

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.18476 of 2015
and MP.No.1 of 2015

S.Brathibha ... Petitioner

Vs

1.The State
Rep by The Inspector of Police,
J1, Saidapet Police Station.

2.N.Sethuraman ... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C.,
praying to direct the respondent to call for the entire records
connected with FIR in Crime No.1815 of 2015 dated 06.07.2015 pending
investigation on the file of the respondent police and quash the same
as far as the petitioner [A2] is concerned.

For Petitioner : Mr.Radhakrishnan, Senior Counsel
for Mr.K.Thilageswaran

For Respondents : Mr.C.Emalias, APP [for R1]

O R D E R

This petition has been filed to quash the FIR in Crime No.1815
of 2015 on the file of the 1st respondent as far as the petitioner is
concerned.

2. Heard the learned counsel for the petitioner; learned
Additional Public Prosecutor appearing for the 1st respondent and
perused the materials placed on record.

3. It is the case of the prosecution that on a complaint lodged
by one Sethuraman, a case in Crime No.3752 of 2012 was registered
against three persons by the Inspector of Police, Central Crime
Branch and after completing the investigation, a Final Report was
filed before the learned XVIII Metropolitan Magistrate, Saidapet.

4. It appears that the accused in crime No.3752 of 2012 did not
appear before the Magistrate, resulting in the Magistrate taking
action under Section 82 of Cr.P.C. Despite the proclamation
proceedings, the accused did not appear before the Magistrate and it

is now represented by Mr.Radhakrishnan that the accused were apprehended in Delhi and now they have been released on bail.

5. Be that as it may, the de facto complainant seems to have approached the learned Magistrate with a prayer to take action against the accused for not appearing before him pursuant to the proclamation, which is punishable under Section 174A IPC. The Magistrate merely sent the complaint to the respondent Police for investigation and report. The respondent Police received the complaint and registered an FIR in Crime No.1815 of 2015 for an offence under Section 174A IPC, aggrieved by which the accused is before this Court for quashing the same.

6. Mr.Radhakrishnan, learned counsel appearing for the accused submitted that Section 174A IPC falls within Chapter X - CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS in the IPC and that a prosecution for offence under Section 174A IPC can be launched only via 195[1][a] of Cr.P.C.

7. This Court has no quarrel with the proposition, since Section 174A IPC falls within the net of Section 195[1][a][i] of Cr.P.C and therefore, for the offence under Section 174A IPC, the public servant concerned must lodge a complaint, based on which only, a Court can take cognizance of the offence. In this case, no cognizance of the offence has been taken by the Court and the Court has merely forward the complaint under Section 156[3] Cr.P.C to the respondent Police for investigation.

8. The Hon'ble Supreme Court in M.Narayandas Vs State of Karnataka AIR 2004 SCC 555 has clearly held that even in cases falling under Section 195 Cr.P.C, Police investigation cannot be precluded.

9. Mr.Radhakrishnan submitted that such a course would be deleterious to the administration of criminal justice inasmuch as a private person cannot be permitted to arrogate to himself the power of Court by setting the criminal law into motion.

10. At the first blush, his argument did sound convincing. On a closer scrutiny of the 1st schedule of Cr.P.C, it is seen that Section 174A has been classified as cognizable and non-bailable offence which means that a police officer is bound to register an FIR under Section 154 Cr.P.C on a complaint. Now the question is, should the complaint be lodged to the Police, only by the public servant or by any private person? There is no bar in the Cr.P.C preventing a private person from lodging a Police complaint and the bar is only with regard to taking of cognizance of the offence under Section 190 Cr.P.C read with 195 Cr.P.C.

11. In view of the aforesaid judgment of the Hon'ble Supreme

Court, registration of the FIR by the Police cannot be said to be illegal. In the result, the petition is devoid of merits and therefore, dismissed. Consequently, connected Miscellaneous Petition is closed.

gya

s/d-
Assistant Registrar

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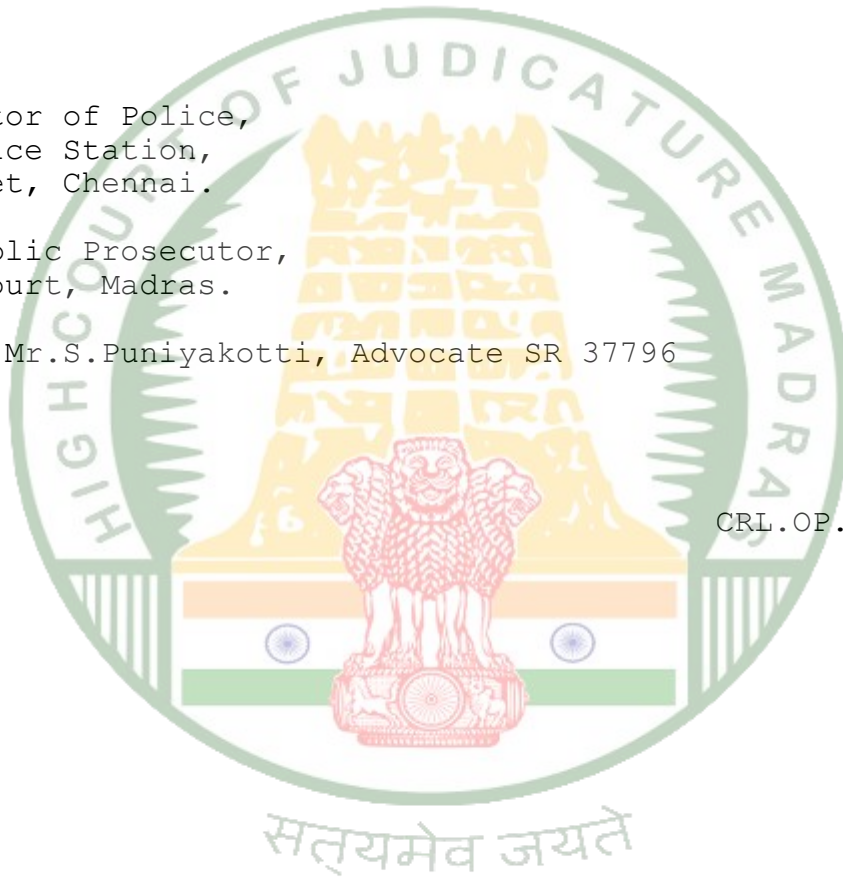
Sub-Assistant Registrar

To

1. Inspector of Police,
J1 Police Station,
Saidapet, Chennai.
2. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.S.Puniyakotti, Advocate SR 37796

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