

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8196 of 2019

M.Siraj Ahmed

... Petitioner

Vs.

The State,
Represented by;
The Inspector of Police [L&O],
K-2, Ayanavaram Police Station,
Ayanavaram,
Chennai - 600 023.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondent to register the case pursuant to the petitioner's complaint dated 18.02.2019 and to take appropriate action against the accused person by name Abubaiitha, S/o. Mohd Ali, residing at No.27/1, N.M.K. Street, Ayanavaram, Chennai-600 023 and to investigate in accordance with laws.

For Petitioner : M/s.Dr.C.K.Syed Shaffi

For Respondent : Mr.C.Raghavan
Government Advocate [Crl. Side]

O R D E R

This Criminal Original Petition has been filed to direct the respondent to register the case pursuant to the petitioner's complaint dated 18.02.2019 and to take appropriate action against the accused person by name Abubaiitha, S/o. Mohd Ali, residing at No.27/1, N.M.K. Street, Ayanavaram, Chennai-600 023 and to investigate in accordance with laws.

2. Heard the learned counsel for the petitioner and the learned Government Advocate [Criminal Side] for the respondent.

3. In view of the Judgment of the Hon'ble Division Bench of this Court in Crl.O.P.(MD)No.13681 of 2018 and batch of cases, dated 20.09.2018, the petition of this nature is not

maintainable before this Court. The relevant portion of the said order is extracted herewith:-

"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 filed 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 not withstanding the breach of time table furnished in Lalitha Kumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives 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."

However, liberty is granted to the petitioner to work out his remedy in accordance with the guidelines given by the Hon'ble Division Bench in the decision referred supra.

4. With the above observations, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Inspector of Police [L&O],
K-2, Ayanavaram Police Station,
Ayanavaram, Chennai - 600 023.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.K.Syed Shaffi, Advocate, S.R.No. 29060

Cr1.O.P.No.8196 of 2019

KS (CO)
GN(23/04/2019)