

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.4089 of 2017

P.K. Ilavarasan

... Petitioner

Vs

The State

Rep. by the Inspector of Police,
E1-Ponneri Police Station,
Ponneri - 601 204.
Thiruvallur District.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate-I, Ponneri, Thiruvallur District in Crl.M.P.No.6245 of 2017 dated 09.01.2017 and direct the Inspector of Police, E-1 Ponneri Police Station to register the F.I.R. on the basis of the petitioner's complaint dated 21.11.2016, under Section 482 Cr.P.C. and to investigate the same, and file a final report before this Hon'ble Court, in a stipulated period.

For Petitioner : Mr.P.Bakiyaraj
For Respondent : Mrs.M.Prabhavathi,
Addl. Public Prosecutor

O R D E R

This petition has been filed to set aside the order passed by the learned Judicial Magistrate-I, Ponneri, Thiruvallur District in Crl.M.P.No.6245 of 2017 dated 09.01.2017 and direct the Inspector of Police, E-1 Ponneri Police Station to register the F.I.R. on the basis of the petitioner's complaint dated 21.11.2016, under Section 482 Cr.P.C. and to investigate the same, and file a final report before this Court.

2. It is the case of the petitioner that the property in question originally belonged to one P.S.Amirthalingam and P.S.Kumar and that the petitioner is the son of P.S.Kumar; after the death of P.S.Amirthalingam, the petitioner purchased the property from his widow S.Lakshmi, by a sale deed document No.2773 of 2011 dated 11.03.2011; one Adithan, Pandian, Thamayanthi, Arun and Nagarajan, claiming themselves as the

legal heirs of one P.S.Jayaraman, executed a Power of Attorney in respect of the same property in favour of one Sufiur Rehman; in the Power of Attorney they have stated that they have obtained the Legal Heirship Certificate to the effect that they are the legal heirs of P.S.Jayaraman; when the petitioner applied under the Right to Information Act, he was informed that the Legal Heirship Certificate was not issued by the Revenue authorities. Hence, the petitioner gave a police complaint and when no action was taken, the petitioner filed a petition in CrI.M.P.No.6245 of 2017 under Section 156(3) Cr.P.C. before the learned Judicial Magistrate No.I, Ponneri. The learned Judicial Magistrate, Ponneri, by impugned order dated 01.09.2017 in CrI.M.P.No.6245 of 2017, has, instead of sending the petition to the police for investigation, proceeded further under Section 200 Cr.P.C., challenging which, the petitioner is before this Court.

3. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor, appearing for the respondent.

4. The learned counsel for the petitioner placed strong reliance on the judgments of the Supreme Court in (i) Devarapalli Lakshminarayana Reddy & others v. V.Narayana Reddy & others [(1976) 3 SCC 252], (ii) Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage & others [(2016) 6 SCC 277] (iii) Hemant Yashwant Dhage v. State of Maharashtra & others [(2016) 6 SCC 273] and submitted that, when the Magistrate has given a finding that there are prima facie materials, he ought to have sent the petition under Section 156(3) Cr.P.C. to the police for registration of F.I.R.

5. When a complaint is given to a Magistrate, it is not necessary that he should have to send the same to the police for registration of F.I.R. under Section 156(3) Cr.P.C. This aspect has been considered by the Supreme Court recently in Priyanka Srivastava and another Vs State of Uttar Pradesh and Others [(2015) 6 SCC 287]. It is also open to the Magistrate to proceed further under Section 200 Cr.P.C. and after recording the evidence adduced by the complainant, he could order investigation, under Section 202 Cr.P.C. post cognizance or dismiss the complaint under Section 203 Cr.P.C. '73.

6. Therefore, the power of the Magistrate to order investigation post cognizance under Section 202 Cr.P.C. is preserved. Under such circumstances, the learned Magistrate cannot be directed to send the complaint to the police for registration of an F.I.R.

7. Hence, this Court does not find any infirmity in the order passed by the Court below warranting interference. The petitioner is directed to adduce his evidence, as directed by the learned Magistrate, under Section 200 Cr.P.C. and the learned Magistrate shall proceed in the manner known to law.

With the above direction, this petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

To Sub Assistant Registrar

1. The Inspector of Police,
El-Ponneri Police Station,
Ponneri - 601 204.
Thiruvallur District.

2. The Judicial Magistrate No.I,
Ponneri.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Bakiyaraj, Advocate, S.R.No.55513

CRL.O.P.No.4089 of 2017

PA(CO)
GSP(04/09/2018)

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