

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.7533 & 7534 of 2017

and

Crl.M.P.No.5455 of 2017

1. D.Devaraj

2. Jeyaprakash

... Petitioners in both
Crl.O.Ps.

Vs.

1. The Superintendent of Police,
Villupuram District, Villupuram.

2. The Deputy Superintendent of Police,
District Crime Branch,
Villupuram District, Villupuram.

3. The Inspector of Police,
District Crime Branch,
Villupuram District.

... Respondents in both
Crl.O.Ps.

PRAYER in Crl.O.P.7533 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in DIS No.100 of 2017 dated 07.03.2017 by the learned Special Judicial Magistrate (FAC), Special Court for Land Grabbing Cases, Villupuram and further consequential orders.

PRAYER in Crl.O.P.7534 of 2017: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the respondent to register the case on the basis of the complaint of the peittioners dated 16.06.2016 as per order passed in D.Dis.No.81 of 2017 dated 22.02.2017 passed by the learned Special Judicial Magistrate(FAC), Special Court for Land Grabbing Cases, Villupuram to investigate further.

For Petitioners

in both Crl.O.Ps. : Mr.P.G.Thiyagu

For Respondents

in both Crl.O.Ps. : Mr.C.Iyyapparaj
Additional Public Prosecutor.

ORDER

There are several discrepancies in the way in which,
the petitioner's request under Section 156(3) of Cr.P.C. was
handled.

2. The learned Special Judicial Magistrate (FAC), Villupuram by an Official Memorandum dated 22.02.2017 had directed the third respondent police to register F.I.R. on or before 10.03.2017 without fail. Though it is termed as Official Memorandum, the same has been passed on the petition under Section 156(3) of Cr.P.C. The words of the Official Memorandum would amount to be a judicial order only. Subsequently, the then Inspector of Police namely V.Venkatesan had conducted an enquiry and closed it as being civil in nature and had advised the parties to approach the Court, in spite of the fact that there was a specific direction by the learned Special Judicial Magistrate (FAC), Villupuram to the third respondent police to register the FIR. This is the first discrepancy.

3. Another infirmity is that pursuant to the final report of the third respondent police, the learned Special Judicial Magistrate (FAC), Villupuram by an Official Memorandum dated 07.03.2017 had observed that "no F.I.R is required to be registered for this case", which is the reverse of the earlier order and opposed to Section 362 of Cr.P.C.

4. It is with a bit of dismay, I am constrained to observe that the entire way in which the petitioner's petition under Section 156(3) was handled, suffers from these infirmities. Further, it would not be appropriate to initiate the investigation process in motion in the background of the orders claiming them to be Official Memorandums, which are in violation of Section 362 of Cr.P.C.

5. Hence, I am constrained to set aside the Official Memorandums dated 22.02.2017 and 07.03.2017 passed by the learned Special Judicial Magistrate (FAC), Special Court for Land Grabbing Cases, Villupuram, on the petitioner's complaint made under Section 156(3) of Cr.P.C.

6. It is brought to my notice that the earlier Investigating Officer is changed and a new Investigating Officer has taken charge in his place. In these circumstances, the petitioners are granted liberty to make a fresh complaint to the third respondent police who is in-charge at present and on receipt of such complaint the third respondent shall adhere to the following directions.

1) If the information received by the third respondent discloses commission of a cognizable offence, then, the same shall be forthwith registered.

2) If an information received does not disclose a cognizable offence, the third respondent shall conduct a preliminary inquiry to ascertain whether cognizable offence is disclosed therein or not and such inquiry shall be completed within a period of fifteen days from the date of information.

3) If the inquiry discloses the commission of

a cognizable offence, the FIR must be registered, if not already registered or closed.

4) If the preliminary inquiry ends in closing the complaint, the closure report must be recorded along with the reasonings and a copy of the same shall be furnished to the complainant within one week.

5) All information relating to cognizable offences whether resulting in registration of FIR or leading an inquiry must be reflected in the general diary/station diary/daily diary of the third respondent's police station.

7. With the above observations and direction, both the Criminal Original Petitions stand allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

rts

To

1. The Superintendent of Police,
Villupuram District, Villupuram.
2. The Deputy Superintendent of Police,
District Crime Branch,
Villupuram District, Villupuram.
3. The Inspector of Police,
District Crime Branch,
Villupuram District.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.G.Thiyagu, Advocate SR.No.87839

CrI.O.P.No.7533 & 7534 of 2017
and CrI.M.P.No.5455 of 2017

SV (CO)
GN (08/12/2017)