

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON`BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

CrI.O.P.No.12382 of 2011

A.Samiyappan

... Petitioner

Vs

1.State by
Commissioner of Police,
Coimbatore.

2.Inspector of Police,
B-2 R.S.Puram,
Coimbatore.

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C, to direct the first respondent, the Commissioner of Police, Coimbatore to entrust the job of investigation to any other Inspector of Police by registering the complaint of petitioner Samiyappan dated 11.05.2011.

For Petitioner

: Mr.A.E.Chelliah
Senior Counsel for
M/s.G.Vasanthakumari Chelliah

For Respondents

: Mr. B.Ramesh Babu,
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition has been filed to direct the first respondent, the Commissioner of Police, Coimbatore to entrust the job of investigation to any other Inspector of Police by registering the complaint of petitioner Samiyappan dated 11.05.2011.

2. The petitioner had given a complaint to the Commissioner of Police dated 11.05.2011 stating that on 09.05.2011 at 4.00 p.m, certain unidentified persons along with 4 named persons took him under duress and told him that he had signed a Power of Attorney in 1996 and had compelled him to refute saying that he did not sign the Power of Attorney. Since the petitioner refused to comply with their demand, he was bundled upon in a car to R.S.Puram B-2 Police Station and that in the presence of the police, he was compelled to say that the signature was not his signature and when he asked as to why he had been troubled, he was abused and threatened by the said persons. Further, under the compulsion he was directed to write something against his wishes. He had stated it is true that he had signed as a witness in the power given to

one Ramagopal. Again that on 11.05.2011, around 9.30 a.m, he received a call from the number 9042017746 and one Elangovan had threatened him to bring certain documents and to sign certain documents and that he had given a complaint fearing his life and had requested the Commissioner to take action.

3. On 07.08.2017, this Court had directed the first respondent, Commissioner of Police to file the status report. The Commissioner had filed a status report stating that the complaint dated 11.05.2011 preferred by the petitioner was forwarded and the case in Crime No.883 of 2011 was registered by B-2, R.S Puram Police Station for offences under Section 147, 294(b), 363 and 506(i) IPC on 27.05.2011, against the accused Gnanapandithan, Elangovan, Shanmuganathan and Karuppasamy and that the case was investigated by the Sub-Inspector of Police and referred as “mistake of fact” on 18.08.2011 and the final report was filed before the Judicial Magistrate No.I, Coimbatore and the final report has been accepted by the Magistrate and the case was closed on 04.09.2013.

4. The learned Government Advocate (Crl. Side) submits that the

final report was also given File No.236 of 2013. The respondent also produced proof showing that the RCS notice was served on the petitioner/complainant. The remedy available to the petitioner is only to challenge the order of the closure of complaint by filing a protest petition on issuance of notice from the court. In this case, the procedure adopted by the court is not in conformity with the law laid down by the Apex Court in **1997 (7) SCC-614 = AIR 1997 SC 3876 (UPSC vs. Pappaiah)**. The order of the Magistrate in accepting the closure report without giving notice to the complainant is bad in law. In the Judgment referred to above, it has been held that if the Magistrate is not inclined to take cognizance of the offence and issue the process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. Therefore, needless to state that on consideration of the report made by the officer incharge of a police station under Section 173(2)(1), if the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make submissions to persuade the Magistrate to take cognizance of the offence and issue process. Whereas the

Magistrate has overlooked the power granted to him in exercise of powers under Section 173(8) and has accepted the closure report without following the procedure. The opportunity of the complainant to put forth his case has been denied. Since the Court has not followed the procedure, the complainant cannot be put to hardship due to the fault of the court. If the petitioner feels that he is aggrieved by the final report and the closure report of Judicial Magistrate No.I, Coimbatore dated 04.09.2013 in Cr.No.883 of 2011, he is at liberty to approach the learned Magistrate Court and file a protest petition as contemplated under law and seek his remedy before the Magistrate Court.

5. With this observation, this petition stands closed.

11.09.2017

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Index : Yes

Internet: Yes

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A.D.JAGADISH CHANDIRA, J

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To

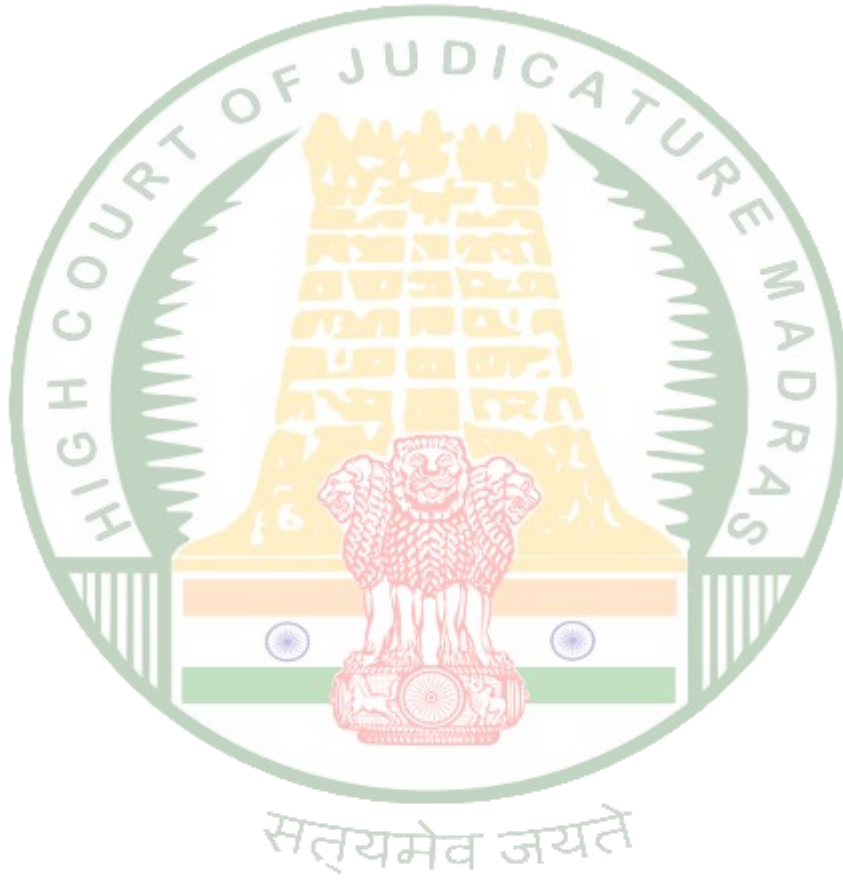
- 1.The Public Prosecutor, High Court, Chennai.
- 2.The Commissioner of Police,
Coimbatore.
- 3.The Inspector of Police,
B-2 R.S.Puram,
Coimbatore.



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