

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.Nos.30227 and 30228 of 2015
and
M.P.No.1 of 2015

M.Mohanraj ...Petitioner in both CrlOPs

Vs.

1.State by The Inspector
General of Police
Office of the Inspector
General of Police,
Duima Street,
Pondicherry

2.State By The Superintendent
of Police (North)
Nehru Street,
Pondicherry.

3.State By The Inspector of Police
Muthialpet Police Station,
Pondicherry.

4.Victor Inbaraj

5.Albert Raj

6.Arokiaraj

7.Arulraj ...Respondents in both CrlOPs

Prayer in Crl.O.P.No.30227 of 2015:

Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to direct the 1st respondent for further investigation in Crime No.93 of 2015 pending on the file of the 3rdrespondent police to conduct fresh enquiry on the petitioner's complaint dated 28.07.2015.

Prayer in Crl.O.P.No.30228 of 2015:

Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to transfer the investigation in Crime No.93 of 2015, pending on the file of the 3rd respondent to any other investigating agency for

conducting fresh enquiry on the petitioner's complaint dated 28.07.2015.

For Petitioner :Mr.P.Sathish

For Respondents :Mr.V.Balamurugan,
Additional Public Prosecutor
(Pondicherry)
for R1 to R3

COMMON ORDER

The petitioner has come forward with this petition seeking for a direction, directing the 1st respondent to conduct further investigation in Crime No.93 of 2015 pending on the file of the 3rd respondent and to transfer the investigation from the 3rd respondent to any other investigation agency to conduct a fresh enquiry, on the basis of the complaint given by the petitioner dated 28.07.2015.

2.The learned counsel appearing for the petitioner submitted that the petitioner has lent money to Al-Victor Inbaraj and to repay the same, he has issued a cheque. When the cheque was presented for encashment, it was returned as "Funds insufficient". On the fateful day viz., 28.07.2015, when the petitioner was in the xerox shop, Al directed the petitioner to come to his house and collect the money in person. Hence, the petitioner along with his wife had gone to the house of the accused and at that time, he assaulted the petitioner. Immediately, the petitioner was admitted in the hospital and an intimation was sent to the concerned Police Station at 00.45 hours. On that basis, one Mohammed Mirza, ASI, went to the hospital and recorded the statements. However, no case has been registered. Thereafter, the petitioner was discharged from the hospital on 30.07.2015 and he approached the learned Judicial Magistrate by invoking Section 156(3) of CrPC. Consequently, a case has been registered in Crime No.93 of 2015 for offences punishable under Section 323 r/w 34 IPC against four persons and the matter has been investigated.

3.It is pertinent to note that when the petitioner questioned the respondent as to why he is not receiving the complaint, the respondent slapped the petitioner and threatened him with dire consequences. Immediately, the petitioner preferred a complaint before the higher officials and to the Human Rights Commission. Thereafter, on 25.09.2015, the Human Rights Commission had also issued summons to the Investigating Officer. Therefore, the apprehension of the petitioner is that the

present Investigating Officer shall not investigate the matter properly. Hence, the petitioner prayed for transfer of investigation and for further investigation.

4. Resisting the same, the learned Additional Public prosecutor (Pondicherry) would submit that the complaint itself is false. In the complaint, it was stated that on the date of the alleged occurrence, when the petitioner went to the house of the accused, the mother of the accused had opened the door. But on the said date, the mother of the accused was admitted in a hospital, which itself would prove that the complaint is a false complaint. Further, he would submit that the investigation is going on in a proper direction and the charge sheet has been filed on 18.01.2016 under Sections 323 r/w 34 IPC and hence, the learned Additional Public Prosecutor would submit that there is no necessity for transfer of investigation and for fresh investigation. Thus, he prayed for dismissal.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. The alleged occurrence is said to have taken place on 28.07.2015 and immediately, the petitioner was admitted to the hospital. On receipt of the information, an ASI visited the hospital and recorded the statement. However, no case was registered. Only when the petitioner was discharged from the hospital on 30.07.2015 and he approached the learned Judicial Magistrate by invoking Section 156(3) of CrPC, a case has been registered in Crime No.93 of 2015 for the offences punishable under Section 323 r/w 34 IPC. I am unable to understand as to why a case has not been registered once the victim has been admitted in the hospital and taking treatment as inpatient. Further, no valid reason has been assigned as to why the case has not been registered immediately.

7. It is also pertinent to note that when the investigation was not properly done, the petitioner herein had approached the investigating agency. However, the petitioner was ill-treated and hence, he immediately preferred a complaint before the Human Rights Commission and on the basis of the said complaint, the Investigating Officer was issued summons by the Human Rights Commission. Furthermore, the Doctor has been examined only on 18.01.2016 and that the Charge sheet has been filed in a hasty manner, without examining all the

witnesses. Even the Doctor has stated that the petitioner was assaulted with a knife. However, the charge sheet was filed only under Section 323 IPC instead of 324 IPC. The non-filing of the charge sheet for offences under the correct provisions of law itself would show the malafide intention of the Investigating officer. Also no reason has been assigned by the police for not visiting the scene of occurrence and not preparing the observation mahazar and rough sketch. There is also no information as to whether any Material Object has been seized.

8. Furthermore, on perusal of the Accident Register Copy shows that it has been specifically noticed that "Assault and abrasion on left forearm, contusion on the right shoulder". Even though X-ray has been taken, no bone injury. Dr.Dinesh himself has deposed during his examination that he had stated about the injuries as (1) cut injury to the left forearm and (2)abrasion on the right side of the neck.

9.On perusal of the complaint and also the injuries mentioned by them would show that the ingredients of Sections 323, 324 and 307 IPC have been made out. But, the charge sheet has been filed only for the offences punishable under Section 323 r/w 34 IPC. Thus, the apprehension of the petitioner is genuine and the action of the Investigating Officer is not appreciable. Therefore, it is the duty of the Court to give appropriate relief to the petitioner and to order for further investigation by the Inspector of Police. Hence, the charge sheet already filed has to be set aside and the Inspector of Police has to be directed to reinvestigate the matter afresh, after obtaining the Medical Certificate and recording the 161 statements of the witnesses.

10.Hence, the **Inspector of Police, Grand Bazaar Police Station Pondicherry*** is directed to reinvestigate the matter under the supervision of the Superintendent of Police and the Superintendent of Police is directed to monitor the same and file a final report within a period of three months from the date of receipt of a copy of this order. The Investigating Officer is further directed to follow the procedure laid down in Criminal Procedure Code and reinvestigate the matter in a proper manner.

11. The Criminal Original Petitions are disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)
dt. 28/03/2016

Corrected as per the order of this
Court dated 29.07.2016 and
made in CrI.OP.NO.30227 & 30228
of 2015

Sd/-
Assistant Registrar(CS III)
dt.26.08.2016

//True Copy//

Sub Assistant Registrar

mps
To

1.The Inspector General of Police
Office of the Inspector General of Police,
Duima Street, Pondicherry

2.The Superintendent of Police (North)
Nehru Street, Pondicherry.

**3.The Inspector of Police, Grand Bazaar
Police Station Pondicherry***

4.The Inspector of Police
Muthialpet Police Station, Pondicherry.

4.The Additional Public Prosecutor(Pondicherry)
Madras High Court, Madras.

+ 1 cc to M/s. Prakash Alapadam, Advocate SR.12926

To be substituted
to the order
already despatched
on 13.4.2016 and
made herein

CrI.O.P.Nos.30227 &
30228 of 2015

CA(CO)
EU 29.09.2016