



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

WEB COPY

Cr1.O.P. (MD) No. 4421 of 2017

and

Cr1.M.P. (MD) No. 3161 of 2017

Kartheesan

... Petitioner

Vs.

1. Karlosh,
The Special Sub-Inspector of Police,
Palavoor Police Station,
Tirunelveli District.

2. The Deputy Superintendent of Police,
Valliyoor Sub-Division,
Tirunelveli District.

3. The Inspector of Police,
Palavoor Police Station,
Tirunelveli District.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the order passed by the learned Judicial Magistrate, Valliyoor, Tirunelveli District in Cr.M.P.No.1719 of 2017, dated 22.02.2017 and set aside the same.

For Petitioner	:	Mr.R.Anand
For R1	:	Mr.S.Palani Velayutham
For R2 & 3	:	Mr.K.Anbarasan
		Government Advocate (Cr1. Side)

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the order passed by the learned Judicial Magistrate, Valliyoor, Tirunelveli District in Cr.M.P.No.1719 of 2017, dated 22.02.2017 and set aside the same.

2. The case of the petitioner is that on the complaint given by one Chandrakumar, a petition enquiry was conducted in C.S.R.No.24 of 2016 against this petitioner and this petitioner was called to the Palavoor Police Station, on 16.01.2017 by Karlosh, Special Sub-Inspector of Police. It is the case of the petitioner that during the enquiry, the said Karlosh had obtained signatures of the petitioner in blank papers and was threatening the petitioner. Therefore, the petitioner issued a legal notice to



Karlosh on 19.01.2017. Aggrieved by that, it is alleged by the petitioner that the said Karlosh came to the house of the petitioner on 23.01.2017 and brutally attacked him. The petitioner got admitted himself to Asaripallam Government Hospital was in-patient from 23.01.2017 to 25.01.2017. Since the police did not take action on the complaint given by the petitioner in respect of the alleged incident, that is said to have taken place on 23.01.2017, the petitioner filed a petition under Section 156(3) of Cr.P.C., in CrI.M.P.No.1719 of 2017 before the learned Judicial Magistrate, Valliyoor. The learned Judicial Magistrate, Valliyoor by a complex order dated 22.02.2017, has held that the petitioner has made out a case for order under Section 156(3) of Cr.P.C, but has simultaneously held that the Deputy Superintendent of Police should conduct an honest investigation about the alleged involvement of Karlosh for the incident and submit a report, based on which, the same will be treated as a private complaint. Challenging the second portion of the order, the petitioner is before this Court.

3. On coming to know about this petition, Mr.S.Palani Velayutham, learned counsel entered appearance for Karlosh and requested that the copies of the petition and typed set of papers to be furnished to him for the purpose of effective representation.

4. Mr.K.Anbarasan, learned Government Advocate (CrI.side) has submitted that as per the directions of the learned Judicial Magistrate, the Deputy Superintendent of Police has conducted enquiry and submitted a report to the Judicial Magistrate, on 05.04.2017. The learned Government Advocate (CrI.Side) brought to the notice of this Court that on an earlier occasion, the petitioner attempted to commit suicide in the Court of the Judicial Magistrate, Valliyoor by inflicting knife injury on himself, in connection with that a case in Crime No.248 of 2006 was registered against him and he is facing trial in C.C.No.22 of 2007 before the same Magistrate.

5. Mr.R.Anand, learned counsel for the petitioner submitted that when this Court had granted stay of all further proceedings on 13.04.2017, the Deputy Superintendent of Police ought not to have proceeded with the enquiry. He further contended that the police have antedated the report to 05.04.2017, in order to circumvent the stay order dated 13.04.2017. Be that as it may, the fact remains that the Deputy Superintendent of Police has conducted the enquiry and collected some materials and has submitted the same to the learned Judicial Magistrate, Valliyoor. The learned Judicial Magistrate can consider the said report afresh after hearing the petitioner and pass fresh order, in the



6. This Court gave its anxious considerations to the rival submissions.

7. Though the order dated 22.02.2017 passed by the learned Judicial Magistrate, Valliyoor is indeed very abstruse inasmuch as, in one breath, he has stated that a cognizable offence stands disclosed on the complaint of the petitioner and in the same breath, he has stated that since the Karlosh is a police man, the Deputy Superintendent of Police should conduct an honest enquiry and send a report to the Court for the Court to take a decision and thereafter, the Court would take a decision whether to treat the report as a private complaint. When a petition under Section 156(3) Cr.P.C., is submitted to a Judicial Magistrate, he has only two options, one is to summarily dismiss the same or send it to the police under Section 156(3) Cr.P.C., for registration of an F.I.R. He cannot issue a direction to the Deputy Superintendent of Police to conduct an honest enquiry and submit a report and thereafter, treat the said report as a private complaint.

8. Under ordinary circumstances, this Court would have set aside the order passed by the learned Judicial Magistrate, Valliyoor, dated 22.02.2017 and remanded the same. However, rightly or wrongly, the Deputy Superintendent of Police has conducted an enquiry and has placed certain materials before the learned Judicial Magistrate, Valliyoor. No regular F.I.R. has been registered. Under such circumstances, this Court directs the learned Judicial Magistrate, Valliyoor to consider the report of the Deputy Superintendent of Police and hear the petitioner and pass fresh orders as to whether an F.I.R. should be registered or not by the local police. A copy of the report of the Deputy Superintendent of Police shall be furnished by the Judicial Magistrate, Valliyoor to the petitioner.

9. With the above directions, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1.Karlosh,
The Special Sub-Inspector of Police,
Palavoor Police Station,
Thiruvananthapuram District.



2. The Deputy Superintendent of Police,
Valliyoor Sub-Division,
Tirunelveli District.

3. The Inspector of Police,
Palavoor Police Station,
Tirunelveli District.

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

5. The Learned Judicial Magistrate,
Valliyoor, Tirunelveli District.

+1cc to Mr.S.Palani Velayutham , Advocate Sr.No.59706

+1cc to Mr.R.Anand , Advocate Sr.No.59680

MSA/AKV

VB/SKN/SAR1/30.06.2017/4P/8C

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