

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

Crl.O.P.No.1 of 2018

N. Naresh

...Petitioner

Vs.

1) The Superintendent of Police,
Kanchipuram,
Kanchipuram District.

2) The Deputy Superintendent of Police,
Sriperumbudur,
Kanchipuram District.

3) The Inspector of Police,
Sriperumbudur Police Station,
Kanchipuram District.

...Respondents

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, praying to direct the 2nd & 3rd respondents not to harass the petitioner based on the complaint given by Y.Masthan.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents: Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

The prayer sought for in this petition is for a direction, directing the second and third respondents not to harass the petitioner based on the complaint given by Y.Masthan, other than due process of law.

2. Heard Mr.K.G.Senthil Kumar, learned counsel appearing for the petitioner and Mr.R.Ravichandran, learned Government Advocate (Crl.Side) appearing for the respondents Police.

3. On hearing both sides, it seems that there was a dispute between the petitioner and one Masthan about the landed property. In this regard, the claim of the petitioner is that, he had already given a complaint to the respondents Police and

under Section 482 of Cr.P.C., direction was also obtained from this Court dated 09.08.2017 in Crl.O.P.No.15310 of 2017, to investigate the said complaint. After investigation of the same, it seems that the respondents Police have filed report as a mistake of fact.

4. However, the said Masthan also approached this Court by filing Crl.O.P.No.15868 of 2017 seeking direction from this Court to investigate his complaint dated 19.07.2017 given to the respondents Police.

5. This Court by an order dated 17.09.2017 gave directions to the respondents Police to inquire the matter in accordance with law.

6. It is submitted by the learned Government Advocate appearing for the respondents that, in pursuance to the directions issued by this Court dated 17.09.2017, the respondents Police received yet another complaint dated 19.11.2017 by post from the said Masthan and the same was taken up for investigation based on which a First Information Report (F.I.R.,) has been registered against the petitioner for the alleged offences under Sections 147, 148, 323 and 506(2) IPC and the investigation is still pending.

7. In this regard, it is the further grievance of the petitioner that if at all, the said Masthan had given any complaint, based on which the investigation has to be undertaken by the respondents Police, they can do so in order, by not harassing the petitioner. The said Masthan seems to have given yet another complaint dated 19.11.2017 and based on that complaint, the petitioner claimed through his counsel that, the respondents Police, called the petitioner over phone to appear before the respondents Police and thereby putting the petitioner in harassment, is the grievance of the petitioner in the aforesaid prayer.

8. In this regard, the learned Government Advocate appearing for the respondents would submit that the first complaint from the respondents was received on 19.07.2017. Subsequently, yet another complaint has been given by the said Masthan on 19.11.2017 and in respect of that complaint, preliminary inquiry has to be necessarily conducted by the respondents Police and only for the said purpose, the respondents Police summoned the petitioner for conducting preliminary inquiry. The said process of summoning the petitioner for preliminary inquiry on the basis of the complaint dated 19.11.2017, has been construed as harassment by the petitioner and therefore, he has approached this Court with this petition.

9. However, on the other hand, the learned counsel appearing for the petitioner would vehemently contend that the second complaint said to have been given by Masthan, is only for the purpose of dispossessing or evicting the petitioner from the disputed property forcibly with the help of the respondents Police and therefore, the above said complaint, according to the petitioner is a false complaint and based on which, the respondents Police started investigating the petition by way of harassment to the petitioner and through which they want to forcibly evict the petitioner from the property.

10. In this regard, the learned counsel appearing for the petitioner would also submit that, with regard to the said disputed property, however they already approached the Civil Court, where the petitioner has got an interim order from the Civil Court that, not to evict the petitioner. Only in this context, the petitioner is before this Court expressing his concern about the way in which the complaint of said Masthan is inquired or investigated.

11. I have heard the said submission made by both sides. Since it seems to be a case in counter, as the summon to appear before the respondents Police issued by the second respondent is pursuant to a direction given by this Court on the petition filed by the petitioner to complete the investigation, whereby the respondents Police has referred it as mistake of fact.

12. Subsequently, the said Masthan seems to have given a complaint against the petitioner and in this regard also a direction was issued by this Court dated 17.09.2017. Pursuant to which an Interlocutory Application was filed before the Civil Court and an ad-interim injunction was granted in favour of the petitioner.

13. The respondents Police received yet another complaint from the said Masthan dated 19.11.2017. In this regard, it is the stand of the respondents Police that once the complaint is received it is the duty of the respondents Police to conduct preliminary inquiry and for the said purpose, the person against whom the said complaint has been made is necessarily to appear before the respondents Police and it is not to harass the petitioner.

14. In this regard, the only grievance of the petitioner is that if at all any complaint is filed against the petitioner for which the petitioner's presence is required for preliminary inquiry, the respondents Police can very well summon the petitioner by issuance of proper summon as contemplated under the Code of Criminal Procedure and not to call the petitioner over phone or by any other mode other than issuing summons thereby fixing the time and date to appear before the

respondents Police.

15. As pointed out by the learned counsel for the petitioner, that once a complaint is received by the respondents Police, in order to have a preliminary inquiry or investigation, they can very well summon the person on whom such complaint is given and also upon other persons who have been alleged to have committed the offence. In this regard, the petitioner can be issued with summons but not to call such person over phone as not contemplated under the Code. In view of the above circumstances, the following orders are passed in the present criminal Original Petition:-

1. That the respondents Police is directed to proceed with the preliminary inquiry or investigation with regard to the complaint dated 19.11.2017 given by one Masthan against the petitioner.
2. In the process of such preliminary investigation or inquiry, the respondents Police can issue summons to the petitioner for completing the investigation of the case by fixing the date and time of inquiry.
3. Once such summon is received by the petitioner, the petitioner shall respond to the same and appear before the respondents Police with proper information available with him and disclose the same before the investigating agency enabling them to proceed further in the investigation .

16. Though the respondents Police would get every power to arrest the person against whom the complaint has been made, where the alleged offences if made out in the case, since it seems to be a case in counter, where the petitioner had given a petition to investigate and the other person in turn had now given a petition to investigate against the petitioner, as claimed by the petitioner, since it is a dispute over the property for which the petitioner has already approached the Civil Court and obtained an interim order, the respondents Police is directed not to take coercive steps during the investigation of the case and not to harass the petitioner.

With these observations/directions, the present Criminal Original Petition stands disposed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

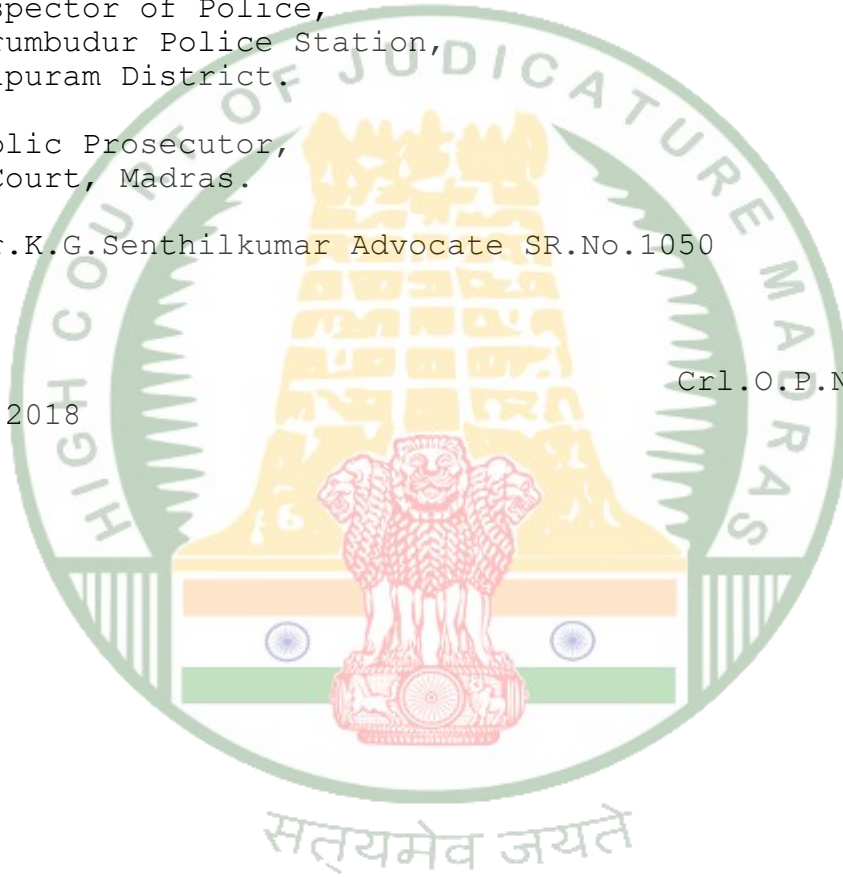
To:-

- 1) The Superintendent of Police,
Kanchipuram,
Kanchipuram District.
- 2) The Deputy Superintendent of Police,
Sriperumbudur,
Kanchipuram District.
- 3) The Inspector of Police,
Sriperumbudur Police Station,
Kanchipuram District.
- 4) The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.G.Senthilkumar Advocate SR.No.1050

SDR 12.03.2018

Order in
Crl.O.P.No.1 of 2018



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