

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15729 of 2019
and Crl.MP.No.7834 of 2019

N.Amsaveni

..Petitioner

Vs.

1.R.Loganathan

2.State rep.by

The Inspector of Police,
District Crime Branch,
Coimbatore.

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Crl.M.P.No.6397 of 2018, on the file of the learned Judicial Magistrate No.VII, Coimbatore and set aside the order dated 27.05.2019.

For Petitioner : Mr.A.M.Rahamath Ali

For 1st Respondent : Mr.S.Gunalan

For 2nd Respondent : Mr.C.Raghavan

Government Advocate(Crl.side)

ORDER

This Criminal Original Petition has been filed challenging the Order passed by the learned Judicial Magistrate No.VII, Coimbatore, directing the respondent Police to register an FIR under Section 156(3) of CrPC.

2.The learned counsel for the petitioner submitted that entire procedure followed by the Court below is illegal and against the settled principles of law. The learned counsel submitted that the first respondent initially filed a complaint before the Court below and the Court below took a sworn statement of the first respondent. Thereafter, the Court below ordered for an enquiry under Section 202 of Cr.P.C., and sought for a report from the Police. A report was also filed before the Court below. The Court below thereafter chose to issue directions under Section 156(3) of Cr.P.C., and directed the respondent Police to register an FIR against the accused persons.

3.The learned counsel for the petitioner submitted that Section 156(3) of Cr.P.C., comes into play in the pre-cognizance stage and Section 202 of Cr.P.C., comes into play at the post-cognizance stage. The moment the Court below had chosen to treat the petition as a complaint under Section 200 of Cr.P.C.,

and had taken the sworn statement of the first respondent and ordered for a report under Section 202 of Cr.P.C., the Court below did not have the jurisdiction to give a direction under Section 156(3) of Cr.P.C. The learned counsel further submitted that pursuant to the orders passed by the Court below, the respondent police have also now registered an FIR in Crime No.9 of 2019.

4.The learned counsel appearing on behalf of the first respondent submitted that the Court below had taken into consideration the report filed by the police and thought it fit that the allegations made out a cognizable offence, and therefore a direction was given to the respondent police to register an FIR, in exercise of its power under Section 156 (3) of Cr.P.C. The learned counsel submitted that the respondent police must be permitted to investigate the case and the same should not be interfered by this Court in exercise of its jurisdiction under Section 482 of CrPC.

5. This Court heard the learned Government Advocate appearing on behalf of the second respondent police.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The procedure that was followed by the Court below is patently illegal, and it goes against the settled principles of law. Power to direct investigation by police under Section 156 (3) of Cr.P.C., is done at the pre-cognizance stage and the enquiry or investigation ordered under Section 202 of Cr.P.C., is done at the post-cognizance stage. Once a Magistrate takes cognizance of the offence, he cannot thereafter order for an investigation under Section 156(3) of Cr.P.C. The law on this issue has been settled by the Hon'ble Supreme Court in Rameshbhai Pandurao Hedau .vs. State of Gujarat reported in (2010) 2 MLJ Cr1 489.

8.It will also be useful to refer to the judgment of the Hon'ble Supreme Court in Mona Panwar .Vs. High Court of Judicature of Allahabad through its Registrar and Others reported in (2011) 3 SCC 496, wherein, the Hon'ble Supreme Court had explained the various options that are available to the Magistrate, on receipt of a complaint. In this judgment, the Hon'ble Supreme Court has categorically held that on receipt of a complaint, the Magistrate has the option of directing investigation under Section 156(3) of Cr.P.C., or adopt the course as provided under Section 200 of Cr.P.C. This judgment was further reiterated by a larger Bench in Ram Dev Food Products Private Limited .Vs. State of Gujarat reported in (2015) 2 MLJ Cr1 112.

9.The Court below has completely lost sight of these rudimentary principles of law. The Court below completely misdirected itself in ordering for an investigation under Section 156 (3) Cr.P.C., after having taken cognizance of the complaint and after ordering for an enquiry under Section 202 of Cr.P.C. Therefore, this Court has no hesitation to interfere with the order passed by the court below.

10.Yet another disturbing factor that was noticed in this case is that the Court below has failed to take note of the judgment of the Hon'ble Supreme Court in Priyanka Srivastava & Another .Vs. State of U.P. reported in [2015 6 SCC 287] wherein, the Hon'ble Supreme Court has made it very clear that in petitions filed under Section 156(3) of Cr.P.C, it must be necessarily accompanied by sworn affidavit of the complainant. This requirement has also not been satisfied in this case. Looking at the order from any angle, this Court is of the considered view that the same requires to be set aside.

11.In the result, the Order passed by Court below in CrI.M.P.No.6397 of 2018 dated 25.05.2019, is hereby set aside and consequently the FIR registered in Crime No.9 of 2019, pursuant to the order, is also quashed. It is left open to the first respondent to give a fresh complaint and proceed further in accordance with law. This order will not stand in a way of the first respondent from preferring a fresh complaint since the order of the Court below was set aside only on the ground of serious procedural lapses.

This Criminal Original Petition is accordingly allowed with the above directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.VII, Coimbatore.
- 2.The Inspector of Police, District Crime Branch, Coimbatore.
- 3.The Public Prosecutor, High Court, Chennai.

+1 cc to M/s.S.Gunalan,Advocate Sr.No.68431

CrI.O.P.No.15729 of 2019

AKM/ 28.08.19/ 3P-5C /