



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Original Petition (MD) No.11593 of 2016

K.Natarajan

... Petitioner

vs.

State through  
The Inspector of Police  
S.S.Colony Police Station  
Madurai City

... Respondent

**PRAYER:** This petition is filed under Section 482 Cr.P.C to direct respondent to register the petitioner's complaint as an F.I.R., on the basis of the direction given by the Addl.Mahila Court (Magistrate Level), Madurai, Madurai District, vide it's order, dated 02.06.2016 in CrI.M.P.No.1696 of 2016, within the time stipulation.

For Petitioner : Mr.Ramprakash Rajagopal

For Respondent : Mr.P.Kandasamy,G.A.(CrI.Side)

### O R D E R

Petitioner came forward under Section 482 Cr.P.C., for a direction to the respondent, namely, the Inspector of Police, S.S.Colony Police Station, Madurai City, to take further action in pursuance of the orders of the learned Judicial Magistrate, Additional Mahila Court, Madurai, passed in Cr.M.P.No.1696 of 2016, under Section 156(3) Cr.P.C.

2. According to the learned counsel for the petitioner, no action as per law in pursuance of the orders passed by the learned Judicial Magistrate, under Section 156(3) Cr.P.C., has been taken by the Inspector of Police, S.S.Colony Police Station, Madurai.

3. The learned Government Advocate (Criminal Side) submits that the matter has been enquired into and it has been closed.

4. I have anxiously considered the rival submissions and perused the materials on record.



5. Petitioner gave his daughter Sujatha in marriage to one Krishnakumar. In an unfortunate event, Sujatha has lost her life. Her father Natarajan suspected foul play in her death. He suspected his son-in-law. In the circumstances, he filed a complaint before the Magistrate.

6. The matter has been taken up in Cr.M.P.No.1696 of 2016 and on 02.06.2016 the learned Additional Magistrate, Mahila Court, Madurai, passed the following order:

*"Complainant present, on perusal of complaint and other materials it discloses cognizable offence. Hence, the Inspector of Police, S.S.Colony, to register the F.I.R., in this case within 30.06.2016."*

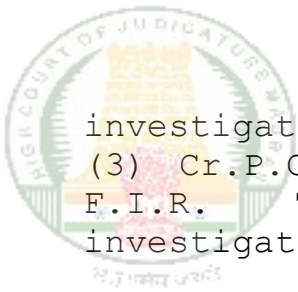
7. When a complaint containing allegations of commission of cognizable offence is presented to a Station House Officer, F.I.R., has to be registered under Section 154 Cr.P.C. When the Police Officer failed to do so, the complainant can complain to the Superintendent of Police under Section 154(3) Cr.P.C., the Superintendent of Police can direct the Subordinates Police Officer to register the case and investigate.

8. Instead of so complaining to the Superintendent of Police, the complainant can also present a complaint, under Section 200 Cr.P.C., before a Magistrate. Under Section 156(3) Cr.P.C., the Magistrate has got power to direct the concerned Police to investigate the matter, if the complaint disclose commission of a cognizable offence. Thus, under Section 156(3) Cr.P.C., the learned Magistrate cannot mechanically direct the Police to take up investigation.

9. It is pertinent to note that while passing orders under Section 156(3) Cr.P.C., the learned Magistrate has power analogues to that of the Superintendent of Police in Section 154(3) Cr.P.C. One is Police / administrative power. The other one is judicial power.

10. As per Section 2(h) Cr.P.C., 'Investigation' refers to every steps taken by a Police Officer to 'collect evidence'. It may be oral, documentary, medical and expert evidence (See Section 156 and 157 Cr.P.C.). In a cognizable case, without registering F.I.R., a Police Officer has no power to collect evidence. It means without registering F.I.R., he has no power to investigate the case. F.I.R., is a condition precedent to conduct investigation.

11. Now, as stated above, the order passed by the learned Magistrate under Section 156(3) Cr.P.C., is a direction to conduct



investigation. On receipt of the said direction under Section 156 (3) Cr.P.C., it is the duty of the Police Officer to register F.I.R. Thereafter only, he can collect evidence / conduct investigation.

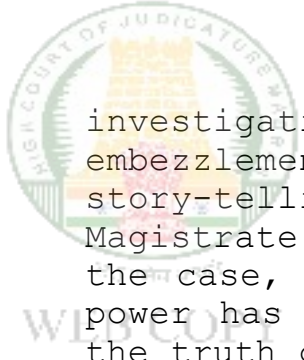
**12.** If the collected evidence disclosed commission of cognizable offence, he has to file a final report under Section 173(2) Cr.P.C., before the concerned Court. If it is a 'Mistake of Fact (M.F.)' 'Mistake of Law (M.L.)' 'Civil Case', then accordingly he can file a negative final report before the concerned Magistrate, however after giving notice to the complainant (See **Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC)]**). If the complainant is aggrieved, he can present a complaint before the learned Magistrate, which is also known as "Protest Petition".

**13.** In the instant case, admittedly, F.I.R., was not registered, in spite of the direction issued by the learned Magistrate under Section 156(3) Cr.P.C. Ofcourse, it is stated by the Police that they have enquired the matter and closed it. Now, we will disregard that enquiry, because it is not an investigation, because no F.I.R., was registered. The learned Judicial Magistrate, Additional Mahila Court, Madurai, has not directed the Inspector of Police, S.S.Colony Police Station, Madurai, to conduct enquiry, he has directed him to conduct investigation, so in this case, legally no investigation was conducted.

**14.** Section 482 Cr.P.C., deals with inherent power of the High Court. One of the facet / dimension of it is that the High Court can issue direction to implement any order passed under the Code. Now, in this case, the learned Magistrate has passed orders under Section 156(3) Cr.P.C. However, it was not implemented. So, rightly the complainant has invoked the said inherent power of this Court.

**15.** There is no provision in the Code of Criminal Procedure for filing a petition under Section 156(3) Cr.P.C. Actually, a (private) complaint has to be filed before the Magistrate. It is the discretion of the Magistrate either under Section 156(3) Cr.P.C., to direct the Police to undertake investigation or under Section 200 Cr.P.C., he himself can enquire the complaint.

**16.** Issuing directions under Section 156(3) Cr.P.C., is wide prevalent in the Magistrate Courts. If one read the provisions of Cr.P.C., at every stage of a case, the Magistrate has to be informed by the Police. Registration of F.I.R., securing of material objects (See Form-95) and medical examination of the accused and victim etc., have all to be reported to the Court without delay. It is intended to ensure transparency in



investigation and ensure fairness investigation and avoid embezzlement of truth and avoid introduction or insertion of story-telling. Once a final report is filed, the learned Magistrate will take a different role. Even then at any stage of the case, he can call for the case-diary and peruse it. Such a power has been given to the Magistrate with a view to arrive at the truth of the matter and render justice.

**17.** The Magistrate after passing an order under Section 156(3) Cr.P.C., by giving CrI.M.P.No. should not stop with that. The Magistrate should post the CrI.M.P., to a future date and see that the Final Report, whether positive or negative, is filed by the Police. If this has been done, the Inspector of Police, having not registered the F.I.R., would have to come to light. The Magistrate can also issue further direction to the concerned Police to file the final report, in case if it is not filed. The Magistrate has the power to see that his orders under Section 156 (3) Cr.P.C., are properly implemented by the Police. The idea is that the Police should be made accountable to law and Court.

**18.** In view of the foregoing, ordered as under:

- (i) The Inspector of Police, S.S.Colony Police Station, Madurai, is directed to register F.I.R., in pursuance of the directions issued by the learned Judicial Magistrate, Additional Mahila Court, Madurai, in Cr.M.P.No.1696 of 2016, under Section 156(3) Cr.P.C., investigate it and file his proper report before the said Magistrate.
- (ii) The learned Magistrate is directed to call for a report from the said Police as to the orders passed by him, under Section 156(3) Cr.P.C., giving a reasonable time to the Police.

**19.** Accordingly, this criminal original petition is disposed of.

Sd/-

Assistant Registrar (CS-I)

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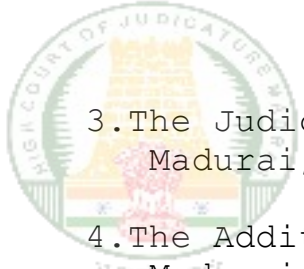
Sub Assistant Registrar

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To

1.The Principal Sessions Judge, Madurai.

<https://hcservices.ecourt.gov.in/hcservices/>  
2.The Chief Judicial Magistrate, Madurai.



3.The Judicial Magistrate, Additional Mahila Court,  
Madurai, Madurai District.

4.The Additional Public prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

5.The Assistant Commissioner of Police,  
Thilagar Thidal, Madurai.

6.The Inspector of Police, S.S.Colony Police Station,  
Madurai City.

7.The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1CC to Mr.M.Pitchi Muthu, Advocate Sr.No.37283

GJM/ARK/PV/25.7.16-5p-9c

**Cr1.O.P. (MD) .No.11593 of 2016**  
**14.07.2016**