

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.02.2019

CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.5350 of 2019

Dr.Vedha @ Dhamodharan

...Petitioner

vs.

1. The Principal Secretary to the Government,
Higher Education Department,
Secretariat, St. George Fort,
Chennai.

2. The Director,
Directorate of Collegiate Education,
9th Floor,
EVK Sampath Building,
College Road, Chennai - 6.

3. The Registrar,
University of Madras,
Centenary Building,
Chepuak, Chennai - 5.

4. The Commissioner of Police,
Chennai City.

5. The Principal,
Loyola College,
Nungambakkam, Chennai - 34.

6. Painter Mugilan
Mattrru Udaga Maiyyam,
No.19, BF1, Munnusamy Street,
Venkatesh Nagar,
Virugambakkam, Chennai - 600 092.

7. Mr.Kaaleeswaran,
Mattrru Udaga Maiyyam,
No.19, BF1, Munnusamy Street,
Venkatesh Nagar,
Virugambakkam, Chennai - 600 092.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondent Nos.1 to 4 to take action upon the respondents No.5 to 7 under the criminal law as well as through the departmental proceedings based on the petitioner's representation dated 22.01.2019.

For Petitioner : Mr.S.Balaji

For Respondents: Mr.V.Kadhirvelu, (for R1 & R2)
Special Government Pleader (Edu.)
Mr.E.Manoharan (for R4)
Additional Government Pleader.

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be an Editor of Microstat and contending inter alia that the painting displayed by Mr.Mugilan, painter, Respondent No.6 and Mr.Kaleeswaran, Respondent No.7, Assistant of the said painter, exhibited in Loyola College, has offended the sentiments of Hindus, petitioner is stated to have made a representation dated 22.01.2019 to the Director General of Police to take action.

2. Further contending that the said representation has not been acted upon, petitioner has sought for a writ of mandamus directing the Principal Secretary to the Government, Higher Education Department, Chennai, the Director, Directorate of Collegiate Education, Chennai, the Registrar, University of Madras, Chennai and the Commissioner of Police, Chennai City, respondents 1 to 4 respectively to take action on the Principal, Loyola College, Chennai, Mr.Mugilan and Mr.Kaaleeswaran, respondents 5 to 7, respectively, under the criminal law as well as departmental proceedings, based on his representation dated 22.01.2019.

3. Heard Mr.S.Balaji, learned counsel for the petitioner who advanced arguments.

4. First of all, there is no representation to the Principal Secretary to the Government, Higher Education Department, Chennai, the Director, Directorate of Collegiate Education, Chennai, the Registrar, University of Madras, Chennai and the Commissioner of Police, Chennai City, respondents 1 to 4 respectively. Therefore, no mandamus can be issued directing them to take action against the Principal, Loyola College, Chennai, Mr.Mugilan and Mr.Kaaleeswaran, respondents 5 to 7, respectively.

5. Secondly, the petitioner has sent a representation dated 22.01.2019 to the DGP, which reads thus:

"Subject: LOYALA COLLEGE PAINTING COMPLAINT.

Respected Sir,

Here I feel so shameless in this complaint against Loyala College Chennai as well as Mr.Kaleeswaran & Painter Mugilan who painted Hon'ble Prime Minister of India Narendra Modi's CARICATURE same as LORD HANUMAN, as well as TRISHUL symbol used in Sexual part of women in the depth of MENSURATION Painting & why NANDHINI is HINDU not CHRISTIAN in which they described about how Hindu Rape is different from the Christian Rape.

Why DOLLARIZE Compare with RAM RAJYA?

WHY ME TOO Criticize BHARATH MATA as well as SWACH BHARAT Targeted the Farmers Suicide in India through this painting exhibition on 19-20 January will be promoting NEW INDIA?

So please take action on this matter as soon as possible sir."

6. Though, in his representation, petitioner has sought for action to be taken, we do not appreciate the statement of the petitioner made in the representation as to how Hindu rape is different from Christian rape?

7. Thirdly, even taking for granted that a complaint has been made to Director General of Police, Tamil Nadu, he has not been arrayed as a party respondent, whereas the Commissioner of Police, Chennai City, has been arrayed as respondent No.4, to whom there is no complaint.

8. Section 295-A of Indian Penal Code, which is a cognizable offence, reads thus.

295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs — Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Punishment—Imprisonment for 3 years, or fine, or both—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable.

Petitioner cannot be said remediless.

9. In *Lalita Kumari Vs. Government of Uttarpradesh and Others* reported in [2014] 2 SCC 1, a Constitution Bench of the Hon'ble Apex Court issued the following directions relating to registration of FIR, which read as follows:

"120. In view of the aforesaid discussion, we hold:

120.1. The 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.

120.2. 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.

120.3. 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.

120.4. 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.

120.5. 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.

120.6. 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.

120.7.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.

120.8.Since the General Diary/Station Diary/Daily Dairy 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."

10. On the aspect as to whether a person can prefer a police complaint or to approach the jurisdictional Magistrate in reporting a cause for action under criminal law, a Hon'ble Division Bench of Madurai Bench of this Court by order dated 20.09.2018 in G.Prabakaran Vs. The Superintendent of Police, Thanjavur District and another in (Crl.OP.(MD)No.13681 of 2018 etc., batch), while answering the references, ordered in paragraph Nos. 35 and 36 as follows:

'35.Accordingly, we answer the references in the following manner, while giving certain directions:

(i) Section 482 Cr.P.C. Cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156 (3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C

(iv) A petition can be file invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154 (3) Cr.P.C.

(vi) An informant can send substance of the information to the superintendent of Police on knowing the decision of the Station House Officer in

not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the Superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any petition without due compliance.

(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The Judicial Magistrate, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narrative in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one.

The references stands ordered accordingly."

11. Code of Criminal Procedure envisages as to when report or a complaint can be made. Decisions stated supra explain the procedure. There is alternate and effective remedy under the Code of Criminal Procedure. Exercise of jurisdiction under Article 226 of the Constitution of India is extraordinary. Mandamus cannot be issued directing respondents 1 to 4 to take action under the criminal law or departmental proceedings.

Moreover, Respondent No.4, is not even a party to the representation, cannot be directed to take action. For all the abovesaid reasons, relief sought for cannot be granted. Writ Petition is dismissed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

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4. The Commissioner of Police,
Chennai City.

+1cc to Mr.S.Balaji, Advocate, S.R.No.17326

+2ccs to the Government Pleader, S.R.No.17648, 17292

WP.No.5350 of 2019

SAI (CO)

rrs 27/03/2019

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