the landlords, there was no rental agreement executed separately by the first respondent in favour of the first accused. Therefore, the first respondent lodged complaint before the Inspector of Police and also the Commissioner of Police, Trichirappalli. Since they did not take any action, the first respondent filed a complaint seeking direction under Section 156(3) of Cr.P.C.

3. By an order, dated 07.08.2021, the learned Judicial Magistrate No.1, Tiruchirappalli in Cr.M.P.No.4345 of 2021, directed the fifth respondent to register the F.I.R as against A.1 to A.3 and investigate the case and file the final report.

4. The learned counsel appearing for the petitioner submitted that the learned Magistrate mechanically without application of mind <https://www.mhc.tn.gov.in/judis> directed the fifth respondent to register the F.I.R as against the officials, who furnished information under the Right to Information Act. The information furnished under the Right to Information Act cannot be termed as offence, since the petitioner had only discharged her official duty being a Government official and

it cannot be termed as crime punishable under the Indian Penal Code. The officials are being dragged into the private litigation of the second respondent as scapegoats which in turn leading to wastage of working hours in performing their duty.

5. The learned Senior Counsel appearing on behalf of the first respondent submitted that right or wrong, the learned Magistrate directed the fifth respondent to register a case against the petitioner. When the petitioner is being an accused, she has no say before registering the F.I.R and she has no locus to challenge the order passed by the learned Magistrate. In support of his contention, he relied upon the Judgment reported in 2014 (4) SCC 626 – Dinubhai Boghabhai Solanki Vs. State of Gujarat and others, in which, the Honourable Supreme Court of India held that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every <https://www.mhc.tn.gov.in/judis> criminal case before taking any action against the accused person, it would frustrate the entire objection of an effective investigation.

6. The learned Additional Public Prosecutor appearing for the fifth respondent submitted that as directed by the learned Judicial Magistrate No.I, Tiruchirappalli in Cr.M.P.No.4345 of 2021, dated 07.08.2021, the fifth respondent registered the F.I.R in Crime No.1341 of 2021 on 15.11.2021 for the offences under Sections 465, 468, 747 and 420 of I.P.C as against the first accused alone, namely, the second respondent herein. After registration of F.I.R, the investigation is pending. The third respondent herein filed quash petition in CrI.O.P(MD)No.18514 of 2021, in which, this Court granted interim stay of further proceedings of the order in Cr.M.P.No.4345 of 2021, dated 07.08.2021 on the file of the learned Judicial Magistrate No.1, Tiruchirappalli and it is pending.

7. Heard the learned counsel appearing for the petitioner, the learned Senior Counsel appearing for the first respondent, the learned counsel appearing for the second respondent, the learned counsel appearing for the third respondent and the learned Additional Public Prosecutor appearing for the fifth respondent and perused the entire materials available on record. <https://www.mhc.tn.gov.in/judis>

8. On a perusal of the records revealed that though the learned Judicial Magistrate No.1, Tiruchirappalli, directed the fifth respondent to register the case as against the respondents 2 and 3 and the petitioner herein, the fifth respondent registered the case only as against the second respondent herein, since the third respondent and the petitioner are Government officials, who furnished details under the Right to Information Act. Whatever the documents furnished by the second respondent herein, the same was furnished to the first respondent's son. That apart, Section 23 of the Right to Information Act says that no Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. It does not appear to interdict proceedings before the civil Courts alone. The bar against entertaining any suit, application or other proceeding in respect of any order made under the Act, places a total embargo on any judicial proceeding against any order made under the Act except by way of an appeal as provided under Section 19 of the Act. Thus, the information furnished by the Public Information Officer in response to a request made to her under Section 7 of the Act can be treated as an 'order'. Section 19 of the Act providing for appeals

<https://www.mhc.tn.gov.in/judis> uses the expressions “decision” and “order” as forming the subject matter of appeals. Those replies are immune to challenge either before the civil Court or before the criminal Court except by way of an appeal under Section 19 of the Right to Information Act.

9. In view of the above, the prosecution against the officials, who furnished the information under the Right to Information Act, is misconceived. Therefore, the fifth respondent rightly registered the F.I.R only as against the second respondent herein and the investigation is pending. Accordingly, this Criminal Revision Case is disposed of.

23.02.2

Index : Yes  
Internet : Yes/No  
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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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

G.K.ILANTHIRAIYAN, J.

To

1.The Judicial Magistrate No.1,  
Tiruchirappalli.

2.The Inspector of Police,  
Fort Crime Police,

C.Kayalvizhi vs R.Sugumar on 23 February, 2022

Tiruchirappalli.

3.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

Order made in

23.02.2022

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