



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2018

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMARCrl.O.P.(MD) Nos.6493 of 2018 & 17119 of 2017Crl.O.P.(MD) No.6493 of 2018:

M.Balamurugan

.. Petitioner

vs.

1.The Superintendent of Police,
Trichy.2.The Inspector of Police,
District Crime Branch,
Trichy District.

.. Respondents

Petition is filed under Section 482 of Code of Criminal Procedure to direct the second respondent to register the complaint given by the petitioner dated 14.08.2015 and take necessary action within the time frame to be stipulated by this Court.

For Petitioner

For Respondents

: Mr.A.Arjunarajan

: Mr.K.Chellapandian

Additional Advocate General

assisted by Mr.K.K.Ramakrishnan

Additional Public Prosecutor

Mr.M.Ajmalkhan

Senior Counsel,

(assisted the Court)

Crl.O.P.(MD) No.17119 of 2017:

Sakunthala

.. Petitioner

vs.

1.The Superintendent of Police,
Sivagangai,
Sivagangai District.2.The Deputy Superintendent of Police,
Ram Nagar, Devakottai,
Sivagangai District.3.The Inspector of Police,
All Women Police Station,
Devakottai,
Sivagangai District.

.. Respondents



Petition is filed under Section 482 of the Code of Criminal Procedure to direct the third respondent to register a case/FIR on the complaint given by the petitioner dated 23.11.2017 and investigate into the case.

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For Petitioner : Mr.S.Muthukumar
For Respondents : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.K.K.Ramakrishnan
Additional Public Prosecutor
Mr.M.Ajmalkhan
Senior Counsel,
(assisted the Court)

COMMON ORDER

According to the petitioners, the respondent police have not registered their complaints, even after a lapse of several months/years. Therefore, they have filed the present petitions before this Court.

2.Since the issue involved in the above petitions is one and the same, these petitions are disposed of by this common order. For sake of brevity, facts are being taken from Crl.O.P.(MD) No.6493 of 2018, which read as follows:

The writ petitioner viz., Mr.M.Balamurugan, the Inspector of Posts, Thuraiyur West Sub Division, filed the said petition seeking direction to the second respondent viz., the Inspector of Police, District Crime Branch, Trichy District to register the complaint given by him on 14.08.2015 and to take necessary action.

(ii) According to the petitioner, one V.Perumal, Former Branch Post Master, Perumalpalayam Branch, while working as a Branch Post Master at Perumalpalayam Post Office, has committed fraud in savings bank accounts during the period from 22.12.2012 to November, 2013 and caused monetary loss to the tune of Rs.54,350/- to the Department. On 15.04.2013, the said Perumal has collected Rs.20,000/- from one Ravi through his brother Nalluchamy to deposit the same in Account No.1768970. But the said amount was not credited in the said account. Likewise, the said Perumal has also not credited a sum of Rs.24,000/- in account No.301356, received from one Thiruvengadam through his wife Jeyanthi. In such circumstances, the said Perumal has caused loss to the Department. He has also cheated various depositors by not crediting various amounts collected from them. Having noticed the aforesaid irregularities and misappropriation of the funds of the post office, the then Inspector of Post Office, namely Gurusankar, Thuraiyur West Sub Division has given a complaint before the second respondent on 14.08.2015, explaining all the facts and requested to take immediate action. The aforesaid complaint was forwarded to the Inspector of District Crime Branch, Trichy for taking necessary action. No action has been taken. Hence, the officials working in the said post office,

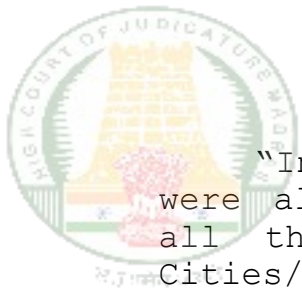


personally approached the respondent police on 17.08.2015, 24.08.2015, 15.09.2015, 29.09.2015 and 01.10.2015 respectively and requested to take action and register a case against the proposed accused. No enquiry or action has been taken by the second respondent to register the petitioner's complaint. Therefore, the petitioner has lodged a reminder complaint to the second respondent. Even thereafter, no fruitful result has come out. Hence, the petitioner has left with no other option, except to file the present petition under Section 482 Cr.P.C.,

3.The learned counsel appearing for the petitioners submitted, by following the dictum laid down by the Hon'ble Supreme Court in Lalita Kumari V. Government of Uttar Pradesh and others [Lalita Kumari-V (unreported order dated 05.03.2014), the Station House Officer should enquire into the complaint and if any cognizable offence is made out, he/she should register the same within a period of 15 days. The aforesaid dictum has been elaborately discussed by this Court in the decision reported in 2016 (5) CTC 577 [Sugesan Transport Pvt. Ltd., rep. by the Director Rejendra Sheth Vs. The Assistant Commissioner of Police, J-2 Adyar Police Station, Adyar, Chennai - 600 020], wherein, this Court has also specifically given directions to the Station House Officers to scrupulously follow the principles laid down in the Lalita Kumari's case. Hence, the petitioners seek direction to the respondent police to register a case based on their complaints, following the principles laid down in the aforesaid decisions.

4.Earlier, when the matters came up for hearing on 05.06.2018, this Court posed a question to the learned Additional Advocate General appearing for the respondents as to why the dictum laid down by the Hon'ble Supreme Court in Lalita Kumari case, this Court in Sugesan Transport Pvt. Ltd., and the subsequent Circulars dated 27.11.2013 and 07.07.2016 issued by the Director General of Police, Tamil Nadu, Chennai have not been scrupulously followed by the Station House Officers, for which, the learned Additional Advocate General sought time to get instructions. The learned Additional Advocate General also submitted that in so far as the above Criminal Original Petitions, the concerned respondent police have already registered a case on the petitioners' complaint. However, in order to pass appropriate orders for the non compliance of the decision of the Hon'ble Supreme Court in Lalita Kumari case, these cases are posted for further hearing.

5.Today, the learned Additional Advocate General appearing for the respondents, on instructions, submitted that the Director General of Police has issued appropriate instructions to all the Station House Officers concerned to strictly comply with the decision of the Hon'ble Apex Court (Lalita Kumari case) as well as the orders passed by this Court. To that effect, the learned Additional Advocate General has submitted a Circular dated 23.06.2018 in RC.No.226313/Crime.4(3)/2013, wherein at paragraphs - 1 to 6 read as follows:



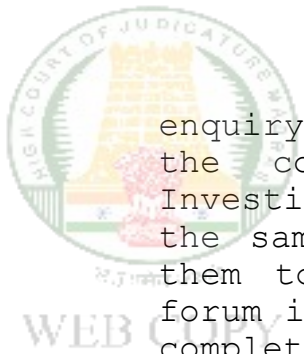
"In the reference fourth cited, all Unit officers were already directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts to the effect that the directions of the Hon'ble Supreme Court in "Lalita Kumari Vs. Government of Uttar Pradesh and others case (W.P (Crl.) No.68/2008, dated 12.11.2013) should be followed scrupulously without any deviation.

2)The Hon'ble Madurai Bench of Madras High Court in its order dated 16.03.2015 in Crl.O.P(MD)No.4326/2015 batch cases has, among other things, directed that the police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR, if information received by him discloses a cognizable offence and also recommended to form monitoring committee and action against erring personnel.

3)The Monitoring Committee has been constituted in Cities and Districts headed by the Additional Deputy Commissioner (Head Quarters) in Cities and the Additional Superintendant of Police (Head Quarters) in Districts to be assisted by the Assistant Commissioner of Police (CCRB) in Cities and the Deputy Superintendant of Police (DCRB) in District.

4)The Monitoring Committee will review all the cases once in two months with regard to whether the Station House Officers in their jurisdiction have followed the guidelines/directions issued by the Hon'ble Supreme Court in "Lalitha Kumari Vs. State of UP" case in respect of registering FIR in letter and spirit and submit report to the unit officer concerned for taking necessary action.

5)In the reference fifth cited, the Additional Advocate General-III of Madurai Bench of Madras High Court informed that, the Hon'ble Mr.Justice D.Krishnakumar who is dealing with the portfolio of direction petitions under Section 482 Cr.P.C. said that "inspite of categorical pronouncement made by the Hon'ble Supreme Court of India in Lalithakumar Vs. State of UP" as reported in 2014(1) SCC 1, the police officials are not following the dictum", hence, the Hon'ble court directed the Director General of Police to issue circular instructions to all police officials to strictly follow the mandate of the said case. The Hon'ble Court also expressed its concern that the mandate was not strictly followed. The Hon'ble Supreme Court has laid down law that the police officer investigating a cognizable offence has an option, discretion or latitude in conducting a preliminary enquiry into the complaints received by them, but they have no option other than to register a FIR, if the complaint or the subsequent



enquiry disclosing prima-facie cognizable offence and if the contrary is established, it is open to the Investigation Officer to close the enquiry, but a copy of the same should be served on the complainant to enable them to pursue the same before the competent criminal forum in the manner known to law. But the enquiry must be completed within 14 days.

6.All the Commissioners of Police in Cities and all Superintendant of Police in Districts are, therefore directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts that the directions of the Hon'ble Supreme Court of India should be followed in letter and spirit without any deviation."

6.The learned Additional Advocate General further submitted that following the above said Circular dated 23.06.2018, all the Station House Officers are strictly instructed to follow the directions issued by the Hon'ble Supreme Court in Lalita Kumari case as well as the order passed by this Court in CrI.O.P(MD)No.4326 of 2015 (Sugesan Transport Pvt. Ltd.,) and it is also instructed that if any deviation is noted in complying the directions issued by the Hon'ble Supreme Court as well as by this Court, action will be taken against the erring officials.

7.Mr.M.Ajmalkhan, the learned Senior Counsel, who assisted the Court would submit that as per the Judgments rendered by the Hon'ble Supreme Court in D.K.Basu V. State of West Bengal reported in AIR 1997 SC 610 and Arnesh Kumar vs. State of Bihar and another reported in (2014) 8 Supreme Court Cases 273, failure on the part of the concerned official to comply with the mandates in Lalita Kumari case, would amount to contempt of Court.

8.At the stage of pending complaints before the respondent police, Criminal Original Petitions have been filed under Section 482 Cr.P.C., before this Court mainly on the following two categories:

(i)The complaint preferred by the de facto complainant/petitioner has not been enquired into within the specific time, following the directions issued by the Hon'ble Apex Court as well as this Court.

(ii)In some of the cases, the dispute between the parties is purely civil in nature and the parties are being harassed at the hands of the respondent police.

9.Now, it is appropriate for this Court to deal with the aforesaid two categories of issues involved in the Criminal Original Petitions. At this juncture, it is useful to extract paragraph - 111 (vii) of the decision in Lalita Kumari's Case (supra) wherein, time limit has been fixed to conduct preliminary enquiry on the complaint.



"111(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

10. Pursuant to the said decision, the Circular dated 27.11.2013 has been issued by the Director General of Police, Tamil Nadu, Chennai, wherein at paragraphs - 2 and 3, it is held as follows:

2. The following are the directions of the Hon'ble Supreme Court of India:-

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases



e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

3.All the Commissioners of Police in Cities and all Superintendents of Police in District are, therefore, directed to give suitable instructions to all the Station House Officers in their respective Cities/Districts that the directions of the Hon'ble Supreme Court of India should be followed in letter and spirit without any deviation.

11.The time period of seven days fixed in Lalita Kumari-IV at Paragraph No.120.7 has been further extended by the Supreme Court in Lalita Kumari-V, vide order dated 05.03.2014, which reads as follows:

"Heard Mr.Sidharth Luthra, learned Additional Solicitor General.

After hearing him and in the light of the grievance expressed in the present Criminal Miscellaneous Petition filed in the Writ Petition, we modify Clause (vii) of paragraph 111 of our Judgment dated 12th November 2013 in the following manner:

"(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary enquiry should be made time bound and in any case, it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the cause of it must be reflected in the General Diary entry."

To this extent, Clause (vii) of paragraph 111 of the Judgment is modified."

12.Pursuant to the Circular dated 27.11.2013, yet another Circular dated 07.07.2016 has been issued, wherein at paragraphs - 3 and 4 read as follows:



"3. Therefore, it is decided to constitute a Monitoring Committee in Cities and District headed by the Additional Deputy Commissioner (Head Quarters) in Cities and the Additional superintendent of Police (Head Quarters) in Districts to be assisted by the Assistant Commissioner of Police (CCRB) in Cities and the Deputy Superintendent of Police (DCRB) in Districts."

4. The Monitoring Committee shall review all the cases once in two months whether the Station House Officers in their jurisdiction have followed the guidelines/directions issued by the Hon'ble Supreme Court in Lalitha Kumari case in respect of registering FIR letter and spirit and submit report to the unit officer concerned for taking necessary action."

13. In the said Circular dated 07.07.2016, it has been specifically decided to constitute a Monitoring Committee in Cities and Districts headed by the Additional Deputy Commissioner (Head Quarters) in Cities and the Additional Superintendent of Police (Headquarters) in Districts to be assisted by the Assistant Commissioner of Police (CCRB) in Cities and the Deputy Superintendent of Police (DCRB) in Districts. The Monitoring Committee shall review all the cases once in two months whether the Station House Officers in their jurisdiction follow the guidelines/directions issued by the Hon'ble Supreme Court in Lalita Kumari's Case (supra) in respect of registering FIR in letter and spirit and submit a report to the unit Officer concerned for taking necessary action.

14. Therefore, it is quite clear that the Monitoring Committee should review the cases within the prescribed time as mentioned above. But, it is seen from the facts of the present cases, the Monitoring Committee has not taken any effective steps to implement the said Circular of the Director General of Police, Tamil Nadu, Chennai.

15. In respect of the second category of cases is concerned, some cases have been filed before this Court by stating that the Station House Officer has harassed the proposed accused in respect of the cases which relate to civil in nature, money transactions, land dispute, family dispute etc. Further, the Investigators, having lack of legal knowledge, while dealing with the complaints, caused unnecessary delay in completing the enquiry, which resulted, harassment to the parties. The Hon'ble Supreme Court in Lalita Kumari's Case (supra) at Paragraph - 111 (vi) held as follows:

"111(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as



- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases

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e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. ..."

16. As seen from several cases, the Investigators have lack of legal knowledge to deal with the complaints viz., civil disputes, money transactions, family disputes etc., Therefore, it is useful to extract the following desirable attributes of a good criminal investigator which are described in the book viz., Encyclopedia of Police Law and Crimes:

(1) Observation powers should be highly developed and specialized.

(2) Report writing must be of better quality because the investigator's finished report will determine whether or not the case will go to court.

(3) An investigator should be an extrovert, he must have the ability to talk to people he doesn't know and gain their confidence within a short period of time.

(4) Motivation - the investigator must feel he is doing a good job and is performing an important and useful function.

(5) A good investigator must be confident he has the abilities to do a good job.

(6) The investigator must have a real interest in the criminal investigation filed, a natural curiosity, or inquisitiveness.

(7) The ability to work without close supervision is essential - An investigator must be able to work and accomplish a task on his own.

(8) Open-mindedness - the investigator must not jump to hasty conclusions

(9) Perseverance and patience - usually, an investigator is working on several cases simultaneously and must attend to a great deal of detail. The investigator needs the patience required for details, stakeouts and long drawn-out proceedings.



(10) The criminal investigator should have a logical mind so he can reconstruct the sequence of events. The investigator should also have the imagination to conjecture what possibly could have occurred while the crime was being committed.

(11) A criminal investigator must have above-average intelligence and learning ability. The investigator needs excellent memory and recall. He should have the ability to identify a method of operation, the similarities among cases, and the value of evidence and information.

(12) Resourcefulness - a good investigator investigates crimes as an impartial collector of information without bias or prejudice. He must also have the integrity to reject bribes.

(13) The Criminal investigator must possess a considerable amount of knowledge about the legalities involved in charging a suspect with a crime and prosecuting the crime in court.

(14) The investigator should have an average, inconspicuous physical appearance. The investigation unit should have a balance of male and female investigators.

17. This Court has come across several Criminal Original Petitions, wherein, the Investigation Officers slept over the complaints for several months/years in view of lack of above qualities to decide the complaint, which would cause unnecessary hardship to the complainant in getting statutory remedy before the respondents.

18. In view of the observations made in the earlier paragraph and also in view of the guidelines extracted above, it is appropriate for the Department to evolve minimum norms/guidelines to assess the investigating officers who are dealing with the above said complaints. Hence, this Court feels it appropriate to issue the following directions to the Director General of Police, Tamil Nadu, Chennai to issue necessary instructions in the light of the decision of the Hon'ble Supreme Court as well as this Court.

(i) The decision of the Hon'ble Apex Court reported in 2013 (6) CTC 353 (SC) [Lalita Kumari V. Government of Uttar Pradesh and others]; decision of this Court reported in 2016 (5) CTC 577 [Sugesan Transport Pvt. Ltd., rep. by the Director Rejendra Sheth Vs. The Assistant Commissioner of Police, J-2 Adyar Police Station, Adyar, Chennai - 600 020], and the Circular issued by the Director General of Police dated 07.07.2016 should be strictly followed by the officers concerned and enquiry should be completed upon the complaint within 15 days from the date of receipt of the complaint, in exceptional cases six weeks. Further, the status of the complaint should be communicated to the defacto complainant through RPAD/e-mail or through SMS within the aforesaid period.



(ii) The Monitoring Committee, constituted by the Director General of Police vide Circular dated 07.07.2016 has to strictly comply with the directions issued therein and to review the cases once in two months and submit a report to the Unit Officer concerned (the Superintendent of Police/Commissioner of Police) without any deviation.

(iii) The Unit Officers shall submit a report to the Director General of Police, Chennai within one month from the date of receipt of a report from the Monitoring Committee, thereafter, if any deviation is noted, three months time is granted to take further action against the erring officer, after providing opportunity to submit his/her explanation.

(iv) The Director General of Police is directed to take necessary steps to provide online-registration of the complaint in all the police stations as expeditiously as possible, preferably within six months.

(v) The Director General of Police has to issue suitable directions to conduct periodical training programmes to the Investigating Officers to update their legal knowledge, especially on civil and criminal law and Court procedures by utilising services of retired High Court Judges as well as Senior Advocates who are specialised on the civil and criminal laws.

(vi) The Director General of Police is directed to issue fresh Circulars/Instructions to the concerned police station/Station House Officers to strictly adhere the above said directions by incorporating the judgment of the Hon'ble Supreme Court and this Court. The Circular to be issued shall also be permanently placed in the notice board of every Station House Officer.

19. Before parting with the cases, this Court suggests the Principal Secretary, Home Department, Government of Tamil Nadu and Director General of Police, Chennai, to constitute a Committee to evolve minimum norms/guidelines for the Investigating Officers, who are dealing with the complaints relating to civil disputes, murder case, dacoity, family disputes, commercial taxation cases, etc., so as to effectively investigate the complaints.

20. In the light of the above observations and directions these Petitions are disposed of.

21. For reporting compliance, post the matters by 02.08.2018 before me.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar (CS-IV)



To

1. The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Secretariat, Chennai -9.
2. The Director General of Police, Mylapore,
Chennai.
3. The Superintendent of Police,
Trichy.
4. The Inspector of Police,
District Crime Branch,
Trichy District.
5. The Superintendent of Police,
Sivagangai,
Sivagangai District.
6. The Deputy Superintendant of Police,
Ram Nagar, Devakottai,
Sivagangai District.
7. The Inspector of Police,
All Women Police Station,
Devakottai, Sivagangai District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

CrI.O.P.(MD) Nos.6493 of 2018 & 17119 of 2017
19.07.2018

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JM/SV/SAR 4/24.07.2018/12P/11C