



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Crl.O.P.(MD)No.2529 of 2017

and Crl.M.P.(MD) No.1952 of 2017

Sivaramakumar

: Petitioner/Petitioner

Vs.

1.M/s.Sarvalakshmi Papers Ltd.,
Rep. by its Managing Director Y.Sivaramprasath,
Door No.31, (Old Door No.10Z),
Bharathi Park,
7th Cross Street, Saibaba Colony,
Coimbatore - 11.

2.Y.Sivaram Prasath

3.D.Muthusamy

4.V.S.Pattabiraman

5.S.Seenivasa Ragavan

: Respondents/Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to order passed by Learned Judicial Magistrate No.1, Madurai in unnumbered Cr.M.P.No. of 2017 and set aside the same.

For Petitioner

: Mr.S.Saravana Kumar

O R D E R

It is seen that this petitioner filed a private complaint against the respondent and sought for a direction to the Judicial Magistrate No.1, Madurai for sending the same to police under Section 156(3) Cr.P.C. However, the learned Judicial Magistrate considered the private complaint and found that it discloses the commission of cognizable offence and proceed to take cognizance of the offence instead of sending the same to Police under 156(3) Cr.P.C. Challenging the said order, the complainant is before this Court.

2.Heard Mr.S.Saravana Kumar, learned counsel for the petitioner.

3.The learned counsel appearing for the petitioner submitted that the learned Magistrate having found the complaint discloses commission of offence ought to have sent the same to Police under Section 156(3) Cr.P.C. for investigation. Instead of sending the same to police for investigation, the Magistrate proceeded to take cognizance of the offence disclosed thereunder and called upon the petitioner for recording his sworn statement.

4.This Court gave its anxious consideration to the submission made by the learned counsel appearing for the petitioner.

5. Recently, the Hon'ble Apex Court in Mrs. Priyanka Srivastava v. State of U.P. [2015 (4) Scale 120] has stated that the order under 156(3) Cr.P.C. ought not to be passed by the Magistrate mechanically and directions have been issued to all the Magistrate in the Country to follow certain procedure.

6. When a complaint is filed before the Magistrate he has three options:

(a) to send the same under Section 156(3) Cr.P.C. for police investigation.

(b) to dismiss the complaint stating that it does not disclose commission of any offence and

(c) proceed to take cognizance of the offence disclosed in the said complaint.

In this case, the Magistrate has resorted to the third option by calling upon the petitioner to appear before him on 30.01.2017 for recording his sworn statement. In the considered opinion of this Court that cannot be said to be illegal.

7. The learned counsel appearing for the petitioner submitted that certain documents have to be recovered. Therefore, the police investigation is necessary.

8. Even after taking cognizance of the offence, the Magistrate has got powers under Section 202 Cr.P.C. to direct investigation, if he thinks fit for the purpose and decide whether or not there is sufficient ground for proceeding. Therefore, this Court does not find any infirmity in the order dated 23.01.2017.

9. With the above observations, this petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

10. The learned counsel for the petitioner submitted that the petitioner is ready to cooperate with the Magistrate for the conduct of the case. Recording his submission, the Magistrate is directed to proceed further with the case in accordance with law expeditiously.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.1,
Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CrI.O.P. (MD) No.2529 of 2017
and CrI.M.P. (MD) No.1952 of 2017
09.03.2017