



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.4467 of 2017

A.Subash Chandran

... Petitioner

-vs-

1.Sivanpillai

2.Shanmuga Kumari

3.Balasubramanian

4.The Sub Inspector of Police,
Suchindram Police Station,
Kanyakumari District

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in pursuant to the order made in C.M.P.No.3804 of 2016 on the file of the Judicial Magistrate, NO.III, Nagercoil, dated 22.08.2016 and set aside the same and consequently direct the Sub Inspector of Police, Suchindram Police Station, Kanyakumari District to register the case on the basis of complaint given by the petitioner dated 06.07.2016 and allow the criminal original petition.

For Petitioner : Mr.C.Sankar Prakash

For Respondents : Mr.K.Anbarasan

Government Advocate (Crl. side)

ORDER

It is seen that this petitioner has filed a private complaint in CMP No.3804 of 2016 before the Judicial Magistrate, No.III, Nagercoil, against the respondents herein and had prayed for sending the same to the police under Section 156(3) of the Code of Criminal Procedure. The learned Judicial Magistrate had passed the following order on 22.08.2016, in CMP No.3804 of 2016, which is as follows:

"This petition filed by the petitioner u/s. 156(3) Cr.P.C.

Petitioner present. Heard the petitioner. Records perused.

On considering the nature of the case, this Court of the view that this complaint has to be treated as private complaint. Accordingly, for recording the statement of complainant and witnesses if any, with the list of witnesses.



Call on 16.09.2016.

Order written by me in the notes paper, typed by the typist, corrected and pronounced by me in open Court on 22nd day of August 2016."

Challenging the order, the petitioner is before this Court.

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2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the 4th respondent.

3. The learned counsel for the petitioner submitted that the Magistrate ought to have sent the petition under Section 156 (3) Cr.P.C. to the police for investigation and instead, the Magistrate cannot proceed to record the sworn statement of the complainant and the witnesses.

4. In the considered opinion of this Court, there is a fallacy in the submissions of the learned counsel for the petitioner.

5. When a private complaint is presented to the Magistrate, he has three options:

(i) not to entertain the private complaint on file, if it does not disclose the commission of any offence ;

(ii) To send the same under Section 156(3) Cr.P.C. bearing in mind the law laid down by the Hon'ble Supreme Court in **Mrs. Priyanka Srivatsav v. State of U.P.** reported in **2015(4) Scale 120**.

(iii) To apply his mind on the private complaint and call upon the complainant to examine himself on oath, so that he can treat it as a private complaint.

6. In this case, the Magistrate has adopted the third option, about which, the petitioner can have no grievance. In a given case, a limited police enquiry can also be ordered under Section 202 of the Code of Criminal Procedure and if the complainant makes out a case by adducing evidences before the Magistrate. In every case, it is not necessary for the Magistrate to order police investigation under Section 156(3) of the Code.

7. In the result, this Court does not find any infirmity in the order passed by the Magistrate warranting interference of this Court. Accordingly, this petition is closed with liberty to the petitioner to work out his remedy in the manner known to law.

Sd /-

ASSISTANT REGISTRAR(AS)

/TRUE COPY/

SUB ASSISTANT REGISTRAR



To:

1.The Judicial Magistrate, NO.III,
Nagercoil

2.The Sub Inspector of Police,
Suchindram Police Station,
Kanyakumari District

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

+1 CC TO M/S.C.SANKAR PRAKASH,ADVOCATE, SR NO.52282

RR

MAS/RR/SAR3:02.05.2017:3P-5C

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