IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7136 of 2017

A. Kannan ... Petitioner

Vs.

1.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai-600 007.

2. The Deputy Commissioner of Police,
Central Crime Branch,
Greater Chennai, Vepery, Chennai.

3. The Asst. Commissioner of Police,
R-8, Vadapalani,
Chennai-600 026.

4. The Inspector of Police,
R-5, Virugambakkam Police Station,
Chennai.

5. K.P. Kadieswaran

6. K. Vijaya ... Respondents
(Respondents 5 & 6 are impleaded
as per the order of this Court in
WMP.No. 10178 of 2017, dated: 22.03.2018)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking Writ of Mandamus, directing the respondents to direct the respondents to register the complaint filed by the petitioner dated 22.03.2016, on the file of the 2nd respondent and the investigation pending with the 3rd and 4th respondent.

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For Petitioner : Mr.K.M. Subraahmaniam

For Respondents: Mr.M.Mohamed Riyaz,
Additional Public Prosecutor. -R1 to R4

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O R D E R

This writ petition has been filed seeking directions to the respondents to register the complaint filed by the petitioner on 22.03.2016.

2. By consent, the writ petition itself is taken up for final disposal.

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 compliant 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

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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 Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Commissioner of Police,
Office of the Commissioner of Police,
Vepery, Chennai-600 007.

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2. The Deputy Commissioner of Police,
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   Greater Chennai, Vepery, Chennai.

3. The Asst. Commissioner of Police,
   R-8, Vadapalani,
   Chennai-600 026.

4. The Inspector of Police,
   R-5, Virugambakkam Police Station,
   Chennai.

5. The Public Prosecutor,
   High Court, Madras.

SSV(CO)
GMY(25/06/2019)

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